

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad/Oceanside

DECISION: Approval with Conditions

APPEAL NOS.: A-6-CII-00-124/A-6-OCN-00-125

APPLICATION NO: 6-01-133

APPLICANT: City of Oceanside

PROJECT DESCRIPTION: Replacement of an existing 50-foot long, 10-foot wide wooden weir structure at the mouth of Buena Vista Lagoon with an 80-foot long by 40-foot wide concrete weir.

PROJECT LOCATION: Mouth of Buena Vista Lagoon, Carlsbad/Oceanside (San Diego County) APN 155-104-04

APPELLANTS: Coastal Commissioners Sara Wan and Shirley Detloff

STAFF NOTES:

On August 23, 2000 Commissioners Detloff and Wan filed an appeal of both City's approval of the weir project, citing that the project was inconsistent with the certified LCPs. The applicant waived its right to a hearing within 49 days of the appeal. The two appeals are being addressed in one report because they are all components of one project that crosses two different jurisdictions. The motions for Substantial Issue are on Pages 4 and 5 of this report and the motions for de novo are on Pages 14 and 15.

In addition to the subject appeals, a related application, CDP #6-01-133, is before the Commission at its October 2001 meeting. This is because a portion of the project is located within the Commission's original jurisdiction (i.e., within the open water area of Buena Vista Lagoon). Should the Commission find Substantial Issue on the subject appeals, a de novo hearing will occur for the subject appeals in conjunction with the Commission's de novo hearing on CDP #6-01-133.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeals have been filed.

Commission staff recommends denial of the applications on de novo because the development will result in adverse impacts to environmentally sensitive habitat areas, inconsistent with Chapter 3 policies of the Coastal Act as well as the certified LCP. The proposed development is not a permitted use within a wetland, has not proposed adequate mitigation and will result in significant impacts to environmentally sensitive resources which could be avoided if other alternatives were implemented. The proposal has not been designed to avoid impacts and be the least environmentally damaging flood control alternative and has been proposed prematurely prior to adoption of an integrated management plan for Buena Vista Lagoon. Therefore, the proposed development is inconsistent with applicable policies of the certified Carlsbad and Oceanside LCPs and Chapter 3 of the Coastal Act and must be denied.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Oceanside Local Coastal Program (LCP), Coastal Development Permit CDP #7-99, Certified City of Carlsbad Local Coastal Program (LCP)/Mello II Segment, Carlsbad Coastal Development Permit CDP #99-53, SUP 99-07, CUP 99-26

I. Appellant Contends That:

For both City approvals, the appellants contend that the City did not address whether the impacts associated with the weir were a permitted use within a wetland, whether impacts were avoidable or whether the project represented the least environmentally damaging alternative. The project is characterized as a flood control project; however, the appellants contend that the Cities' approvals did not address how the proposed project meets the requirements of the certified LCPs with regard to flood protection, did not specifically address the need for the additional rock or its potential impacts to sensitive resources and hydrology, did not address how public access will be maintained during and after construction and did not address proposed changes to existing improvements and the potential impacts to water quality.

II. Local Government Action:

The proposed development was approved by the City of Oceanside Planning Commission on September 27, 1999. The conditions of approval address impacts and mitigation to sensitive plants drainage impacts to Buena Vista Lagoon, and consistency with the proposed Buena Vista Lagoon Management Plan. (A-6-OCN-00-125)

The proposed development was approved by the City of Carlsbad Planning Commission on July 19, 2000. The conditions of approval address drainage impacts to Buena Vista

Lagoon, preservation of public access and consistency with the certified Mello II resource protection policies. (A-6-CII-00-124)

III. Appeal Procedures:

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. During the substantial issue phase, the Commission's review is limited to the issues raised by the appellants. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process is the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

For both City approvals, the appellants contend that the City did not address whether the impacts associated with the weir were a permitted use within a wetland, whether impacts were avoidable or whether the project represented the least environmentally damaging alternative. The project is characterized as a flood control project; however, the appellants contend that the Cities' approvals did not address how the proposed project meets the requirements of the certified LCPs with regard to flood protection, did not specifically address the need for the additional rock or its potential impacts to sensitive resources and hydrology, did not address how public access will be maintained during and after construction and did not address proposed changes to existing improvements and the potential impacts to water quality.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolutions:

- A. **MOTION I:** *I move that the Commission determine that Appeal No. A-6-CII-01-124 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-CII-01-124 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

- B. **MOTION II:** *I move that the Commission determine that Appeal No. A-6-OCN-01-125 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local

action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-OCN-01-125 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. The proposed project site lies on the jurisdictional boundary of the cities of Oceanside and Carlsbad, in the northern San Diego County, at the mouth of Buena Vista Lagoon (Exhibits 1, 2). The lagoon consists of approximately 350 acres of freshwater marsh and open water with a watershed of about 22 square miles. Drainage flows in an east-west direction from the San Marcos Mountains to the Pacific Ocean via Buena Vista Creek and Buena Vista Lagoon. A weir, which acts as a small dam built in a waterway to raise the water level, was erected at the mouth of Buena Vista Lagoon in the 1940's to maintain a stable water level in the lagoon. The original weir was washed out by a storm event during the 1960's and was reconstructed in 1969. This weir, which currently exists, is 50-foot long and has a crest elevation of about 5.6 feet above mean sea level (MSL). It consists of wood soldier pile head walls and a series of wood piles held in place by steel supports. The north and south sides of the channel banks at the mouth of the lagoon are stabilized by rip-rap.

The property occupied by the northern half of the weir and the mouth of the lagoon are within the limits of the City of Oceanside, directly adjacent to the St. Malo residential community. This portion of the project site is owned by the St. Malo Homeowners Association and is protected by a conversation easement. The southern and eastern half of the weir is in the City of Carlsbad and is owned by the State of California (i.e., a portion of the weir extends east into APN 203-010-18 which is owned by the State Lands Commission) and Beach Condominium Homeowners Association located further to the south. The portion of the project that is proposed within the water areas comprising Buena Vista Lagoon is within the Commission's jurisdiction.

The proposed project consists of replacing the existing 50-foot long weir structure at the mouth of Buena Vista Lagoon with an 80-foot long by 40-foot wide concrete weir (Exhibit 3). The proposed replacement weir structure will occupy approximately an additional 15 feet to the north and 15 feet to the south, maintaining the centerline exactly on the jurisdictional boundary between the cities of Oceanside and Carlsbad. A sub-surface, 20-foot wide transition structure will be constructed east (upstream) of the weir and a sub-surface 10-foot wide transition structure will be west of the replacement weir,

resulting in the placement of a structure with a total width of 40 feet, at least 30 feet of which will be below the surface of the water. The new Ogee type weir will be a concrete structure with a flat face on the eastern or upstream side and a curved surface on the west. This design will more efficiently discharge the flow over the crest and onto the beach thereby reducing the amount of beach erosion downstream. The crest elevation of the new weir will be 5.6 feet above MSL, exactly the same elevation as the existing weir. The main objective of the weir replacement and widening project is to provide increased flows through the mouth of the lagoon during storm events while maintaining the existing freshwater character of the lagoon to avoid or reduce the potential for flooding on residential properties. As discussed below a flood protection plan is also proposed as the proposed weir, by itself, would not provide 100-year flood protection to affected properties.

A 10-foot wide by 3-foot high section of the weir structure consisting of a concrete panel will be constructed in the center of the new weir. The panel is a section of the weir that could be removed at a future time without affecting the structural integrity of the weir. Removal of the panel would create a 10-foot wide passage way for water in the lagoon to pass through and allow drainage of a portion of the lagoon. The elevation of the passageway after the panel is removed would be 2.5 feet above MSL. Concrete stop logs could then be lowered into the void to block the opening and allow the weir to function as designed. The panel is designed to be removed by heavy equipment and could be used to either drain portions of the lagoon for maintenance purposes or allow increased flows through the weir area in anticipation of significant storm events. Because the width of the channel would be only 10-feet wide and the bottom elevation would be 2.5 feet above MSL, its removal would not allow full tidal flushing of the lagoon. If a future management plan for Buena Vista Lagoon requires tidal flushing, the proposed weir would need to be significantly modified or removed. Removal of the panel and the future management plan is subject to review under CEQA and approval in accordance with all applicable local, state and federal laws.

Construction is anticipated to take 90 to 150 days and will occur between September 15 and April 15 to avoid the Least tern foraging season. Storm events may delay construction during this time period. Heavy construction equipment anticipated to be used will include at minimum a tracked excavator, and concrete trucks and pumping equipment. All equipment used in the channel of the lagoon mouth will operate from the downstream side of the weir. The main construction staging area will be on the flat vacant lot north of the project site within the St. Malo residential community.

The existing wood soldier pile headwalls will be replaced with decorative concrete sidewalls constructed with a river rock pattern and colored to match the existing earth in the project vicinity. Placement of the weir will permanently impact about 253 sq. ft. of brackish/freshwater wetlands that is proposed to be mitigated at a 1:1 ratio. After installation of the concrete weir, rip-rap will be replaced west of the weir to correspond to the new termini of the weir and tie into existing rip-rap channel sides. East of the weir the slopes will be reinforced with interlocking concrete block material which is designed

to allow vegetation to grow between the blocks. Rip-rap will also be placed on the channel bottom to prevent the water flow from undermining the weir structure.

