

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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# Th15a

## Addendum

February 6, 2014

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item Th15a**, Coastal Commission Permit Application No. **6-12-040-A1 (22<sup>nd</sup> District Agricultural Association)**, for the Commission Meeting of Thursday, February 13, 2014.

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Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 5 of the staff report, modify the proposed replacement for Special Condition No. 3 as follows:

Replace Existing Special Condition No. 3 with:

3. **Soil Contaminant Testing and Re-Use Standards Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval a final soil testing and re-use standards program. The program shall include the following elements:
  - a. Prior to excavation, soil samples shall be obtained to determine the possible presence and vertical and spatial distribution of potential contaminants in the soils of the SOL Phase I area slated for re-use in the Habitat Buffer Restoration Area;
  - b. The soil shall be tested for contaminants known to be associated with parking lots, including, but not limited to, hydrocarbons, heavy metals, and automotive fluids;
  - c. The soil testing and re-use program shall specify the thresholds to be used to determine contaminant levels adequate to protect public safety and wildlife;
  - d. The sampling and testing results shall be reported to the Executive Director. Any soils containing contaminants in

excess of the specified standards shall, with approval of the Executive Director, either be remediated on-site before use as fill material in the Habitat Buffer Restoration Area or shall be hauled offsite to a permitted waste disposal site; and

- e. Any foreign debris, including, but not limited to, refuse or rubble, found within the soils of the SOL Phase I area shall be removed and hauled to a permitted waste disposal site.

The applicant 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. On Page 16 of the staff report, the first full paragraph shall be modified as follows:

~~However, while~~ The preliminary environmental evaluations conducted for the Applicant by Christian Wheeler Engineering in 2013, prior to applying for this permit, indicated that the soil within the Phase I portion of the SOL “appeared to be clean and was relatively free of vegetation or other deleterious substances,” ~~that same evaluation also admitted that this was the result of a “limited study.”~~ Because of the long history of use of the SOL as a parking reservoir for Fairground events, Commission staff was concerned that the soils might be contaminated and had the study reviewed by the Commission’s water quality staff. The September 2013 Preliminary Geotechnical and Environmental Evaluation conducted by Christian Wheeler Engineering showed just minor amounts of petroleum hydrocarbons in two of the nine surface soil samples (out of 26 soil borings total), with no contamination in deeper samples. The Commission’s water quality staff believes that the mixing of surface soils with deeper soils that will be used to construct the proposed berm will eliminate any adverse impacts to the environment from the completed berm. and the limited nature of the soil evaluation conducted to date, the Commission’s staff ecologist believes it is necessary that more extensive soil testing be conducted prior to the excavation and deposition of any Phase I area soils into the Habitat Buffer Restoration Area. Failure to properly test the soil could result in the relocation of contaminants from one habitat area into another.

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# Th15a

Filed: 12/5/13  
180th Day: 6/3/14  
Staff: A. Llerandi-SD  
Staff Report: 1/23/14  
Hearing Date: 2/12-13/14

**STAFF REPORT: AMENDMENT REQUEST**

**Application No.:** 6-12-040-A1

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

**Agent:** Lindsay Teunis

**Location:** 2260 Jimmy Durante Blvd., Del Mar, San Diego County (APN No. 299-042-01, 299-042-02, 299-003-04)

**Description of Original Permit Approval 6-12-040:** Phase I of the South Overflow Lot (SOL) restoration, which includes restoration of 2.41 acres of salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.22 acre of upland transition habitat in the SOL. Also proposed is restoration of 1.07 acres of salt marsh habitat and 0.39 acre of upland transition habitat along the northern bank of the San Dieguito River (East Berm). The restoration plan is designed to be compatible with the conceptual design for the entire SOL restoration (Phase II).

**Proposed Amendment:** Amend Special Condition No. 3 to allow placement of excess spoils generated by Phase I restoration of the SOL within the Habitat Buffer Restoration Area south of the East Overflow Lot and Golf Driving Range so as to create a natively-vegetated earthen berm up to 4.5 feet in height above existing grade.

**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 raises issues regarding protection of sensitive habitats and water quality. Habitat issues arise because the desired placement location for the excess spoils generated by the approved Phase I restoration is the Habitat Buffer Restoration Area required by the previously approved Consent Cease and Desist and Consent Restoration Orders of March, 2012, and located within the San Dieguito River Valley, a sensitive coastal lagoon area. Water quality issues arise because the Habitat Buffer Restoration Area is in the San Dieguito River flood plain and in close proximity to the San Dieguito River itself.

Recommended special conditions include requiring the applicant to adhere to final construction and BMP plans to ensure that the final project conforms to approved parameters. A condition requiring that spoils from SOL be tested for contaminants prior to placement in the habitat restoration area will ensure no impacts to water quality will occur from re-using former parking area soils. With these conditions, impacts on coastal resources will be minimized or eliminated, consistent with Chapter 3 policies of the Coastal Act.

Commission staff recommends **approval of** coastal development permit amendment 6-12-040-A1, as conditioned.

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### **EXHIBITS**

Exhibit 1 – Location Map

Exhibit 2 – Aerial View

Exhibit 3 – Soil Deposition Plan

Exhibit 4 – Berm Restoration Plan (1 of 3)

Exhibit 5 – Berm Restoration Plan (2 of 3)

Exhibit 6 – Berm Restoration Plan (3 of 3)

Exhibit 7 – Coastal Development Permit 6-12-040

Exhibit 8 – Proposed Amended Special Conditions

## **I. MOTION AND RESOLUTION**

### **Motion:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 6-12-040 pursuant to staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment 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 the coastal development permit amendment on grounds that the development as amended subject to conditions will be in conformity with Chapter 3 policies of the Coastal Act. Approval of the permit amendment 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.*

## **PROCEDURAL NOTE:**

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1. The Executive Director determines that the proposed amendment is a material change,
2. Objection is made to the Executive Director's determination of immateriality, or
3. The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

In this case, the Executive Director has determined that the proposed amendment is a material change to the previously approved project. If the applicant object or so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [Title 14 California Code of Regulations, section 13166]

## II. SPECIAL CONDITIONS

The permit amendment modifies the Special Conditions for Coastal Development Permit No. 6-12-040 as follows:

Replace Existing Special Condition No. 3 with:

3. **Soil Contaminant Testing and Re-Use Standards Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval a final soil testing and re-use standards program. The program shall include the following elements:
- a. Prior to excavation, soil samples shall be obtained to determine the possible presence and vertical and spatial distribution of potential contaminants in the soils of the SOL Phase I area slated for re-use in the Habitat Buffer Restoration Area;
  - b. The soil shall be tested for contaminants known to be associated with parking lots, including, but not limited to, hydrocarbons, heavy metals, and automotive fluids;
  - c. The soil testing and re-use program shall specify the thresholds to be used to determine contaminant levels adequate to protect public safety and wildlife;
  - d. The sampling and testing results shall be reported to the Executive Director. Any soils containing contaminants in excess of the specified standards shall, with approval of the Executive Director, either be remediated on-site before use as fill material in the Habitat Buffer Restoration Area or shall be hauled offsite to a permitted waste disposal site; and
  - e. Any foreign debris, including, but not limited to, refuse or rubble, found within the soils of the SOL Phase I area shall be removed and hauled to a permitted waste disposal site.

The applicant 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.

Add Special Conditions Nos. 10 & 11:

10. **Final Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit final project plans to the

Executive Director for review and written approval. Said plans shall be in substantial conformance with the plans drafted by AECOM and submitted to the Coastal Commission on January 3, 2014.

The applicant 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.

11. **Previous Buffer Restoration Requirements.** All other restoration requirements and criteria related to the Habitat Buffer Restoration Area as identified in Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (“Consent Orders”) shall remain in full force and effect.