During construction, two temporary dams will be constructed approximately 100 feet east of the weir and approximately 80 feet west of weir. The dams will be inflatable rubber bladders 80 feet long by 10 feet wide. Placement of these dams will temporarily impact about 400 sq. ft. of brackish/freshwater marsh, and occupy 1200 sq. ft. of open water (Exhibit 5). The area between the temporary dams will be de-watered by pumps. De-watering may also be required after storm events during construction of the replacement weir. Surface water runoff into the construction area from the upstream side will be diverted around the construction area in a 12-16 inch pipe. Approximately 2,000 cubic yards of soil and cobbles will need to be excavated from the site to construct the new weir and widened channel. The excavated sand and cobbles will be spread on the beach and the silt will be exported to a City-approved dump site.

Construction on the north side of the weir will require moving the existing rip-rap channel bank approximately 15 feet to the north. This will necessitate the relocation of an existing 6-foot high masonry wall and 10-foot high tennis court chain link fence about 15-20 feet to the north on the St. Malo property as well. The rip-rap removal could temporarily impact up to 500 sq. ft. of existing brackish/freshwater marsh on the north side of the weir. The widening of the channel, however, will create approximately 391 sq. ft. at current marsh elevations. This will be revegetated to widen the existing marsh. To improve the quality of the existing marsh in the project site, all exotic trees (including Tamarisk and Myoporum) will be removed. Construction of a new channel bank approximately 15 feet to the south of its current location will not impact any structures or fences but will require reconstruction of an existing drain pipe and headwall in this area. Widening the channel will create approximately 516 sq. ft. of open water east of the weir, and up to 1687 sq. ft. of open water west of the weir, depending on the current configuration of the beach near the mouth of the lagoon.

A future Buena Vista Lagoon Management Plan is currently being developed. One alternative that will be analyzed in the management plan is to convert the lagoon to a salt water lagoon by constructing an ocean entrance. This alternative would obviate the need for the weir completely. The Coastal Conservancy is supporting a feasibility study to develop a management plan of the lagoon to restore it. The Conservancy indicates the lagoon has suffered from increased nutrient loading and water temperature, decreasing water depth and circulation and an accelerating rate of cattail, bulrush and algal growth. Together these factors have severely diminished the lagoon's habitat values. Past Conservancy projects have concentrated on controlling the amount of runoff entering the lagoon. The feasibility study would assess various alternatives for addressing the sediment that has previously accumulated in the lagoon and related habitat quality problems, as well as evaluating options for the long term management and maintenance of the lagoon and its habitat values. The proposed work would build upon preliminary studies being completed through a Memorandum of Agreement between DFG, which owns the lagoon, and the Buena Vista Lagoon Foundation. These studies are establishing certain baseline conditions, including wetland jurisdictional boundaries, water quality,

biological conditions, water circulation and the physical properties of existing sediments and soils. Both City's approvals contain a requirement that the weir must be removed if the approved management plan calls for an ocean entrance to the lagoon or another measure that renders the weir moot.

The standard of review is consistency with the certified City of Oceanside and Carlsbad Local Coastal Programs and the public access policies of the Coastal Act.

2. Resource Management/Sensitive Habitat Areas/Hazards. The project site is located within the outlet of Buena Vista Lagoon, within 50 yards of the Pacific Ocean but not ordinarily subject to tidal influence. The property occupied by the northern half of the weir and the mouth of the lagoon is within the limits of the City of Oceanside, directly adjacent to the St. Malo residential community. The southern half of the weir is in the City of Carlsbad. The weir is located within an existing rip-rap-lined channel bank. Fresh water marsh associated with lagoon environs occurs on the site below the riprap line. The project site and area contains a number of significant and sensitive resources including wetlands (freshwater marsh and brackish vegetation) and endangered avian species (least tern and clapper rail).

Regarding Oceanside's approval (A-6-OCN-00-125), the appellants contend that approval of the project by the City is inconsistent with provisions of the City's certified LCP pertaining to permitted uses within wetlands, did not address whether impacts were avoidable or whether the project represented the least environmentally damaging alternative. Policy 4 of the certified Oceanside LUP "Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures; and Hazard Areas" policy group states:

The diking, dredging or filling of Oceanside's coastal waters shall be permitted where there are no less environmentally damaging alternatives and where feasible mitigation measures have been provided to minimize adverse environmental impacts, and shall be limited to the following:

- a. New or expanded port, energy, and coastal dependent facilities.
- b. Maintaining existing or restoring previous dredged depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- c. In open coastal waters, other than wetlands, new or expanded boating facilities.
- d. Incidental public service purposes.
- e. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

- f. Restoration purposes.
- g. Nature study, aquaculture, or similar resource-dependent activities.

Additionally, the certified "Standards For The Identification And Protection of Sensitive Habitat Areas", an implementing ordinance document, provides the following regarding permitted uses within sensitive areas:

[...]

3. Very minor incidental public service facilities including, but not limited to, burying cables and pipes and maintenance of existing intake and outfall lines when specifically approved by the State Department of Fish and Game.
4. Necessary water supply projects—streams and rivers only, providing that any substantial alterations incorporate the best mitigation measures feasible to minimize adverse environmental effects.
5. Flood control projects providing the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain.
6. Habitat restoration measures specifically approved by the State Department of Fish and Game.

The ordinance defines "Sensitive Habitats" as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. All wetlands, riparian areas and habitats containing rare or endangered plants are sensitive habitats. Based on this definition, Buena Vista Lagoon and its associated habitat areas is a sensitive habitat area

Because the proposed development is a flood control project to protect existing development, Provision #5 of the Standards For The Identification And Protection Of Sensitive Habitat Areas is the applicable standard. Provision #5 states that flood control projects are a permitted use within a wetland provided the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain. The Commission interprets this as meaning that any flood control project must be the least environmentally damaging alternative. The project is characterized as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside, located immediately north of the weir. However, as proposed, the replacement weir, by itself, would not provide 100-year flood protection for these residences as indicated by the applicant's two flood protection plans and confirmed by the Commission's engineer. (These reports and findings will be discussed in detail in the de novo section of this report). Such protection could only be assured with installation of berming/walling

around identified St. Malo properties in conjunction with the proposed project. The City's approval failed to discuss this alternative. Additionally, the City's approval failed to address the LCP requirement that the proposed project represented the least environmentally damaging flood control measure. Moreover, the City's approval failed to address the alternative of only berming the St. Malo residential properties that are affected by flooding. Further, the City's approval failed to address other project alternatives such as resizing or relocating the weir in a manner that minimizes wetlands impacts while also providing flood protection for existing structures. Finally, as noted, a future Buena Vista Lagoon Management Plan is currently being developed that may conclude the proposed weir is not necessary if the currently fresh water lagoon is made a salt water lagoon by the creation of an ocean entrance in the vicinity of the weir. The appeal therefore raises a substantial issue regarding whether the proposed development is the least environmentally damaging alternative.

Additional riprap is proposed within the existing channel bottom and side slopes as a result of channel widening associated with the project. The City found that 1) the proposed weir replacement does not adversely impact existing flooding potential but rather will provide a more hydrologically efficient weir device at the lagoon mouth; and 2) All necessary hydrologic studies and analyses required by the City's Floodplain Management Regulations have been reviewed by the City's Public Works Department and have been determined to be adequate for the purpose of the proposed weir. However, the City's permit did not address the need for the additional rock, its potential impacts to sensitive resources and hydrology and whether the project design is the least environmentally damaging alternative as required by the certified LCP. Therefore, the appeal raises a substantial issue regarding whether the additional rip-rap provided for in the proposed development is the least environmentally damaging alternative.

Regarding Carlsbad's approval (A-6-CII-00-125), the appellants contend that approval of the project by the City is inconsistent with provisions of the City's certified LCP pertaining to permitted uses within wetlands, did not address whether impacts were avoidable and did not address whether the project represented the least environmentally damaging alternative. The City's LCP includes several provisions pertaining to the protection of wetlands.

Policy 4-7(e) of the certified Mello II LUP provides:

Development shall continue to be restricted in 100 year floodplain areas. Continuing the policy of zoning 100 year floodplains as open space will permit natural drainage to occur without the need for flood control projects. No permanent structures or filling shall be permitted in the floodplain and only uses compatible with periodic flooding shall be allowed.

Section 21.203.040(E) of the certified Coastal Resource Protection Overlay Zone states:

Floodplain Development: Within the coastal zone, in the 100-year floodplain, no new or expanded permanent structures or fill shall be permitted. Only uses compatible with periodic flooding shall be allowed.

As noted, the project is characterized as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside, located immediately north of the weir. The above LCP provisions require that no new or expanded permanent structures or fill shall be permitted in the 100-year floodplain. The proposed replacement weir is significantly larger than the existing weir and is proposed within the floodway. Thus, the City's approval did not address how this project meets the requirements of the certified LCP.

As noted, additional riprap is proposed within the existing channel bottom and at new locations in the project area as a result of channel widening associated with the project. Similar to the previous finding regarding the same issue in the City of Oceanside's approval, Carlsbad's coastal development permit does not specifically address the need for the additional rock or its potential impacts to sensitive resources and hydrology, or if the project design is the least environmentally damaging alternative. Thus, the project raises a substantial issue with respect to the grounds on which the appeal was filed.

3. Public Access. Major Finding #10 of the Access component of the Oceanside LUP states:

Access to Buena Vista Lagoon is generally limited to three locations: on either side of Hill Street (used primarily by fishermen), and along the frontage road east of Interstate 5 (used for bird watching and limited passive recreation). Further access to the lagoon is believed to be generally inappropriate due to the sensitivity of the wildlife habitat and steep terrain.

The project proposes staging and construction activities within St. Malo, a gated residential community and as such unavailable for public access. Additionally, the site is not located near the preferred locations for public access. Thus, although the City's permit did not specifically address how public access will be maintained during and after construction, based on the above, no public access concerns are raised within the City's jurisdiction.