<http://documents.coastal.ca.gov/reports/2012/3/Th8-s-3-2012.pdf>

### III. FINDINGS AND DECLARATIONS

#### A. PROJECT DESCRIPTION/HISTORY.

The proposed amendment is related to Coastal Development Permit (CDP) No. 6-12-040, which approved restoration (within the SOL and the East Berm area) of a total of 3.48 acres of disturbed salt marsh wetland habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.61 acre of upland transition habitat. The restoration project included two distinct areas which consist of a portion of the Del Mar Fairgrounds South Overflow Parking Lot (SOL) and a portion of the berm (East Berm) that separates the East Overflow Parking Lot (EOL) and Golf Driving Range (GDR) from the San Dieguito River. Specifically, 2.41 acres of disturbed salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.22 acre of upland transition habitat within the SOL were approved for restoration and 1.07 acres of disturbed salt marsh habitat and 0.39 acre of upland transition habitat within the East Berm were approved for restoration. The grading of the SOL Phase I area is expected to produce approximately 12,500 cubic yards of spoils. Special Condition No. 3 of the original CDP No. 6-12-040 required the spoils to be disposed of outside the coastal zone. The Applicant is proposing to amend the permit for the above restoration to allow for excess spoils from the SOL Phase I restoration to be deposited into the 100-foot wide, 1,700-foot long Habitat Buffer Restoration Area, adjacent to and north of the East Berm, which was set aside for restoration by the Commission-approved Consent Cease and Desist and Consent Restoration Orders (“Consent Order”) of March, 2012. The Applicant will use the spoils to create a natively-vegetated earthen berm ranging in height from 0 to 4.5 feet above existing grade.

The Del Mar Fairgrounds (“Fairgrounds”) is a state-owned and operated facility run by the 22<sup>nd</sup> District Agricultural Association (“Applicant”) and originally built to support agricultural activities and horse racing. Every summer, it hosts an annual county fair and thoroughbred horse racing meet, along with a variety of smaller events in the main Fairgrounds complex during the non-summer off season. 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. On the southern and eastern sides of the fairgrounds property, across Jimmy Durante Boulevard and adjacent to the San Dieguito River and the I-5 freeway, the Del Mar Fairgrounds contains three unpaved lots – the SOL, EOL, and GDR. The GDR operates as an approved golf driving range for members of the public to use, and is part of a larger, approved “Surf & Turf” sports and recreation facility. The Surf & Turf facility was permitted by the City of San Diego in a Conditional Use Permit in March 26, 1975. The San Diego Regional Commission subsequently approved an administrative permit for work related to the construction of the Surf & Turf on May 3, 1975 (CDP No. F2379).

The Surf & Turf facility is a recreational sports complex located between Jimmy Durante Boulevard and I-5. In addition to the GDR on its southern end, Surf & Turf contains pool facilities, a volleyball facility, miniature golf, tennis courts, and equipment retail. To the north of the site, beyond a fence and a row of shrubbery, is 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 the freeway itself.

The SOL portion of the restoration is located south of the main Del Mar Fairgrounds complex and is bounded by the San Dieguito River and Jimmy Durante Boulevard. Phase I restoration of the SOL, as approved, will eliminate approximately 130 parking spaces. The loss of parking will be mitigated through measures such as off-site parking and shuttle programs, bicycle facilities, employee transit subsidies, discounted carpool parking, etc. The loss of these 130 parking spaces is not expected to significantly impact the public's ability to access the coast. The East Berm portion of the restoration is located several hundred feet northeast of the SOL, adjacent to the northern bank of the San Dieguito River. Extensive grading of both sites will be undertaken in order to achieve appropriate wetland elevations.

Both restoration sites are adjacent to the 150-acre San Dieguito Wetland Restoration Project which the Commission approved as mitigation for the San Onofre Nuclear Generating Station's cooling water system operations on fish populations (CDP 6-04-088). The SOL portion of the project is proposed to cross beneath the existing Coast to Crest Trail, while the East Berm portion of the project will be located adjacent to the south side of the existing trail. The Coast to Crest Trail is a multi-use trail system for hikers, bicyclists and horseback riders that will eventually extend from the ocean at Del Mar to the San Dieguito River's source on Volcan Mountain, just north of Julian, a distance of approximately 55 miles. Although the entirety of Coast to Crest trail has not been completed, numerous segments of trail are open to the public. The portions of the trail that cross through and are adjacent to the proposed wetland restoration project and the Habitat Buffer Restoration Area are completed and open to the public. The San Dieguito River Park Joint Powers Authority (JPA) – the agency responsible for maintaining and expanding the San Dieguito River Valley Park – is responsible for implementing and maintaining the Coast to Crest Trail.

The East Berm restoration area is located immediately adjacent to the north bank of the San Dieguito River. That restoration area will receive tidal water through a primary tidal channel that will flood during lower high tides and the restoration area is designed so that the site will be inundated during moderately high tides, which will overtop the bank separating the restoration area from the San Dieguito River. No bridges or changes in trail alignment adjacent to the East Berm restoration area are proposed, as that restoration area is located entirely to the south of the existing trail.

The majority of the restoration project is intended to resolve a long-standing Army Corps of Engineers (USACE) enforcement action, and is proposed in accordance with a restoration order from the USACE. The USACE enforcement action was a result of unpermitted grading and stockpiling of soil on the SOL in June of 1990. Specifically, the USACE enforcement action requires the 22<sup>nd</sup> DAA to restore 2.14 acres of salt marsh habitat in the SOL and 0.93 acre of transitional habitat in the East Berm area.

In a separate enforcement action, the Commission issued Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (Consent Orders) on March 8, 2012 to address unpermitted activities at the Del Mar Fairgrounds including landform alteration

within a wetland. The Consent Orders approved by the Commission will result in the complete restoration of the remainder of the SOL to wetland habitat (Phase II).

The project site is within the Del Mar Fairgrounds, which is located in both the Cities of San Diego and Del Mar. While both these Cities have certified LCPs, the entire project site is within the Coastal Commission's area of original permit jurisdiction. Thus the Commission is reviewing the coastal development permit application for the entire project, and Chapter 3 of the Coastal Act is the legal standard of review.

## **B. WETLANDS**

The following Chapter 3 policies of the Coastal Act are most applicable to the proposed amendment, and state, in part:

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.*

Section 30233 (a) of the Coastal Act states, in part:

*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.*
- (b) *Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.*

[...]

Section 30252 of the Coastal Act states, in part:

*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, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...*

[...]

Virtually the entire Fairgrounds property was created by filling tidelands back in the 1930s. Although much of the site is now developed, there are several areas still containing wetland resources, including the EOL, SOL, and most of the GDR. 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. Based on previous Commission findings (Consent Orders), the degraded wetlands on the EOL and SOL, when only used for parking during the annual San Diego County Fair which runs from early June to early July and the Annual Del Mar Horse Racing season which runs from mid-July to early September (Fair and Races), still provide some wetland habitat function outside of the summer Fair and Races.

According to historical photographs of the sites, when the SOL, EOL, and GDR are not used for parking, sparse wetland vegetation returns, and the areas are used for resting and feeding by shorebirds and migratory species. Depending on the specific species, some nesting may also occur, although most species' nesting seasons continue into the summer months when the lots have historically been used for parking. Past delineations by the ACOE have found that EOL and the GDR are, in substantial part, defined as wetlands. In compliance with the Consent Orders approved by the Commission in March 2012, the

Applicant commissioned AECOM to conduct a wetlands delineation study for the EOL and the GDR (the Applicant did not conduct a new delineation for the SOL, as it is planned to be fully restored to salt marsh habitat pursuant to the ACOE enforcement action and Commission Consent Orders). The resulting September 2012 report identified 5.81 acres of disturbed alkali marsh in the EOL and 2.92 acres of disturbed alkali playa in the GDR. Both the alkali marsh and the alkali playa meet the Commission's criteria for "wetland," and thus the AECOM delineation found a total of 8.73 acres of wetlands in the EOL and GDR.

The southernmost segment of delineated wetlands in the EOL extends into the 100-foot wide Habitat Buffer Restoration Area proposed by the Applicant to receive the SOL Phase I spoils. In response to comments from the JPA, the Applicant is avoiding placement of any of the spoils from the SOL within the boundaries of the wetlands delineated within the Habitat Buffer Restoration Area, save for a small 0.029-acre segment in the southeastern corner, so as to avoid filling all but a very small portion of wetlands. As the originally approved Habitat Buffer Restoration plan already permitted some disturbance to the entirety of the portion of the restoration area designated as a wetland, this latest revision will actually decrease disturbance due to the restoration project. The remaining surface area of the Habitat Buffer Restoration Area is not delineated as wetland, and it is into this remainder that the spoils will be deposited and the earthen berm constructed. Furthermore, the Applicant is proposing to construct an 8-foot wide, 2-foot deep bioswale along the northern edge of the proposed berm. This bioswale will also avoid the delineated wetlands.