Regarding the City of Carlsbad, the certified Mello II LUP provides:

Policy 7-3 - ACCESS ALONG SHORELINE

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with

Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat.

Policy 7-6 - BUENA VISTA LAGOON

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon (exhibit 4.10, page 63) to facilitate public awareness of the natural habitat resources of the Lagoon. To protect sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. In addition, the City of Carlsbad, State Coastal Conservancy and Wildlife Conservation Board shall seek to obtain lateral accessways across developed lands.

The subject site is located between the first public roadway and the sea, within the mouth of Buena Vista Lagoon and immediately adjacent to the Pacific Ocean, although the lagoon mouth is not subject to tidal influence from the ocean. The beach and this portion of the lagoon are currently used by walkers, fishermen and naturalists. As noted above, Policies 7-3 and 7-6 of the Mello II LUP require that beach access is protected and enhanced to the maximum degree feasible and that an access trail shall be provided along the southern shoreline of Buena Vista Lagoon to facilitate public awareness of the natural habitat resources of the lagoon. The concern is not only access during construction but also how a significantly wider weir structure will impact public access. The widening of the weir on the south side would encroach upon an existing public access and recreation easement and open space dedication imposed by the Commission in its approval of a 15-foot high, 370-foot long vertical seawall (CDP #6-90-159, Beach Homeowners) to protect a 13-unit condominium project the Commission approved in (#6-89-246, Beach Homeowners). In its approval, the Commission found the easement was necessary to mitigate the impacts of the seawall that was approved at the toe of the bluff. The State Lands Commission indicates the expanded weir would extend into this easement (APN 203-010-20) because the easement extends all the way to the centerline of the cities of Carlsbad and Oceanside.

Additionally, there is concern that the project proposes staging and construction activities located outside the existing drainage and weir easements. The State Lands Commission has stated a concern that any construction activities taking place outside of the easement area east of the weir may be located on sovereign state lands. As such, the State Lands Commission is requiring its subsequent review to assure no adverse public impacts would occur along the south shore of the lagoon between the project site and the railroad tracks. The City's permit did not specifically address how public access will be maintained

during and after construction other than requiring that the State Lands Commission review the project and requiring the project to obtain easements from all owners of the parcels surrounding the weir (APNs 203-010-18, State of California), 203-010-20, Beach Homeowner's Association), 203-010-21(Beach Homeowner's Association), 155-102-46(St. Malo Association), 155-102-47(Open space/riparian) and 155-104-04 (St. Malo Association and JASM Trust) prior to construction. Based on the preceding, the appeal raises substantial issues regarding the consistency of the project with the public access policies of the Coastal Act and the access policies of the certified Carlsbad LCP.

4. Water Quality/Resource Protection. The appellants contend the City's approval did not address proposed changes to existing improvements and the potential impacts to water quality. The certified Oceanside LCP contains policies which address grading and erosion control to protect lagoon resources. One of these policies states:

3. The City shall require all developments which drain into the lagoon to include measures to prevent erosion, sedimentation and other water quality impacts, such as:
 - a. During construction, retaining all runoff on-site in percolation settling ponds and staking down bales of straw in the drainage ways to filter remaining sediments.
 - b. Prohibiting grading or clearing from November through March. Any soils left exposed during this period should be reseeded or temporarily stabilized using plastic or other material as needed.
 - c. Minimizing the alteration of landforms.
 - d. Maximizing penetrable surfaces for percolation, and providing permanent sediment settling basins, grease traps and/or energy dissipaters.

Approximately 2,000 cubic yards of excavation is proposed to construct the weir and widened channel. Although the excavated material would be placed on the adjacent beach, there still remains the potential for excavated soils to be temporarily stockpiled on the site during construction activities that could be carried into the lagoon particularly during rainy weather. In addition, after construction is completed, there remains the potential for runoff from the improved areas of the site (i.e., the asphalt maintenance vehicle access road) and pollutants associated with oil and other chemicals on the road to reach the lagoon.

The certified LCP requires that coastal water quality be maintained in Buena Vista Lagoon. In its approval the City made no findings that the project must comply with the above policy by utilizing best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements. Therefore, because the City's approval does not specifically address the above policy relating to potential impacts to water quality, the Commission finds a substantial issue exists in regards to the project's conformity to the certified LCP.

Regarding the City of Carlsbad, the certified Carlsbad Mello II LCP contains a site-specific policy which address grading and erosion control to protect the lagoon.

D. Grading and Erosion Control

1. Buena Vista Lagoon is the primary coastal resource within the subject area and warrants stringent controls on upstream development activities.

Downstream impacts of possible erosion and sedimentation, due to development must be limited to insignificant levels....

The certified LCP requires that coastal water quality be maintained in Buena Vista Lagoon. In its approval the City made findings that the project must comply with a NPDES permit by utilizing best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements associated with the project. However, the City made no findings requiring the project's consistency with Chapter 15.12 of the certified Stormwater Management and Discharge Control Ordinance. The intent of the ordinance is to protect and enhance the water quality of Carlsbad watercourses, water bodies and wetlands in a manner pursuant to and consistent with the Clean Water Act and State water quality permits. The ordinance requires implementing standard best management practices to reduce water pollution and a number of other measures to reduce pollutants in storm water discharges. While the City did not condition the project to conform to the certified Stormwater Management and Discharge Control Ordinance, findings were made that the project must comply with a NPDES permit by utilizing best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements associated with the project. Thus, the Commission finds no substantial issue exists in regards to the project's conformity to the certified LCP regarding water quality.

In summary, the Commission finds that based on the above, the proposed project raises a substantial issue with several provisions of the Carlsbad and Oceanside Local Coastal Programs with respect to protection of environmentally sensitive habitat, flood control alternatives that would not impact such habitat, public access and water quality.

STAFF RECOMMENDATION ON THE COASTAL PERMIT:STAFF NOTES:

The De Novo staff report has been combined with the appeal staff report for that portion of the proposed development that extends into the Commission's original jurisdiction area within the Buena Vista Lagoon channel. The standard of review for the De Novo portion of the report is the Cities' certified LCPs and the public access and recreation policies of the Coastal Act. The standard of review for the regular coastal development permit are Chapter 3 policies of the Coastal Act with the certified LCPs used as guidance.

SUMMARY OF STAFF RECOMMENDATION: The staff recommends that the Commission deny the proposed development as it is inconsistent with several provisions of the Coastal Act and the Cities' LCPs related to need for flood protection and whether the project is the least environmentally damaging alternative.

- I. MOTION I: *I move that the Commission approve Coastal Development Permit No. A-6-CII-00-124 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial 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 TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the Certified Carlsbad Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

- MOTION II: *I move that the Commission approve Coastal Development Permit No. A-6-OCN-00-125 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial 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 TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the Certified Carlsbad Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

MOTION III: *I move that the Commission approve Coastal Development Permit No. 6-01-133 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial 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 TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Background: The project description/background section used in the preceding Substantial Issue portion of this report is incorporated by reference in this section of the report (de novo section).

The following discussion addresses current flooding conditions which have driven the need for the project. The discussion also addresses the proposed flood protection plan that is proposed in addition to the replacement weir. The flood protection plan was developed subsequent to the City's approvals of the project. Under current 100-year flow rate conditions (5,517 cfs), the water surface elevation in the lagoon was calculated to reach +15.8 feet MSL with the existing 50 feet weir.

There are twelve homes, four unimproved properties, and three tennis courts within the St. Malo community that border the lagoon. The lagoon-perimeter side of these parcels range in elevation from +9.1 to +11.5 feet MSL. Most of the perimeter is protected by earthen dike, though some residences have constructed low-height walls affording additional protection.

During severe winter storms, the water surface elevation rises within the lagoon and has overflowed the banks, flooding some of the St. Malo homes. The City of Oceanside has proposed to remove the existing weir and replace it with an 80-foot OGEE weir. Increasing the channel-weir width and changing the shape of the weir to make it more hydraulically efficient will effectively lower the water surface elevation of the lagoon during storm flows. A 100-foot wide weir was initially desired in order to provide greater flood protection, however, property easements limited the maximum available width to 80 feet.

With the proposed 80-foot OGEE weir, the water surface elevation at the lagoon was calculated to be +12.2 feet for the 100-year flow rate, Q , of 5,517 cfs.

The benefit of constructing the proposed 80-foot OGEE weir is to lower the water surface elevation at the lower end of the lagoon from 15.8 ft to 12.2 ft MSL, reducing the 100-year flood elevation by 3.6 feet. According to the applicant, this improvement significantly reduces the severity of flooding at St. Malo for lesser events.

Because the proposed 80 ft. long weir will not be sufficient by itself to provide flood protection, the applicant is also proposing a flood protection plan. The objective of the flood protection plan is to provide a water barrier that, during and after construction, has no impact to the lagoon and associated vegetation, and minimal impact to the adjacent housing and landscaping. The height for the proposed new earthen dikes or protective structures is +12.5 feet MSL, providing 0.3 feet freeboard during the estimated 100-year event. Based on the flood hydrograph used by Hunsaker and Associates San Diego (1996), the flood flow peaks at 5,517 cfs, exceeding 5,000 cfs for approximately 30 minutes, and exceeding 4,000 cfs for about an hour.

The majority of the flood protection is provided by either raising an existing earthen dike or constructing a new earthen dike around the lagoon perimeter. Note that the proposed improvements are to be constructed on the landward side of the existing dike to avoid filling of the lagoon as well as eliminate potential impacts to lagoon vegetation. Low height walls are recommended at locations where either width limitations or existing structures preclude the feasibility of raising the dike.

The standard of review is consistency with the certified City of Oceanside and Carlsbad Local Coastal Programs and the Chapter 3 policies of the Coastal Act for the portion of the project located on public trust lands.

2. Environmentally Sensitive Habitats/Hazards and Flood Control/Coastal Act Consistency. 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.

In addition, Section 30240 of the Coastal Act provides for the protection of sensitive habitats and parklands, and 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.

Additionally, regarding permissible resource impacts to coastal waters associated with flood control projects, Section 30236 states:

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

Environmentally Sensitive Habitats/ Hazards and Flood Control/Oceanside LCP Consistency

Policy 4 of the certified Oceanside LUP "Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures; and Hazard Areas" policy group states:

The diking, dredging or filling of Oceanside's coastal waters shall be permitted where there are no less environmentally damaging alternatives and where feasible mitigation measures have been provided to minimize adverse environmental impacts, and shall be limited to the following:

- h. New or expanded port, energy, and coastal dependent facilities.
- i. Maintaining existing or restoring previous dredged depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- j. In open coastal waters, other than wetlands, new or expanded boating facilities.
- k. Incidental public service purposes.
- l. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- m. Restoration purposes.
- n. Nature study, aquaculture, or similar resource-dependent activities.

Additionally, the certified "Standards For The Identification And Protection of Sensitive Habitat Areas", an implementing ordinance document, provides, in part, the following regarding permitted uses within sensitive areas. As noted "Sensitive Habitats" is defined in the ordinance as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. All wetlands, riparian areas and habitats containing rare or endangered plants are sensitive habitats. Based on this definition, Buena Vista Lagoon and its associated habitat areas is a sensitive habitat area

1. Nature education and research or similar resource dependent activities;
2. Fishing, birding, biking, and hiking where designated by signs and trail systems;
3. Very minor incidental public service facilities including, but not limited to, burying cables and pipes and maintenance of existing intake and outfall lines when specifically approved by the State Department of Fish and Game.
4. Necessary water supply projects—streams and rivers only, providing that any substantial alterations incorporate the best mitigation measures feasible to minimize adverse environmental effects.
5. Flood control projects providing the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain.

6. Habitat restoration measures specifically approved by the State Department of Fish and Game.

Any land use/or development determined to have a significant adverse impact on sensitive habitat areas will be required to mitigate such impact. If the adverse impact of an endangered species is unavoidable, mitigation measures shall include transplantation of the endangered vegetation.

Environmentally Sensitive Habitats/ Hazards and Flood Control/Carlsbad LCP Consistency

Policy 4-7(e) of the certified Mello II LUP provides:

Development shall continue to be restricted in 100 year floodplain areas. Continuing the policy of zoning 100 year floodplains as open space will permit natural drainage to occur without the need for flood control projects. No permanent structures or filling shall be permitted in the floodplain and only uses compatible with periodic flooding shall be allowed.

Section 21.203.040(E) of the certified Coastal Resource Protection Overlay Zone states:

Floodplain Development: Within the coastal zone, in the 100-year floodplain, no new or expanded permanent structures or fill shall be permitted. Only uses compatible with periodic flooding shall be allowed.

Because this project is a flood control project that substantially alters a stream, the more specific provisions of Section 30236 govern instead of the more general wetland provisions of Section 30233. Thus, the following analysis addresses the range of flood control alternatives and their consistency with the Coastal Act and the certified Oceanside and Carlsbad LCPs. The project is proposed as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside, located immediately north of the weir. The City indicates nineteen lagoon-fronting properties are subject to periodic flooding during rainfall events. As proposed, the weir structure will permanently impact 253 sq. ft. of brackish/freshwater marsh. Additionally, approximately 12,000 sq. ft. of non-vegetated open water area would be filled.

Section 30236 of the Coastal Act prohibits the substantial alteration of rivers and streams except for necessary water supply and flood control projects. The following is taken from the Buena Vista Lagoon Flood Protection Plan, dated March 30, 2001 by Moffatt & Nichol engineers.

The proposed flood protection plan is to widen the weir from 50 to 80 feet with a more hydraulically efficient design, and raise the perimeter protection of the lagoon up to a minimum, of +12.5 feet MSL. This results in raising the existing dike/walls between 1.0 feet up to 3.4 feet.

Widening the weir has been demonstrated herein to provide an efficient means to reduce lagoon flood levels. If the weir-widening project is not implemented, our hydraulic studies indicated the 100-year flood elevation in the lagoon will be +15.8 feet. This will result in significantly higher dikes/walls to be required around the lagoon perimeter. Given the existing elevation range of the lagoon perimeter of +9.1 feet to +11.5 feet MSL, required flood protection height increases will range from 4.3 feet to 6.7 feet. This will present a significant aesthetic impact to the lagoon, plus eliminate first floor views of the lagoon for the St. Malo residents. Since there is insufficient perimeter width to accommodate these height increases with an earthen dike, the resulting flood protection would be a solid wall around the entire lagoon perimeter.

Conversely, if a weir-widening project alternative was desired that resulted in no requirement to raise the existing flood protection for the St. Malo residences, hydraulic calculations indicate that the weir would have to be 208 feet wide to pass the 100-year flood flow and maintain lagoon levels at or below +9.1 feet MSL, which is currently the lowest perimeter elevation. As discussed above, existing easement limit weir widening to 80 feet. Without this constraint, widening the weir from 50 feet to over 200 feet would have a significant impact on aesthetics and possible beach access.

Subsequent to this report the Buena Vista Lagoon Flood Protection Plan (July 27, 2001) was submitted by Moffatt & Nichol engineering. It was prepared at direction of staff to determine the impact of flood events less extreme than the 100-year event. The report was prepared to assess the predicted flooding limits for the various flood events (2-year through 50-year events) to assess property damage issues for both the existing 50-foot weir and the proposed 80-foot weir. No other flood protection improvements were assumed to be in place. The report notes that significant flooding can occur for higher frequency storm events under existing conditions and that broad reduction in flooding can be expected with the proposed weir project. The report concludes the proposed flood protection plan provides a good balance between weir widening and raising the lagoon perimeter flood protection.

The project, by itself will not provide 100-year flood protection to the affected properties. Rather, the project is proposed in conjunction with a flood protection plan that would raise the existing berm system around the affected properties. The following from the Commission's engineer addresses the flood protection plan.

The proposed weir, by itself, will not protect the St. Malo properties from a 100-year flood event. The new weir design will reduce the extent of flooding from the 100-year flood event and will greatly reduce or eliminate flooding from lesser flood flow events. Moffatt & Nichol Engineers estimated the 2, 5, 10, 25 and 50 year flood events, and mapped inundation areas for each event. They found that areas that now flood during a 2-year flood event would only flood with the new weir during a 25-year flood flow event. And areas that now flood during about a 25-year event would flood only during a 100-year event. The areas of flooding

could be reduced further by increases to the dikes surrounding the properties, but the full extent of dike modifications were not developed for this alternative.

The only alternative that would provide protection of the St. Malo Community from a 100-year flood event would be the removal of the weir and restoration of this area to a creek and creek mouth. None of the weir alternatives can achieve protection from the 100-year event. For protection from the 100-year event, there would have to be some combination of weir and dike protection. The letter report from Moffatt & Nichol Engineers estimates that if the current weir is to stay in place, flooding protection from the 100-year event could be obtained by elevating the dikes by 4.3 to 6.7 feet above current levels.

The proposed project will adversely impact an area of wetlands on the northern side of the lagoon. If the weir was to be removed and the area restored as a creek, the wetland area and lagoon habitat would both be adversely impacts. It may be possible to modify the proposed weir design to avoid impacts to the wetland. If that is not possible, the only alternative that would completely avoid any adverse impacts to the wetlands would be to provide all further flood protection by increasing the elevation of the dikes. The project engineer stated verbally that there would be space inland of the existing dikes to provide this increased elevation, so that none of the flood protection would be placed in the lagoon or on the wetlands. This has not been provided to us in writing, nor has it been requested. The applicants had stated, in writing, that the elevated dikes would present a significant aesthetic impact to the lagoon. However, the applicants did not provide any details concerning these aesthetic impacts or why they would be significant.

In summary, there are several options available to address flooding in this area. Drawing from the alternatives that were analyzed, the options are:

1. Keep the current weir, elevate the dikes a lot and avoid any impacts to wetlands
2. Install the new weir, elevate the dikes a little bit and impact the wetlands
3. Remove the weir, restore the area as a creek and impact wetlands and the lagoon

As indicated above, there are several options that could be implemented to address the flooding hazard. As previously noted, the proposed weir replacement project, by itself will not provide 100-year flood protection to the affected properties. Rather, the project is proposed in conjunction with a flood protection plan that would raise the existing berm system around the affected properties. As noted, the Coastal Conservancy is evaluating a range of alternatives to restore the lagoon in a feasibility study. The study is to identify potential project elements necessary for lagoon restoration under alternative hydrologic regimes ranging from a fully freshwater system, through a brackish or part fresh/part tidal system, to a fully tidal/subtidal system. Should the full tidal flushing approach be approved the proposed weir would need to be significantly modified or removed. The Commission finds it is premature to accept wetland impacts at this time, prior to the

adoption of a future management plan. Because the proposed development entails significant adverse impacts to freshwater marsh and brackish wetlands and because there is currently a major study under way to evaluate how to restore the lagoon while also providing flood protection to adjacent property owners, approval of the project at this time would be premature. The Commission cannot find that the proposed development is the least environmentally damaging alternative. Therefore, the Commission finds that at this time CDP Application No. 6-01-133 cannot be found consistent with Section 30236 of the Coastal Act and must be denied.