The Commission's staff ecologist has reviewed the proposed modified Habitat Buffer Restoration plan and concurs that the proposed placement of the fill will not cause adverse habitat impacts or prevent the Applicant from meeting the remaining requirements for restoration of the Habitat Buffer Restoration Area. Further, the proposed project will result in major habitat enhancement through the creation of additional native habitat once non-native vegetation is removed and replaced with native vegetation on the newly created berm. However, because the SOL was for many years used as a parking area for Fairground events, it is possible that the soil could still contain detritus or chemicals from the people and vehicles that utilized it. As such, the Commission's staff ecologist recommended that thorough soil testing and analysis be conducted prior to the excavation and deposition of any spoils into the Habitat Buffer Restoration Area.

Although there is existing functioning wetland habitat immediately adjacent to the restoration areas, none of the existing sensitive habitat will be impacted or removed. In most cases, the first 100 feet upland from a wetland is reserved as a buffer to provide transitional habitat between the actual wetland and permitted development. Although the size of an individual buffer can vary depending on site-specific circumstances, 100 feet is generally accepted as a minimum. A buffer provides a distance barrier and a percolating medium, and reduces the chance that any adverse impact associated with development will find its way into the wetlands. In addition, buffers provide upland habitat that acts as a refuge area for birds and other species that use the various wetlands throughout the river valley. Thus, the deposition of spoils within the Habitat Buffer Restoration Area

and the creation of an earthen berm and bioswale will enhance the spatial and filtration functions of the space between the river area and the nearby EOL and GDR.

In order for the fill of wetlands to be consistent with Coastal Act section 30233, the fill must be for an allowed use, the least environmentally damaging alternative, and feasible mitigation measures must be added to minimize adverse environmental effects. The project, as amended, is still a restoration project, so the proposed fill is an allowable use under Section 30233(a)(7). The amendment would actually decrease the amount of disturbance that was contemplated as part of the original project, so the project, as amended, is the least environmentally damaging feasible alternative. As proposed, however, there is still potential for the project to cause adverse environmental impacts if the excavated spoils are contaminated or if feasible impacts to wetlands are not minimized. Thus, to meet the final test under Section 30233, the Commission imposes the following mitigation measures to minimize the potential impacts of the project.

**Special Condition No. 10** requires the Applicant to adhere to approved final plans for the proposed vegetated berm to ensure that the foreseeable impacts to wetlands are minimized. **New Special Condition No. 3** requires the Applicant to conduct soil testing of the spoils prior to excavation and deposition due to the SOL's past usage as a parking area during Fairground events. **Special Condition No. 11** ensures that the development is consistent with the Commission's previously-issued cease and desist and restoration orders for this site. Thus, the Commission finds the proposed project, as conditioned, in conformance with the wetland protection policies of Chapter 3 of the Coastal Act.

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

Segments of the Coast to Crest Trail have already been constructed on the Del Mar Fairgrounds property. A portion of the Coast to Crest trail on the SOL is built as a slightly elevated boardwalk. Because the trail is elevated on the boardwalk and the existing berm, it allows good views of the river and the existing and restored wetlands.

There is currently no connection between the Fairgrounds and the nearby beach other than on busy urban streets. Thus, the trail begins at the western-most point of the SOL at Jimmy Durante Blvd. and continues east along the San Dieguito River. The Coast to Crest Trail continues east of the SOL and runs parallel to the river and East Berm along the southern boundary of the Habitat Buffer Restoration Area, before crossing underneath I-5, and continuing to the eastern edge of the Horse Park property. The Commission recently approved an extension of the trail that crosses the Horse Park property and connects the trail to El Camino Real (CDP 6-04-029-A1). The public trail system is a significant component of the San Dieguito Wetlands Restoration Plan and significantly enhances low-cost public access in this area. This trail also formalizes and enhances public access through the Fairgrounds property.

The portion of the trail crossing through the Fairgrounds property was conditioned for pedestrian use only along with the Commission's approval of the San Dieguito Wetland Restoration (CDP No. 6-04-088). The raised boardwalk minimizes impacts to the delineated, but non-vegetated, wetlands currently existing on SOL, EOL, and GDR. The USACE accepted the presence of the boardwalk within the SOL restoration area, and does not consider that any significant adverse impacts will result from its pedestrian-only use. On the contrary, the boardwalk may actually channel traffic across the site and minimize the potential for people to wander through the wetland vegetation itself. The elevated boardwalk provides views of the river without the necessity to walk through habitat to get close enough to see the water. The boardwalk also has benefits as a public education tool.

While a public access benefit, a public access path traversing a restored habitat area has the potential to disturb sensitive wetland species and may increase the amount of refuse that enters the restoration area. However, in the current case, the segment of the Coast to Crest Trail south of the EOL and GDR is located along the southern boundary of the Habitat Buffer Restoration Area, not within it. Because of the Coast to Crest's Trail's location outside of the Habitat Buffer Restoration Area, the proposed placement of spoils within that space will not impede existing public access or require relocation of the trail itself.

Furthermore, the authorization to place the spoils from the SOL Phase I restoration into the Habitat Buffer Restoration Area will have other indirect benefits to the public and public access. Because the Habitat Buffer Restoration Area is adjacent to the SOL, the removal of the requirement to dispose of the soils outside of the coastal zone will reduce average daily trips and miles driven by construction equipment and dump trucks, leading to less traffic on the already highly-utilized streets around the Fairgrounds and neighboring communities. Fewer miles driven means that fewer automotive and greenhouse emission will be expelled into the air, lessening air quality impacts.

Although few public access impacts are anticipated from this project, expanded closures and detours of the Coast to Crest Trail beyond what was already approved in the original Habitat Buffer Restoration plan are possible public access impacts. As such, **Special Condition No. 10** requires the applicant to conform to final approved plans so as to ensure that impacts to public access are avoided or minimized. As conditioned, the Commission finds the proposed development consistent with the cited Chapter 3 policies

of the Coastal Act and consistent with all other public access and recreation policies as well.

#### **D. WATER QUALITY**

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.*

Currently, the SOL restoration area has elevations ranging from +3.2 to +5.5 feet National Geodetic Vertical Datum (NGVD) and the East Berm restoration has elevations ranging from +4.2 to +8.1 feet NGVD. In order to achieve appropriate wetland elevations, the SOL restoration area will be graded to elevations ranging from approximately -1 to approximately +4.5 feet NGVD and the East Berm restoration area will be graded to elevations ranging from approximately 0 to approximately +4.5 feet NGVD. The proposed SOL Phase I restoration will produce approximately 12,500 cubic yards of spoils, which, with approval of this amendment, will be utilized to create a berm up to 4.5 feet in height above the existing grade in the Habitat Buffer Restoration Area south of the EOL and GDR. To control erosion, the created berm will be serpentine in shape and undulating in grade, with slopes ranging from 3:1 to 5:1. Coupled with the required palette of native plants the Applicant is required to plant on the berm under the Consent Order, this will lessen the chance of severe erosion occurring during storm events and affecting nearby water quality. Additionally, the Applicant is constructing an 8-foot wide, 2-foot deep bioswale along the northern border of the proposed berm to capture and filter additional runoff coming from either the berm or the adjacent EOL and GDR. This, in conjunction with the berm itself, is beneficial, as the Commission authorized at the November, 2013, hearing CDP No. 6-12-067, permitting the parking of vehicles within the EOL and GDR. Because the presence of vehicles increase the

likelihood of introducing particulates and chemicals into the soil and water, the presence of the bioswale and berm acts as a buffer between the parking area and the nearby river.

However, while preliminary environmental evaluations conducted for the Applicant by Christian Wheeler Engineering in 2013, prior to applying for this permit, indicated that the soil within the Phase I portion of the SOL “appeared to be clean and was relatively free of vegetation or other deleterious substances,” that same evaluation also admitted that this was the result of a “limited study.” Because of the long history of use of the SOL as a parking reservoir for Fairground events and the limited nature of the soil evaluation conducted to date, the Commission’s staff ecologist believes it is necessary that more extensive soil testing be conducted prior to the excavation and deposition of any Phase I area soils into the Habitat Buffer Restoration Area. Failure to properly test the soil could result in the relocation of contaminants from one habitat area into another.