Regarding the City of Oceanside, Provision #5 of Oceanside's certified "Standards For The Identification And Protection of Sensitive Habitat Areas" states that flood control projects are a permitted use within a wetland provided the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain. As explained above, the proposed project is not the least environmentally damaging alternative. Thus, the Commission finds the project (A-6-OCN-00-125) can not be found consistent with the requirements of the certified local coastal program and must be denied. Additionally, the certified LCP allows wetland impacts provided such impacts are associated with habitat restoration measures which have been specifically approved by the Department of Fish and Game (DFG). However, the project is not a habitat restoration project and no approval from DFG has been obtained.

Additional riprap (approximately 12,000 sq. ft.) is proposed within the existing channel bottom and side slopes as a result of channel widening associated with the project. The City found that 1) the proposed weir replacement does not adversely impact existing flooding potential but rather will provide a more hydrologically efficient weir device at the lagoon mouth; and 2). All necessary hydrologic studies and analyses required by the City's Floodplain Management Regulations have been reviewed by the City's Public Works Department and have been determined to be adequate for the purpose of the proposed weir. However, the City's permit did not address the need for the additional rock, its potential impacts to sensitive resources and hydrology and whether the project design is the least environmentally damaging alternative as required by the certified LCP.

The proposed project consists of installing a 80-foot long by 40-foot wide concrete structure which would occupy approximately an additional 30 feet to the north and south and another 30 feet within the water channel to accommodate the proposed transition structures. Rip-rap is proposed west of the weir to correspond to its new termini and would tie into existing rip-rap channel sides. Rip-rap will also be placed on the channel bottom to prevent the water flow from undermining the weir structure. While the rip rap proposed with the larger design of the weir would assure its stability, it would also impact the existing natural channel that contains the weir by widening of the existing natural channel's bottom and sides. Based on the preceding discussion, because the Commission can not accept the project as the least environmentally damaging flood control project consistent with Section 30236 of the Coastal Act, it cannot similarly accept additional impacts to existing coastal resources (i.e., lagoon bottom and channel).

Thus, the Commission finds the project (A-6-OCN-00-125) is inconsistent with the certified Oceanside LCP and must be denied.

Regarding the City of Carlsbad, approximately 9 sq. ft. of southern Coastal Freshwater March habitat and 6 sq. ft. of inundated marine pondweed is proposed for impact within the City of Carlsbad's jurisdiction. The City of Carlsbad approved the wetland impacts associated with the proposed weir as a minor incidental public facility. However, the proposed improvements are not incidental to an existing facility; they are the total replacement of an existing facility with a larger facility. As proposed, the replacement of the existing weir does not represent the smallest footprint possible. As such, the permanent impacts to wetland vegetation cannot be found as unavoidable and thus the project cannot be found as the least-environmentally-damaging alternative.

Regarding adequate mitigation for proposed impacts, as noted, temporary and permanent impacts to wetland are proposed. A mitigation plan was approved that includes 1:1 mitigation for wetland impacts, timing restrictions to protect the endangered least tern, removal of exotics and additional water quality provisions if deemed necessary by the resource agencies. However, the City did not address whether the wetland impacts to submerged aquatic vegetation and freshwater marsh associated with the project are avoidable or whether the project represents the least environmentally damaging alternative.

As noted, the project is characterized as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside, located immediately north of the weir. Section 21.203.040(E) of the Carlsbad Coastal Resource Protection Overlay Zone requires that no new or expanded permanent structures or fill shall be permitted in the 100-year floodplain. The proposed replacement weir is significantly larger than the existing weir and is proposed within the floodway. Thus, the City's approval did not address how this project meets the requirements of the certified LCP. The City found the project was consistent with the City's Floodplain Management Regulations (Chapter 21.110 of the Carlsbad Municipal Code) but those regulations are not part of the certified Carlsbad LCP and as such can not be used to find the project consistent with the certified LCP.

As noted, additional riprap is proposed within the existing channel bottom and at new locations in the project area as a result of channel widening associated with the project. Similar to the previous finding regarding the same issue in the City of Oceanside's approval, Carlsbad's coastal development permit does not specifically address the need for the additional rock or its potential impacts to sensitive resources and hydrology, or if the project design is the least environmentally damaging alternative. While the rip rap proposed with the larger design of the weir would assure its stability, it would also impact the existing natural channel the weir is located in by widening of the existing bottom and sides and the covering of those areas with additional riprap. Based on the preceding discussion, because the Commission can not accept the project as the least environmentally damaging flood control project consistent with Section 30236 of the Coastal Act, it cannot similarly find that additional impacts to existing coastal resources

(i.e., lagoon bottom and channel) can be found consistent with the policies of the Carlsbad LCP and must be denied.

In summary, the proposed development will result in significant impacts to environmentally sensitive resources. A major study is currently under way evaluating the feasibility of alternatives that would not entail these adverser environmental effects. The Commission cannot find the proposed development to be the least environmentally damaging flood control alternative. Therefore, the proposed development is inconsistent with applicable policies of Chapter 3 of the Coastal Act and of the certified Carlsbad and Oceanside LCPs and must be denied.

3. Public Access/Coastal Act Consistency. Because the proposed development is located between the sea and the first public road, Section 30604(c) requires that a specific access finding be made. In addition, many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 30211, 30212.5, 30221, 30223 and 30252. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, protecting suitable upland recreational sites, and providing adequate parking facilities for public use.

Major Finding #10 of the Access component of the Oceanside LUP states:

Access to Buena Vista Lagoon is generally limited to three locations: on either side of Hill Street (used primarily by fishermen), and along the frontage road east of Interstate 5 (used for bird watching and limited passive recreation). Further access to the lagoon is believed to be generally inappropriate due to the sensitivity of the wildlife habitat and steep terrain.

The certified Carlsbad Mello II LUP provides:

Policy 7-3 - ACCESS ALONG SHORELINE

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat.

Policy 7-6 - BUENA VISTA LAGOON

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon (exhibit 4.10, page 63) to facilitate public awareness of the natural habitat resources

of the Lagoon. To protect sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. In addition, the City of Carlsbad, State Coastal Conservancy and Wildlife Conservation Board shall seek to obtain lateral accessways across developed lands.

The subject site is located between the first public roadway and the sea, within the mouth of Buena Vista Lagoon and immediately adjacent to the Pacific Ocean, although the lagoon mouth is not subject to tidal influence from the ocean. The beach and this portion of the lagoon are currently used by walkers, fishermen and naturalists. As noted above, Policies 7-3 and 7-6 of the Mello II LUP require that beach access is protected and enhanced to the maximum degree feasible and that an access trail shall be provided along the southern shoreline of Buena Vista Lagoon to facilitate public awareness of the natural habitat resources of the lagoon. The concern is not only access during construction but also how a significantly wider weir structure will impact public access. The widening of the weir on the south side would encroach upon an existing public access and recreation easement and open space dedication imposed by the Commission in its approval of a 15-foot high, 370-foot long vertical seawall (CDP #6-90-159, Beach Homeowners) to protect a 13-unit condominium project the Commission approved in (#6-89-246, Beach Homeowners). In its approval of this development, the Commission found the easement was necessary to mitigate the impacts of the seawall that was approved at the toe of the bluff. The State Lands Commission indicates the expanded weir would extend into this easement (APN 203-010-20) because the easement extends all the way to the centerline of the cities of Carlsbad and Oceanside. Because the weir will extend into the public access easement area, it will impact public access in this area.

Additionally, there is concern that the project proposes staging and construction activities located outside the existing drainage and weir easements. The State Lands Commission has stated a concern that any construction activities taking place outside of the easement area east of the weir may be located on sovereign state lands. As such, the State Lands Commission is requiring its subsequent review to assure no adverse public impacts would occur along the south shore of the lagoon between the project site and the railroad tracks. The City's permit did not specifically address how public access will be maintained during and after construction other than requiring that the State Lands Commission review the project and requiring the project to obtain easements from all owners of the parcels surrounding the weir (APNs 203-010-18, State of California), 203-010-20, Beach Homeowner's Association), 203-010-21(Beach Homeowner's Association), 155-102-46(St. Malo Association), 155-102-47(Open space/riparian) and 155-104-04 (St. Malo Association and JASM Trust) prior to construction. Therefore, the Commission finds that public access impacts remain a concern and the project can not be found consistent with Sections 30210 and 30211 of the Coastal Act

4. Water Quality/Resource Protection. Section 30231 of the Coastal Act states:

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

The certified Oceanside LCP contains policies which address grading and erosion control to protect lagoon resources. Some of these policies include:

4. The City shall require all developments which drain into the lagoon to include measures to prevent erosion, sedimentation and other water quality impacts, such as:
 - e. During construction, retaining all runoff on-site in percolation settling ponds and staking down bales of straw in the drainage ways to filter remaining sediments.
 - f. Prohibiting grading or clearing from November through March. Any soils left exposed during this period should be reseeded or temporarily stabilized using plastic or other material as needed.
 - g. Minimizing the alteration of landforms.
 - h. Maximizing penetrable surfaces for percolation, and providing permanent sediment settling basins, grease traps and/or energy dissipaters.

Regarding the City of Carlsbad, the certified Carlsbad Mello II LCP contains a site-specific policy which address grading and erosion control to protect the lagoon.

E. Grading and Erosion Control

Buena Vista Lagoon is the primary coastal resource within the subject area and warrants stringent controls on upstream development activities. Downstream impacts of possible erosion and sedimentation, due to development must be limited to insignificant levels....