Finally, the proposed project will not involve creating any new impervious surfaces or the introduction of any pollutants. Rather, by restoring habitat (removing non-native vegetation and revegetating mostly bare areas with natives), the proposed development increases the runoff filtration potential along the north bank of the San Dieguito River. Therefore, the surface water entering the San Dieguito River from the project site will carry a lower level of sediments and pollutants. The proposed project will enhance the quality of the surface water that collects on the areas east of Jimmy Durante, that are not part of the existing storm drain system that operates on the developed portions of the Fairgrounds property.

Because of the history of the SOL Phase I area as a parking reservoir, there is the potential that the excavated material will be contaminated, in which case the project, as amended, could result in adverse impacts to water quality. To avoid this potential adverse impact, **New Special Condition No. 3** requires the Applicant to comply with a Commission-approved soil testing plan prior to any excavation and deposition of Phase I spoils into the Habitat Buffer Restoration Area. Therefore, the Commission finds the development, as conditioned, consistent with the cited policies of the Coastal Act with respect to water quality concerns.

## **E. VISUAL RESOURCES**

Section 30251 of the 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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

[...]

The Fairgrounds is located within the San Dieguito River Valley, a popular scenic coastal area. While the main Fairgrounds complex is mostly developed, much of the river valley is open space, offering views from both the valley floor and surrounding hills. Furthermore, unlike the main Fairgrounds complex, the SOL, EOL, and GDR are substantially undeveloped, and still retain the open space nature of the adjacent river and lagoon areas. As such, the proposed construction of an earthen berm of up to 4.5 feet in height has the potential to affect views and the character of the valley.

As proposed, the deposition of spoils within the Habitat Buffer Restoration Area should not adversely affect public views of the greater river valley. This is because the aforementioned Coast to Crest Trail that serves as a popular artery through the habitat areas of the river valley is located on the southern side of the Habitat Buffer Restoration Area, the same side as the river and lagoon. Thus, pedestrians will still be able to enjoy the scenic nature of the river area. Furthermore, because the berm will only be 4.5 feet above existing grade at its maximum height, it is unlikely that they berm will impede views for the majority of the public. Finally, should the berm impede views, it would only impede views northward from the Coast to Crest Trail, towards the empty dirt parking lots of the EOL and GDR and the development (RV Park, Surf & Turf recreation center, and hotel) beyond. In addition to any screening of the aforementioned development from users of the trail, the revegetated and restored nature of the berm should actually increase the scenic quality viewed from the trail because the berm will be a naturally vegetated space is what is now a flat, disturbed, and sparsely vegetated space. Finally, it should also be noted while scenic views are also available to drivers on the nearby I-5 freeway, due to the much higher elevation of the freeway in comparison the project area, the proposed deposition of soils will have little to no impact on drivers' views.

The Commission therefore finds the proposed project amendment, as conditioned, will not adversely impact public views or scenic resources and is consistent with Section 30251 of the Act.

## **F. LOCAL COASTAL PLANNING**

Although the site is in an area of original jurisdiction and thus not subject to the policies and regulations of either Del Mar's or San Diego's certified LCPs, it is nonetheless consistent with the Fairgrounds/Racetrack land use designation and zone of the Del Mar LCP that geographically includes the SOL, and with the Commercial Recreation land use designation and zone of the San Diego LCP that geographically includes the EOL and GDR. The District is currently working on a complete update of its 1985 Master Plan. However, in areas of original jurisdiction, Chapter 3 of the Coastal Act is the legal standard of review, with local planning documents used as guidance. The preceding findings have demonstrated that the proposal, as conditioned, is fully consistent with all applicable Chapter 3 policies of the Coastal Act and will not prejudice the ability of the Cities of Del Mar and San Diego to continue to implement their respective LCPs.

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

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing testing and disposal of graded spoils, 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.

(G:\San Diego\Reports\Amendments\2010s\6-12-040-A1 22<sup>nd</sup> DAA SOL staff report.doc)

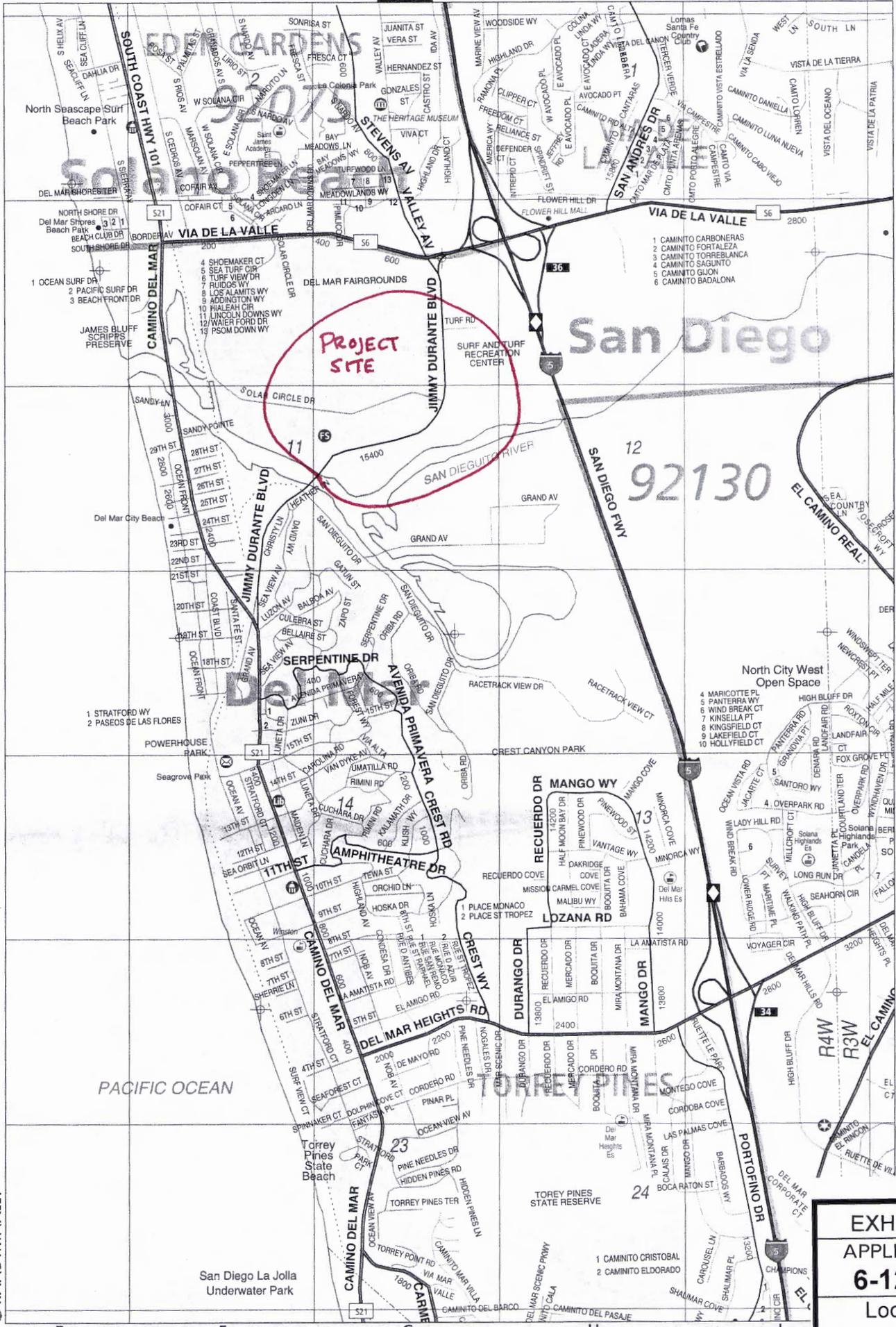
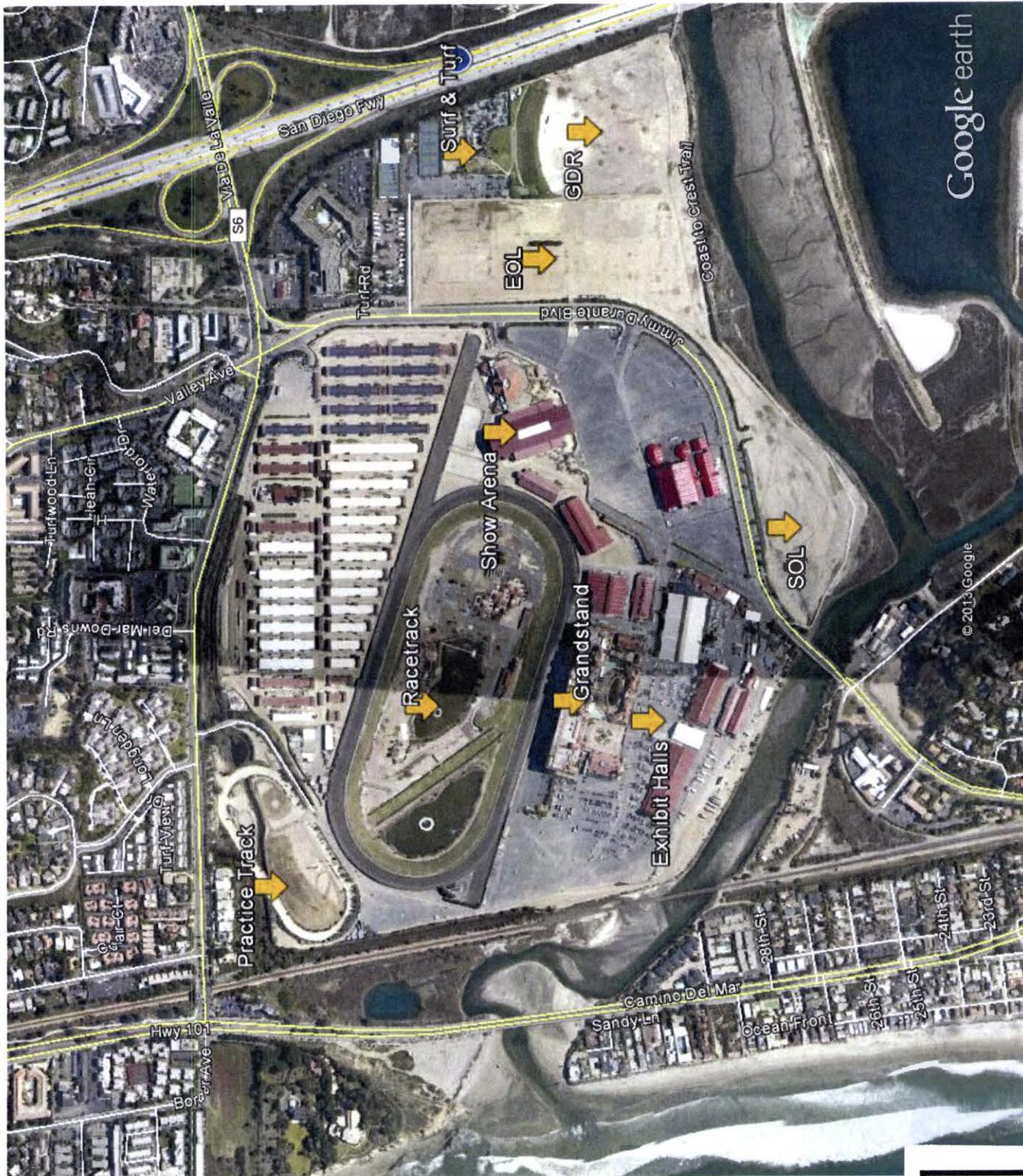


EXHIBIT NO. 1  
 APPLICATION NO.  
**6-12-040-A1**  
 Location Map



Google earth

5000

feet  
km

earth



1

EXHIBIT NO. 2
APPLICATION NO.
<b>6-12-040-A1</b>
Aerial View
California Coastal Commission



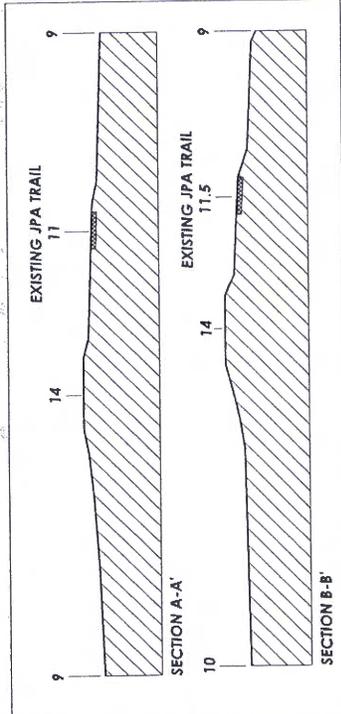
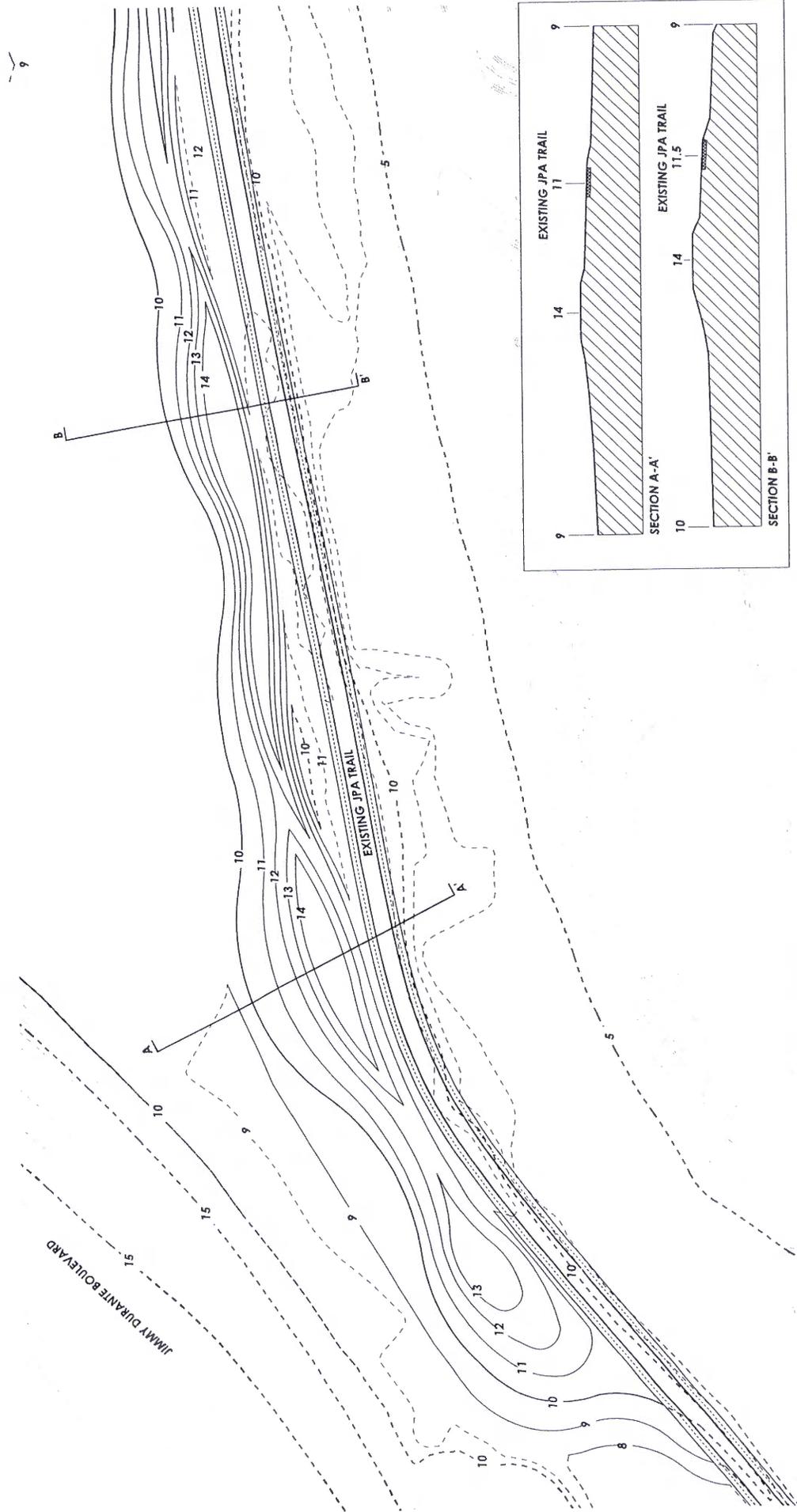
- LEGEND**
- Buffer Restoration Area
  - Proposed Grading Limit
  - Proposed Elevation Contour
  - Proposed Bioswale
  - JPA Coast to Crest Trail
  - Existing Split Rail Fence
  - Existing Elevation Contours
- Potential Waters of the U.S.**
- Alkali Marsh