The certified Oceanside LCP also contains policies that state that drainage and runoff should be controlled and that appropriate erosion control measures should be installed before any on-site grading. The project site is located downstream of Buena Vista Lagoon. Approximately 2,000 cubic yards of excavation is proposed to construct the weir and widened channel. Although the excavated material would be placed on the

adjacent beach, there still remains the potential for excavated soils to be temporarily stockpiled on the site during construction activities that could be transported into the lagoon particularly during rainy weather. This is particularly true for the subject site due to its proximity to the lagoon. In addition, after construction is completed, there remains the potential for runoff from the improved areas of the site (i.e., the asphalt maintenance vehicle access road) and pollutants associated with oil and other chemicals on the road to reach the lagoon.

Chapter 15.12 of the certified Carlsbad Stormwater Management and Discharge Control Ordinance requires that coastal water quality be maintained in Buena Vista Lagoon. In its approval the City made findings that the project must comply with a NPDES permit by utilizing best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements associated with the project. However, the City made no findings requiring the project's consistency with Stormwater Management and Discharge Control Ordinance. The intent of the ordinance is to protect and enhance the water quality of Carlsbad watercourses, water bodies and wetlands in a manner pursuant to and consistent with the Clean Water Act and State water quality permits. The ordinance requires implementing standard best management practices to reduce water pollution and a number of other measures to reduce pollutants in storm water discharges. While the project, as proposed, would have potential water quality impacts, such impacts could be reduced and/or mitigated through special condition of approval. However, because the Commission is denying the proposed development as it has been found inconsistent with other provisions of the Carlsbad and Oceanside LCPs and Chapter 3 policies of the Coastal Act, special conditions of approval to address water quality concerns can not be attached.

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

The Oceanside LCP designates the site for open space. The replacement weir was approved as a flood control project that was found as the least-environmentally-damaging flood control alternative. The City further found that unavoidable impacts had been mitigated through an approved mitigation program. However, as currently proposed, the Commission finds the replacement weir can not be found the least-environmentally-damaging flood control alternative as it in itself would not provide protection of affected residential properties from the 100-year flood. To achieve that goal a flood protection plan (berming/walling) is necessary on the perimeter of the St. Malo lagoon-fronting lots. As noted in this report, other alternatives that would not result in impacts to sensitive resources have not been adequately evaluated as required by the LCPs and the Coastal Act. These alternatives include relocating or resizing the weir. Therefore, the proposed project cannot be found consistent with the hazard policies of the Oceanside LCP regarding flood protection.

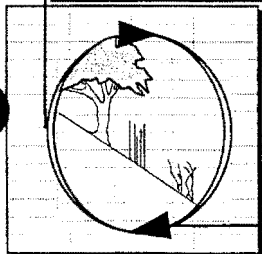
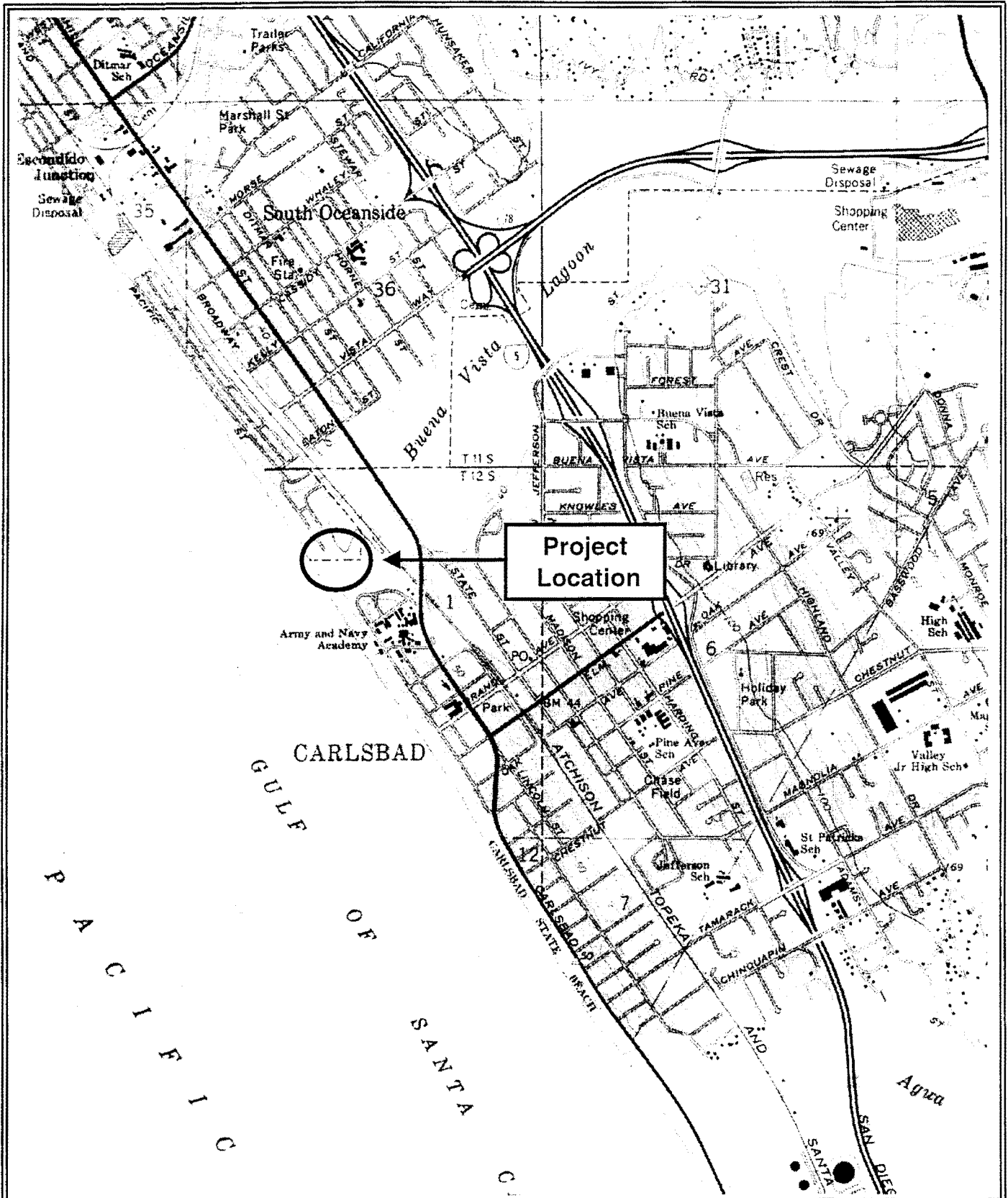
The Carlsbad Mello II Land Use Plan (LUP) designates the site for open space. Similarly, Carlsbad approved the project as a flood control project. However, the LCP does not allow new or expanded permanent structures in the floodplain; therefore, the project is inconsistent with the LCP. The City found that the project was consistent with its Floodplain Management Regulations (Chapter 21.110 of the Carlsbad Municipal Code). While those regulations apply Citywide, they have not been incorporated into the certified Carlsbad LCP and as such can not be used to find the project consistent with the certified LCP. Additionally, as indicated above, other project alternatives were not considered. Therefore, the proposed project cannot be found consistent with the hazard policies of the Mello II Land Use Plan regarding flood protection.

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

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.

As indicated above the Commission finds there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Alternatives have been provided in this report which would lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and can not be found consistent with the requirements of the Coastal Act to conform to CEQA.





↑
Scale: 1"=2,000'

Project Vicinity Map
 Buena Vista Lagoon Weir Replacement Project
 Source: USGS 7.5' San Luis Rey, CA

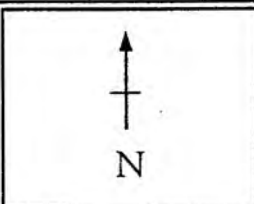
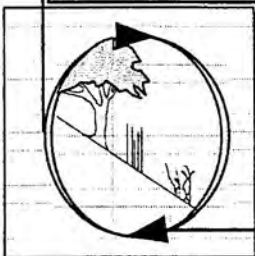
EXHIBIT NO. 1
 APPLICATION NO.
 A-6-CII-00-124
 A-6-CII-00-125
 6-01-133
 Location Map

Merkel & Assoc



Directions to site from Interstate 5:

- Exit I-5 at Vista Way in Oceanside
- Follow Vista Way west to Coast Highway
- Turn south on Coast Highway and follow across lagoon into Carlsbad
- Take first right after crossing lagoon onto Mountain View Drive.
- Take first right onto dirt road, next to tennis courts, down to lagoon and weir site.



Aerial Map
 Buena Vista Lagoon Weir Replacement Project
 Source: Microsoft® TerraServer
 image: 01June94

EXHIBIT NO. 2
APPLICATION NO.
A-6-CII-00-
A-6-CII-00-
6-01-133
Aerial of Location