ILermx\_NAVTEC, Trimble SANDAG 2012; AECOM 2013  
 0 150 Feet

Proposed Naturalized Berm within Buffer Restoration Area (Plan View)

estoration Project  
 \9902\CD\05100\03202\_Maps\JPA\_Naturalized\1/2014\_re.mxd

**EXHIBIT NO. 3**  
**APPLICATION NO.**  
**6-12-040-A1**  
**Soil Deposition Plan**



# DEL MAR FAIRGROUNDS - BERM RESTORATION AREA

2260 Jimmy Durante Blvd. | Del Mar, CA 92014

## PROPOSED BUFFER GRADING ALTERNATIVE

DRAWING TITLE:

NOTES: Concept sketch issued to propose reuse of excavated materials

DRAWING SCALE: 1" = 20'-0"

SUBMITTAL DATE: 11 December, 2013

DRAWING REFERENCE: South Lot Phase 1; East Berm Area Restoration Plans

SHEET SIZE: 24" x 36"

SITWORKS

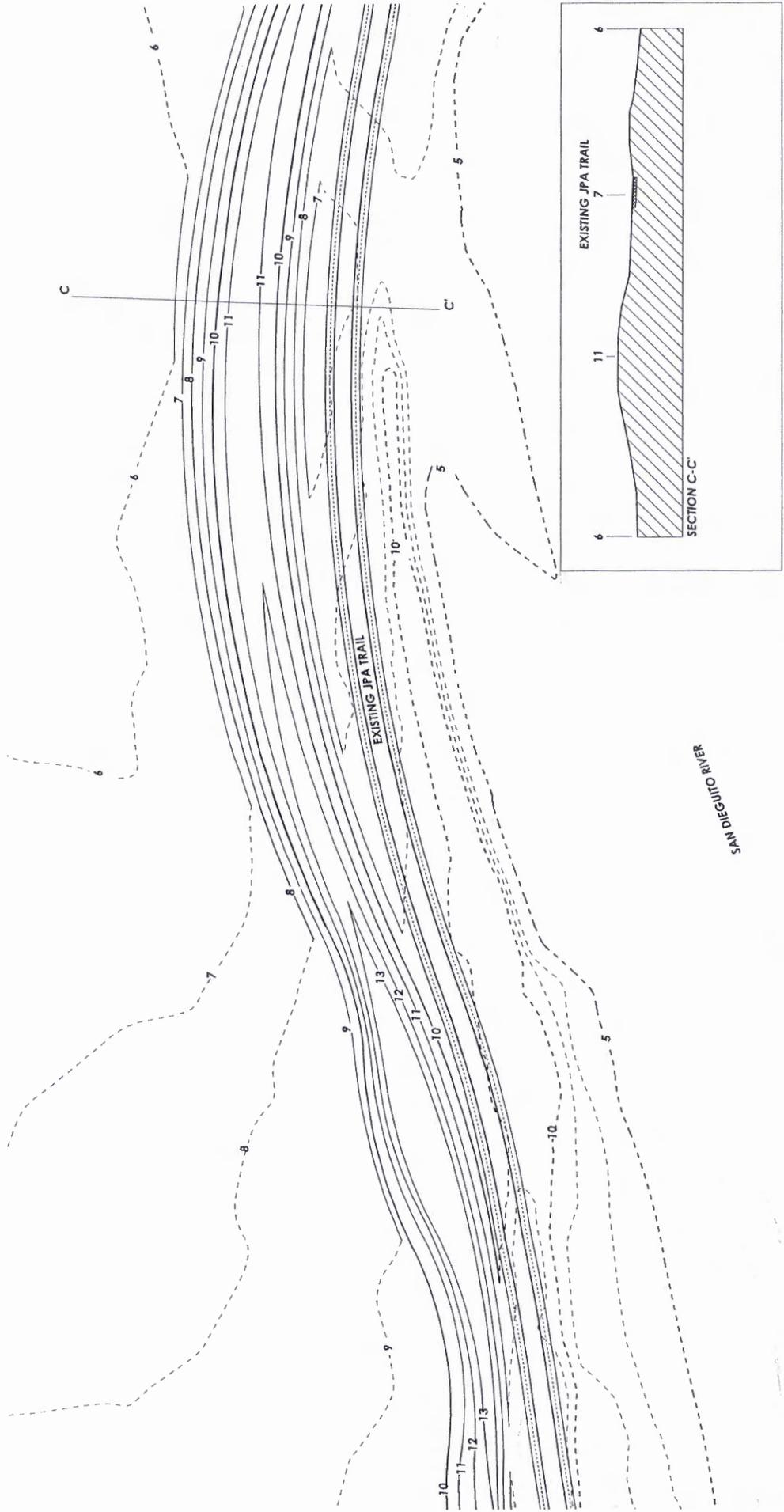
**BR-G-001**

SKETCH NO.: [Buffer Restoration] - [Grading]

AECOM

Inc. nomics

EXHIBIT NO. 4
APPLICATION NO. 6-12-040-A1
Berm Restoration Plan
1 of 3



**DEL MAR FAIRGROUNDS - BERM RESTORATION AREA**  
 2260 Jimmy Durante Blvd. | Del Mar, CA 92014

**PROPOSED BUFFER GRADING ALTERNATIVE**

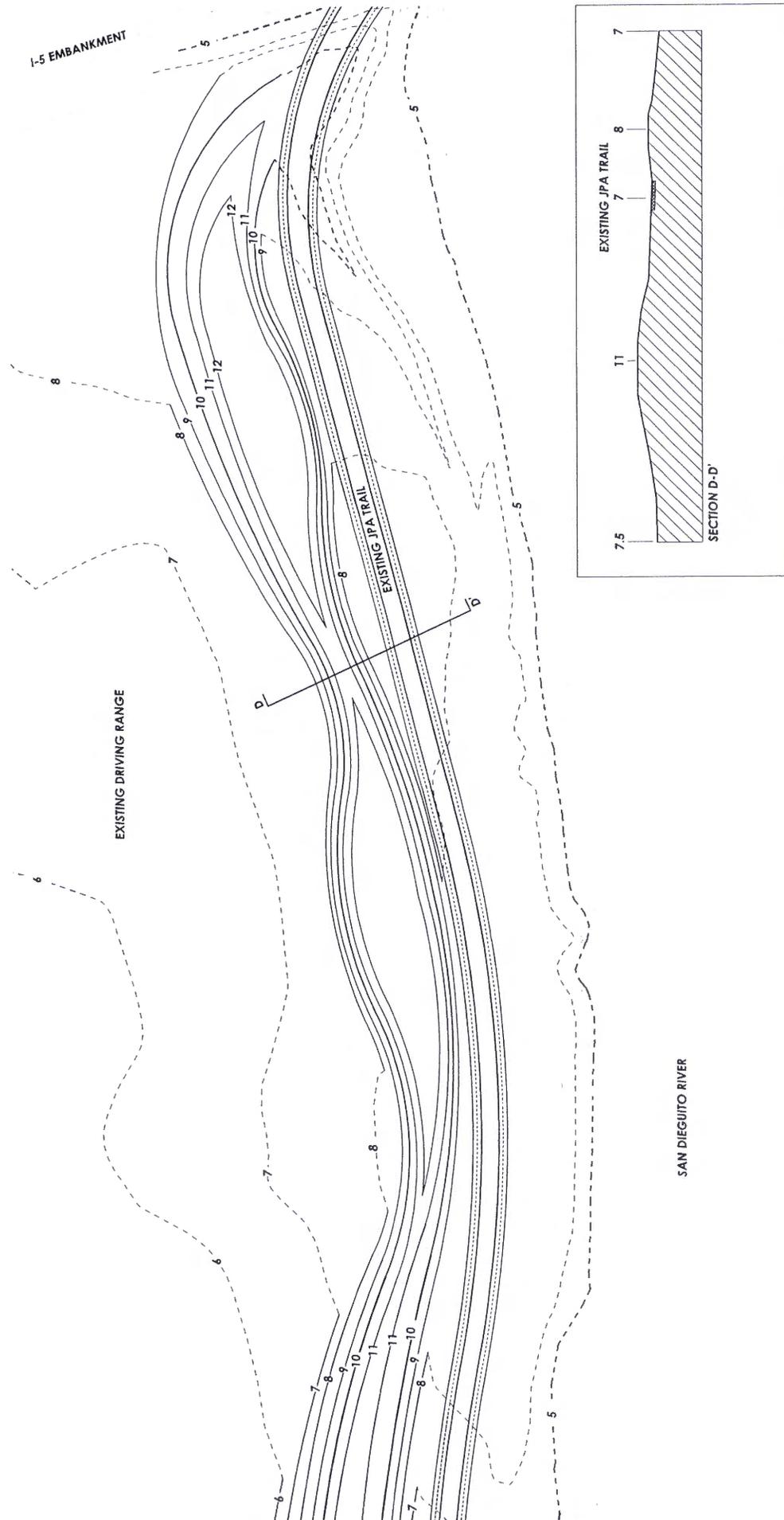
DRAWING TITLE: **PROPOSED BUFFER GRADING ALTERNATIVE**  
 NOTES: Concept sketch issued to propose reuse of excavated materials  
 DRAWING SCALE: 1" = 20'-0"  
 SUBMITTAL DATE: 11 December, 2013  
 DRAWING REFERENCE: South Lot Phase 1; East Berm Area Restoration Plans  
 SHEET SIZE: 24" x 36"

Inc. **omics**

**SITWORKS**

**BR-G-002**  
 SKETCH NO.: [Buffer Restoration] - [Grading]

EXHIBIT NO. 5
APPLICATION NO. 6-12-040-A1
Berm Restoration Plan
2 of 3



# DEL MAR FAIRGROUNDS - BERM RESTORATION AREA

2260 Jimmy Durante Blvd. | Del Mar, CA 92014

## PROPOSED BUFFER GRADING ALTERNATIVE

DRAWING TITLE:

NOTES: Concept sketch issued to propose reuse of excavated materials

DRAWING SCALE: 1" = 20'-0"

SUBMITTAL DATE: 11 December, 2013

DRAWING REFERENCE: South Lot Phase 1: East Berm Area Restoration Plans

SHEET SIZE: 24" x 36"

SITWORKS

**BR-G-003**

SKETCH NO.: [Buffer Restoration] - [Grading]

Inc. **ormics**

EXHIBIT NO. 6  
 APPLICATION NO.  
**6-12-040-A1**  
 Berm Restoration  
 Plan  
 3 of 3

RECEIVED

JUN 06 2013



CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Page: 1

Date: **November 30, 2012**

Permit Application No.: **6-12-040**

# CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421  
(619) 767-2370  
[www.coastal.ca.gov](http://www.coastal.ca.gov)

## COASTAL DEVELOPMENT PERMIT

On **November 15, 2012**, the California Coastal Commission granted to:

### 22nd District Agricultural Association

this permit subject to the attached Standard and Special Conditions, for development consisting of

**Phase I of the South Overflow Lot (SOL) restoration, which includes restoration of 2.41 acres of salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.22 acre of upland transition habitat in the SOL. Also proposed is restoration of 1.07 acres of salt marsh habitat and 0.39 acre of upland transition habitat along the northern bank of the San Dieguito River (East Berm). The restoration plan is designed to be compatible with the conceptual design for the entire SOL restoration (Phase II)**

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

**Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar and San Diego, San Diego County (APN #s: 299-071-04, 299-201-01, and 299-030-01).**

Issued on behalf of the California Coastal Commission by

CHARLES LESTER  
Executive Director

By: **ERIC STEVENS**  
Coastal Program Analyst

### ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . o . . ." applies to the issuance of this permit.

EXHIBIT NO. 7
APPLICATION NO.
<b>6-12-040-A1</b>
CDP No. 6-12-040
California Coastal Commission

**COASTAL DEVELOPMENT PERMIT**

Date: November 30, 2012

Permit Application No.: 6-12-040

Page 2 of 6

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE, 14 Cal. Admin. Code Section 13158(a).

6/3/13

Date



Signature of Permittee

**STANDARD CONDITIONS:**

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

**SPECIAL CONDITIONS:**

The permit is subject to the following conditions:

1. **Revised Final Monitoring Plan.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the permittee shall submit to the Executive Director for review and written approval, a final Salt Marsh Restoration, Maintenance, and Monitoring Plan. Said Plan shall be in substantial conformance with the plan identified as Salt Marsh Restoration, Maintenance, and Monitoring Plan dated April 2012 (Exhibit 9), except that it shall be revised to include the following:
  - a. Section numbers 6.3.1, 6.3.2, 6.3.4, and 6.6 shall incorporate the changes proposed by the applicant's biologist in the correspondence received 7/05/2012 and included as Exhibit 8.

## COASTAL DEVELOPMENT PERMIT

Date: November 30, 2012

Permit Application No.: 6-12-040

Page 3 of 6

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. **Revised Final Plans/BMPs.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the applicant shall submit to the Executive Director for review and written approval, final project plans and BMPs. Said plans shall be in substantial conformance with the plans identified as Del Mar Salt Marsh Wetland Restoration Plans submitted to the Commission on 5/21/2011, except that they shall be revised to include the following:
  - a. Storage and staging areas shall be located in a manner that has the least impact on vehicular and pedestrian traffic along Jimmy Durante Blvd and the public boardwalk/trail system.
  - b. Shoreline material including, but not limited to, local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. During the construction period, the applicants shall monitor the intertidal areas and inlet area daily. Should the applicants discover any debris in the intertidal areas and/or inlet area during the construction period, it shall immediately remove the debris from those areas and dispose of it in a manner consistent with local, state and/or federal regulations, as applicable.
  - c. Unless authorized in writing by the California Department of Fish and Game (DFG) and the U.S. Fish & Wildlife Service (Service), no work shall occur during the nesting seasons of any threatened or endangered avian species nesting in the vicinity within 500 feet of the project area. If work is allowed during the nesting season of such species, a bird monitor shall be onsite while work occurs, and any work will stop or move if the monitor finds that such species are being negatively affected by construction.
  - d. A 100 ft. wetland buffer shall be delineated around the proposed restored wetlands.
  - e. The alignment of the proposed wooden split rail fence around the SOL restoration area shall be modified to follow the alignment of the outer edge of the wetland buffer.
  - f. Depictions and all reference to the "future walkway to be designed by others," "proposed JPA/equestrian trail," and "proposed bus ramp and walls (by others)" on plan sheets 2, 3, 11, 12, 13, 14, and 15 shall be deleted.
  - g. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents.

## COASTAL DEVELOPMENT PERMIT

Date: November 30, 2012  
Permit Application No.: 6-12-040  
Page 4 of 6

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.

3. Disposal of Graded Spoils. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the disposal site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest. Placement of graded soil is prohibited on the South Overflow Lot (SOL), the East Overflow lot (EOL), or the Golf Driving Range (GDR).
4. Grading Elevation Confirmation. PRIOR TO PLANTING OR SEEDING, the applicant shall consult with an independent (one who has not participated in any manner with the planning of the proposed project) licensed engineer, or other competent independent licensed professional who can comply with this condition, to determine that the restoration area of Phase I has been graded in a manner consistent with the approved final plans. This determination shall be in writing and shall demonstrate that the site was graded and contoured to plan. This written determination must be submitted to the Executive Director of the Coastal Commission for review and written approval.
5. Lighting. Temporary lighting proposed to be used during the Fair and Races shall be consistent with the following:
  - a. Temporary lighting is permitted adjacent to the wetland restoration areas for safety/security during the San Diego County Fair and Del Mar Horse Racing seasons (Fair and Races) only.
  - b. Light spillover levels into the restored wetlands and the wetland buffers shall be minimized to the greatest extent practicable through the use of lighting shields which direct light away from the restored wetlands and buffers.
  - c. A maximum of 5 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 ft. of restored or existing wetland habitat in the East Overflow Lot (southern edge) and the Golf Driving Range (southern edge). A maximum of 4 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 ft. of restored or existing wetland habitat within the South Overflow Lot.
  - d. There shall be a minimum distance of 250 ft. between each light standard.
  - e. All lighting equipment and lighting standards shall be located outside of the 100 ft. wetland buffers and lighting shall be directed away from the wetlands.