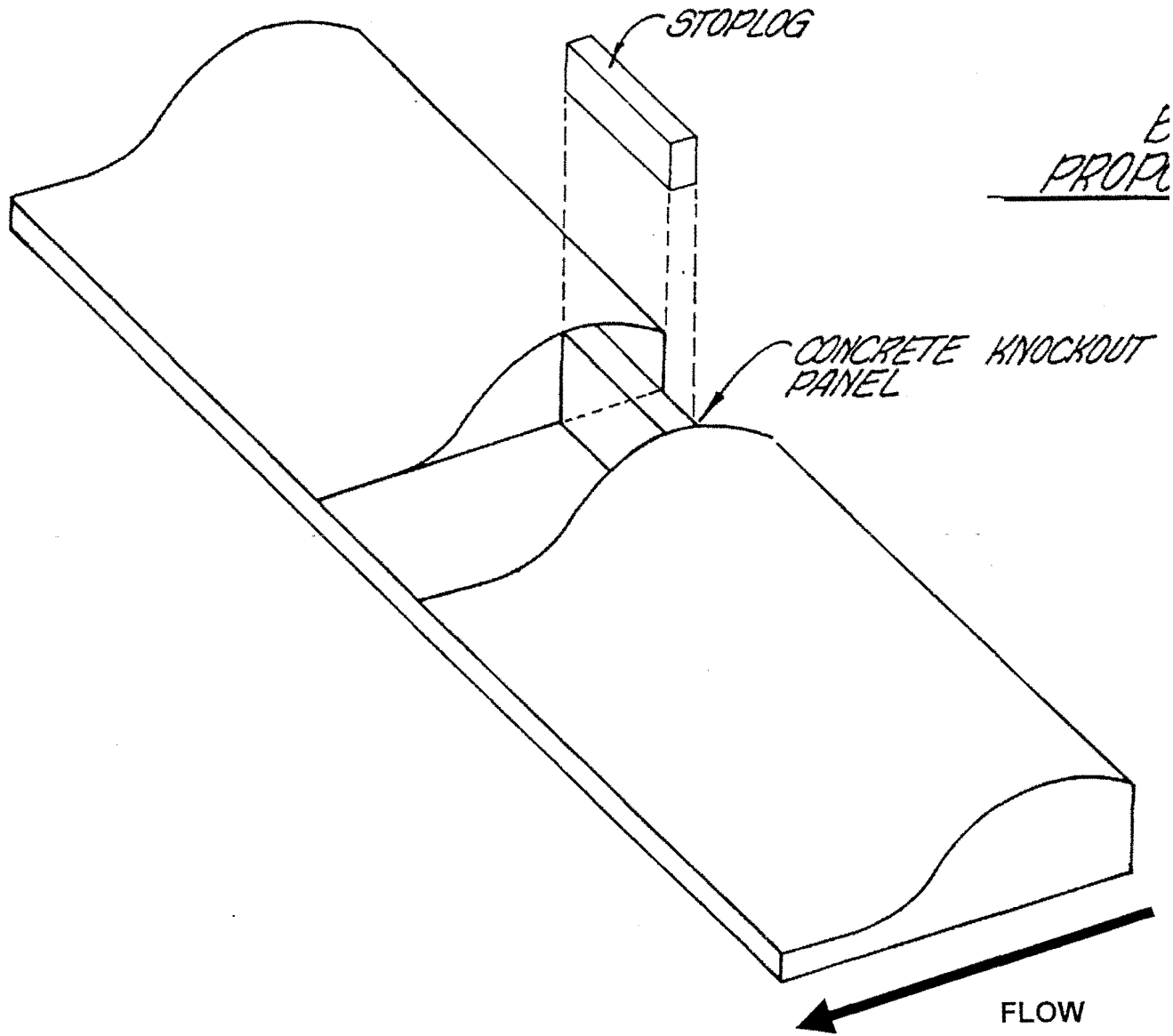


EXHIBIT NO. 3

APPLICATION NO.

A-6-CII-00-124

A-6-CII-00-125

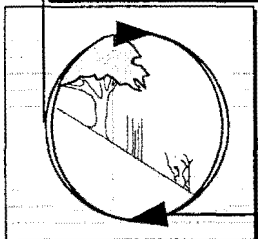
6-01-133

Proposed
Replacement Weir

 California Coastal Commission

Ogee Type Weir

Merkel & Associates, Inc.



PARCEL 4, P M NO. 3554
 (VACANT / PAD GRADE = 12.9)
 APN 155-104-04

PCL 3, P M 17136
 (TENNIS COURT)
 APN 155-102-46

PCL 2, P M 17136
 (VACANT)
 APN 155-102-45

6-01-133
~~6-00-119~~

LUN A, P M 17136
 (OPEN SPACE/PLAN HABITAT)
 APN 155-102-47

STATE OF CALIFORNIA
 PER DCL 04-115026
 (SEE MAP HIL 11007)
 APN 203-010-18

CONSTRUCTION NOTES

- REMOVE EXISTING HEADWALL AND WEIR
- REMOVE AND REINSTALL EXISTING RIPRAP
- REMOVE EXISTING CONCRETE OUTLET STRUCTURE
- REMOVE 20' (+) OF EXISTING 12" PVC STORM DRAIN PIPE
- REMOVE EXISTING CHAIN LINK FENCE
- REMOVE EXISTING 8" x 5" CMU WALL
- REMOVE AC PAVING
- REMOVE IRON GATE
- EXCAVATE AND PREPARE SUBGRADE FOR WEIR STRUCTURE AND WING WALLS
- PLACE COMPACTED BACKFILL MIN COMPACTION 95% PER ASTM 1557-D
- CONSTRUCT CONCRETE WEIR STRUCTURE AND WING WALL
- CONSTRUCT SUBDRAIN SYSTEM PER DETAIL SHOWN ON SHEET NO. 3
- PLACE RIPRAP ON SLOPES MATCH EXISTING RIPRAP LIMITS, SEE GRADATION TABLE ON SHEET NO. 3
- PLACE RIPRAP ON CHANNEL INVERT, SEE GRADATION TABLE ON SHEET NO. 3
- PLACE 5' HIGH CHAIN LINK FENCE PER APPX STD. DETAIL
- INSTALL 24 LF. 12" PVC STORM DRAIN PIPE. CONNECT TO EXISTING STORM DRAIN PIPE. PIPE TO HEADWALL CONNECTION PER DETAIL SHOWN ON SHEET NO. 3
- CONSTRUCT 10' WIDE x 2' HIGH CONCRETE STOPLOG, SEE DETAIL ON SHEET NO. 3

RECEIVED

AUG 22 2000

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT CITY OF OCEANSIDE

FIGURE 2

COMMUNITY SERVICE DEPARTMENT
 COAST ENGINEERING GROUP
 1836 W. ORANGEWOOD AVE., SUITE 330 OCEANSIDE, CA 92067

BUENA VISTA LAGOON WEIR
 PLAN VIEW

NO.	REVISION	APPROVED	DATE

PLAN VIEW
 SCALE: 1" = 10'-0"

EXHIBIT NO. 4
 APPLICATION NO.

A-6-CL-00-12

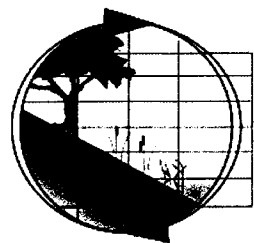
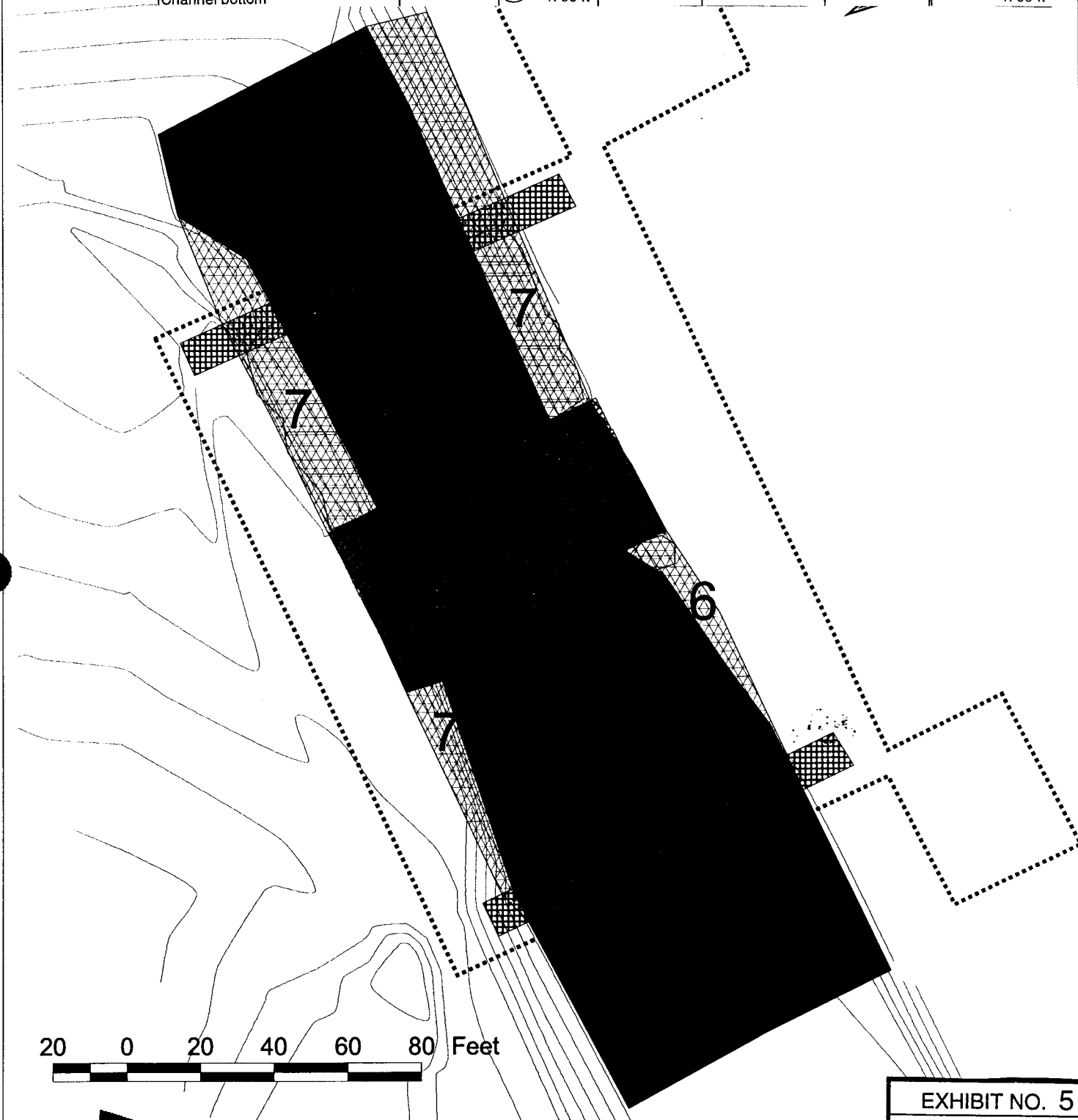
A-6-CL-00-123