**COASTAL DEVELOPMENT PERMIT**

Date: November 30, 2012

Permit Application No.: 6-12-040

Page 5 of 6

The permittee shall undertake the development in accordance with this condition. Any proposed changes shall be reported to the Executive Director. No changes 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. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits, such as a permit from the U.S. Army Corps of Engineers (USACE), for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.
7. Assumption of Risk, Waiver of Liability and Indemnity.
  - a. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, erosion and 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.
  - b. Liability for Costs and Attorneys Fees: The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
8. **Wetland Buffers.** A buffer of a minimum of 100 ft. in width shall be provided upland of the proposed created wetlands (excluding the northern edge of the SOL restoration area which is constrained by Jimmy Durante Boulevard). Permitted uses within the identified buffer shall be limited to the following:
  - a. Restoration and maintenance
  - b. Public access on approved trails

**COASTAL DEVELOPMENT PERMIT**

Date: November 30, 2012

Permit Application No.: 6-12-040

Page 6 of 6

Restoration and preservation of the identified buffer area shall be completed consistent with Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (Consent Orders).

9. **Compatibility with South Overflow Lot (SOL) Phase II Restoration.** Changes to the SOL Phase I Restoration may be required in order to implement the SOL Phase II Restoration including, but not limited to, the following:

- a. Widening and/or deepening the three proposed spillover locations (Exhibit 7)
- b. Grading of the entire berm that will separate the Phase I restoration from the remaining parking lot (and future Phase II restoration area) to wetland elevations consistent with the surrounding wetland topography
- c. Realignment of the existing San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) public access trail within the entire SOL. Realignment, reconstruction and/or removal of the boardwalk in the future shall be the responsibility of Southern California Edison and the San Dieguito River Regional Open Space Joint Powers Authority.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above.

## Proposed Amended List of Special Conditions for 6-12-040

### III. SPECIAL CONDITIONS.

The permit is subject to the following conditions:

1. **Revised Final Monitoring Plan.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the permittee shall submit to the Executive Director for review and written approval, a final Salt Marsh Restoration, Maintenance, and Monitoring Plan. Said Plan shall be in substantial conformance with the plan identified as Salt Marsh Restoration, Maintenance, and Monitoring Plan dated April 2012 (Exhibit 9), except that it shall be revised to include the following:

- a. Section numbers 6.3.1, 6.3.2, 6.3.4, and 6.6 shall incorporate the changes proposed by the applicant's biologist in the correspondence received 7/05/2012 and included as Exhibit 8.

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. **Revised Final Plans/BMPs.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the applicant shall submit to the Executive Director for review and written approval, final project plans and BMPs. Said plans shall be in substantial conformance with the plans identified as Del Mar Salt Marsh Wetland Restoration Plans submitted to the Commission on 5/21/2011, except that they shall be revised to include the following:

- a. Storage and staging areas shall be located in a manner that has the least impact on vehicular and pedestrian traffic along Jimmy Durante Blvd and the public boardwalk/trail system.

- b. Shoreline material including, but not limited to, local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. During the construction period, the applicants shall monitor the intertidal areas and inlet area daily. Should the applicants discover any debris in the intertidal areas and/or inlet area during the construction period, it shall immediately remove the debris from those areas and dispose of it in a manner consistent with local, state and/or federal regulations, as applicable.

- c. Unless authorized in writing by the California Department of Fish and Game (DFG) and the U.S. Fish & Wildlife Service (Service), no work occur during the nesting seasons of any threatened or endangered avian species nesting in the vicinity within 500 feet of the project area. If we

EXHIBIT NO. 8

APPLICATION NO.

**6-12-040-A1**

Proposed Amended  
List of Special  
Conditions

allowed during the nesting season of such species, a bird monitor shall be onsite while work occurs, and any work will stop or move if the monitor finds that such species are being negatively affected by construction.

- d. A 100 ft. wetland buffer shall be delineated around the proposed restored wetlands.
- e. The alignment of the proposed wooden split rail fence around the SOL restoration area shall be modified to follow the alignment of the outer edge of the wetland buffer.
- f. Depictions and all reference to the "future walkway to be designed by others," "proposed JPA/equestrian trail," and "proposed bus ramp and walls (by others)" on plan sheets 2, 3, 11, 12, 13, 14, and 15 shall be deleted.
- g. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents.

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.

3. **Soil Contaminant Testing and Re-Use Standards Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval a final soil testing and re-use standards program. The program shall include the following elements:

- a. Prior to excavation, soil samples shall be obtained to determine the possible presence and vertical and spatial distribution of potential contaminants in the soils of the SOL Phase I area slated for re-use in the Habitat Buffer Restoration Area;
- b. The soil shall be tested for contaminants known to be associated with parking lots, including, but not limited to, hydrocarbons, heavy metals, and automotive fluids;
- c. The soil testing and re-use program shall specify the thresholds to be used to determine contaminant levels adequate to protect public safety and wildlife;
- d. The sampling and testing results shall be reported to the Executive Director. Any soils containing contaminants in excess of the specified standards shall, with approval of the Executive Director, either be

remediated on-site before use as fill material in the Habitat Buffer Restoration Area or shall be hauled offsite to a permitted waste disposal site; and

- e. Any foreign debris, including, but not limited to, refuse or rubble, found within the soils of the SOL Phase I area shall be removed and hauled to a permitted waste disposal site.

The applicant 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.

4. **Grading Elevation Confirmation.** PRIOR TO PLANTING OR SEEDING, the applicant shall consult with an independent (one who has not participated in any manner with the planning of the proposed project) licensed engineer, or other competent independent licensed professional who can comply with this condition, to determine that the restoration area of Phase I has been graded in a manner consistent with the approved final plans. This determination shall be in writing and shall demonstrate that the site was graded and contoured to plan. This written determination must be submitted to the Executive Director of the Coastal Commission for review and written approval.
5. **Lighting.** Temporary lighting proposed to be used during the Fair and Races shall be consistent with the following:
  - a. Temporary lighting is permitted adjacent to the wetland restoration areas for safety/security during the San Diego County Fair and Del Mar Horse Racing seasons (Fair and Races) only.
  - b. Light spillover levels into the restored wetlands and the wetland buffers shall be minimized to the greatest extent practicable through the use of lighting shields which direct light away from the restored wetlands and buffers.
  - c. A maximum of 5 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 ft. of restored or existing wetland habitat in the East Overflow Lot (southern edge) and the Golf Driving Range (southern edge). A maximum of 4 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 ft. of restored or existing wetland habitat within the South Overflow Lot.
  - d. There shall be a minimum distance of 250 ft. between each light standard.

- e. All lighting equipment and lighting standards shall be located outside of the 100 ft. wetland buffers and lighting shall be directed away from the wetlands.

The permittee shall undertake the development in accordance with this condition. Any proposed changes shall be reported to the Executive Director. No changes 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. **Other Permits.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits, such as a permit from the U.S. Army Corps of Engineers (USACE), for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.
7. **Assumption of Risk, Waiver of Liability and Indemnity.**
  - a. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, erosion and 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.
  - b. **Liability for Costs and Attorneys Fees:** The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
8. **Wetland Buffers.** A buffer of a minimum of 100 ft. in width shall be provided upland of the proposed created wetlands (excluding the northern edge of the SOL

restoration area which is constrained by Jimmy Durante Boulevard). Permitted uses within the identified buffer shall be limited to the following:

- a. Restoration and maintenance
- b. Public access on approved trails

Restoration and preservation of the identified buffer area shall be completed consistent with Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (Consent Orders).

9. **Compatibility with South Overflow Lot (SOL) Phase II Restoration.** Changes to the SOL Phase I Restoration may be required in order to implement the SOL Phase II Restoration including, but not limited to, the following:

- a. Widening and/or deepening the three proposed spillover locations (Exhibit 7)
- b. Grading of the entire berm that will separate the Phase I restoration from the remaining parking lot (and future Phase II restoration area) to wetland elevations consistent with the surrounding wetland topography
- c. Realignment of the existing San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) public access trail within the entire SOL. Realignment, reconstruction, and/or removal of the boardwalk in the future shall be the responsibility of Southern California Edison and the San Dieguito River Valley Regional Open Space Park Joint Powers Authority.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above.

10. **Final Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit final project plans to the Executive Director for review and written approval. Said plans shall be in substantial conformance with the plans drafted by AECOM and submitted to the Coastal Commission on January 3, 2014.

The applicant 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.

11. **Previous Buffer Restoration Requirements.** All other restoration requirements and criteria related to the Habitat Buffer Restoration Area as identified in Cease and

Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 ("Consent Orders") shall remain in full force and effect.

<http://documents.coastal.ca.gov/reports/2012/3/Th8-s-3-2012.pdf>