6-01-133

Proposed Project

California Coastal Commission

	Temporarily Impacted	Filled Area	No Significant Impacts	Expanded jurisdiction/ Created habitat	Mitigation Measures	Net Impacts
Freshwater/Brackish Marsh	① 929 ft ²	③ 253 ft ²	⑤ 1460 ft ²	⑥ 391 ft ²	907 ft ²	907 ft ² net gain
Open Water	② 8688 ft ²	④a 500 ft ²		⑦ 2203 ft ²		1703 ft ² net gain
Channel bottom		④b 4700 ft ²				4700 ft ²



**Buena Vista Lagoon
 Weir Replacement Project
 Impacts and Mitigation
 (Number Labels Correspond to Table 1)**

EXHIBIT NO. 5 APPLICATION NO. A-6-CII-00-124 A-6-CII-00-125 6-01-133
Impacts and Mitigation

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 757-2370

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Shirley Dettloff
Mailing Address: 2000 Main Street
Huntington Beach, CA 92648
Phone Number: 714 536-5553

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: The proposal includes a replacement weir which fronts on the ocean entrance to Buena Vista Lagoon
3. Development's location (street address, assessor's parcel no., cross street, etc): centerline on the jurisdictional boundary between the cities of Oceanside and Carlsbad within the ocean entrance to Buena Vista Lagoon
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-00-124

DATE FILED: 8/23/2000

DISTRICT: San Diego

EXHIBIT NO. 6
APPLICATION NO. A-6-CII-00-124 A-6-CII-00-125 6-01-133
Commissioners Appeals
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other

Date of local government's decision: 7/19/2000

Local government's file number (if any): CDP 99-53

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

City of Oceanside
300 N. Coast Hwy.
Oceanside, CA 92054

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

[Signature]
Signature of Appellant(s) or
Authorized Agent

Date 5/23/00

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370



ATTACHMENT "A"—Weir Appeal (Carlsbad)

The proposal includes a replacement weir which fronts on the ocean entrance to Buena Vista Lagoon. Portions of the project are located in the cities of Oceanside and Carlsbad and on State Lands subject to the Coastal Commission's original jurisdiction. The subject site is located between the first public roadway and the sea in the City of Carlsbad. The project consists of replacing the existing 50-foot wide weir structure at the mouth of Buena Vista Lagoon with an 80-foot long by 10-foot wide Agee type weir within an existing drainage easement. The replacement weir would extend an additional 15 feet to the north and 15 feet to the south, maintaining the centerline on the jurisdictional boundary between the cities of Oceanside and Carlsbad and require widening of the existing channel. A 20-foot wide concrete transition structure is proposed east of or upstream of the weir and a 10-foot wide transition structure is proposed west of the weir. The goal of the project is to provide increased flows through the mouth of the lagoon during storm events while maintaining the existing freshwater character of the lagoon. During construction two temporary dams are proposed approximately 100 feet east of the weir and approximately 80 feet west of the weir. Approximately 2,000 cubic yards of excavation is proposed to construct the weir and widened channel. The excavated material would be placed on the adjacent beach.

Approximately 253 sq.ft. of brackish and freshwater marsh is proposed for permanent impact and 929 sq.ft. of brackish and freshwater marsh is proposed for temporary impact. These impacts include those that are within the City of Oceanside's and the Coastal Commission's jurisdiction. Approximately 9 sq.ft. of southern Coastal Freshwater March habitat and 6 sq.ft. of inundated marine pondweed is proposed for impact within the City of Carlsbad's jurisdiction. The City's approval fails to identify that development will conform to the sensitive habitat requirements of the certified Mello II LUP. Specifically, Policy 3-7 provides wetland and riparian resources shall be protected and preserved and that no direct impacts may be allowed except for expansion of existing circulation element roads and those direct impacts associated with the installation of utilities (water, sewer, electrical). The City did not address whether the wetland impacts to submerged aquatic vegetation and freshwater marsh associated with the project are a permitted use within a wetland, did not address whether impacts are avoidable or whether the project represents the least environmentally damaging alternative.

The project is characterized as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside. However, it is noted by the City that the weir would not provide 100-year flood protection. Such protection could only be assured with installation of berming around identified St. Malo properties. The Mello II LCP provides that within the 100-year floodplain, no new or expanded permanent structures or fill shall be permitted. Only uses compatible with periodic flooding shall be allowed. The project is characterized as a flood control project;

however, the City's approval did not address how this project meets the requirements of the certified LCP with regard to flood protection.

Policies 7-3 and 7-6 of the Mello II LUP require that beach access is protected and enhanced to the maximum degree feasible and that an access trail shall be provided along the southern shoreline of Buena Vista Lagoon to facilitate public awareness of the natural habitat resources of the Lagoon. The certified LCP requires that public access be maintained along the south shore of this part of Buena Vista Lagoon. The project proposes staging and construction activities located outside the existing drainage and weir easements. The State Lands Commission has stated a concern that any construction activities taking place outside of the easement area east of the weir may be located on sovereign state lands. As such, the State Lands Commission is requiring its subsequent review to assure no adverse public impacts would occur along the south shore of the lagoon between the project site and the railroad tracks. The City's permit did not specifically address how public access will be maintained during and after construction.

The certified LCP requires that coastal water quality be maintained in Buena Vista Lagoon. In its approval the City made findings that the project must comply with its NPDES permit by utilizing best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements. However, the City's permit does not specifically address proposed changes to existing improvements and the impacts to water quality.

Project plans indicate that additional rip rap is proposed within the existing channel bottom and at new locations in the project area as a result of channel widening associated with the project. The City's permit made findings that the proposed weir replacement does not adversely impact existing flooding potential but rather will provide a more hydrologically efficient weir device at the lagoon mouth. All necessary hydrologic studies and analyses required by the City's Floodplain Management Regulations have been reviewed by the City's Public Works Department and have been determined to be adequate for the purpose of the proposed weir. However, the City's permit does not specifically address the need for the additional rock or its potential impacts to sensitive resources and hydrology, or if the project design is the least environmentally damaging alternative.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

1675 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Sara J. Wan
Mailing Address: 22350 Carbon Mesa Road
Malibu, CA 90265
Phone Number: 310) 456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oceanside
2. Brief description of development being appealed: The proposal includes a replacement weir which fronts on the ocean entrance to Buena Vista Lagoon
3. Development's location (street address, assessor's parcel no., cross street, etc): centerline on the jurisdictional boundary between the cities of Oceanside and Carlsbad within the ocean entrance to Buena Vista Lagoon
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-OCN-00-125DATE FILED: 8/23/2000DISTRICT: San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: _____
Appellant or Agent

Date: _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Lucia J. Allen*
Appellant or Agent

Date: 8/25/00

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

**ATTACHMENT "A"—Weir Appeal (Oceanside)**

The proposal includes a replacement weir which fronts on the ocean entrance to Buena Vista Lagoon. The subject site is located between the first public roadway and the sea. Portions of the project are located in the cities of Oceanside and Carlsbad and on State Lands subject to the Coastal Commission's original jurisdiction. The project consists of replacing the existing 50-foot wide weir structure at the mouth of Buena Vista Lagoon with an 80-foot long by 10-foot wide Agee type weir within an existing drainage easement. The replacement weir would extend an additional 15 feet to the north and 15 feet to the south, maintaining the centerline on the jurisdictional boundary between the cities of Oceanside and Carlsbad and require widening of the existing channel. A 20-foot wide concrete transition structure is proposed east of or upstream of the weir and a 10-foot wide transition structure is proposed west of the weir. The goal of the project is to provide increased flows through the mouth of the lagoon during storm events while maintaining the existing freshwater character of the lagoon. During construction two temporary dams are proposed approximately 100 feet east of the weir and approximately 80 feet west of the weir. Approximately 2,000 cubic yards of excavation is proposed to construct the weir and widened channel. The excavated material would be placed on the adjacent beach.

Approximately 253 sq.ft. of brackish and freshwater marsh is proposed for permanent impact and 929 sq.ft. of brackish and freshwater marsh is proposed for temporary impact. Apparently, these impacts are within the cities of Oceanside and Carlsbad and the Coastal Commission's jurisdiction. Approximately 777 sq.ft. of brackish marsh wetland habitat is proposed for temporary and permanent impacts within the City of Oceanside. The certified LCP allows wetland impacts at Buena Vista Lagoon provided impacts are associated with habitat restoration measures which have been specifically approved by the Department of Fish and Game (DFG). In this particular case, DFG has found that such impacts would be mitigated through the applicant's mitigation plan which proposes 1:1 mitigation for resource impacts. DFG found that no net loss of wetlands would occur and as such the project could be accepted. However, the City did not address whether the wetland impacts associated with the project are a permitted use within a wetland, did not address whether impacts are avoidable or whether the project represents the least environmentally damaging alternative as required by the LCP policies and ordinances ("Standards For The Identification And Protection of Sensitive Habitat Areas").

According to the State Lands Commission part of the project is located on state lands and part of the project is subject to a public access easement and open space dedication. State Lands has identified that the submitted depiction of the public access and recreational use easement is incorrect. The easement area actually extends north to the boundaries of the cities of Oceanside and Carlsbad. There is also a concern that the proposed project may interfere with public access on these properties so that reasonable passage to and from the

beach to the lagoon may be impacted during construction of the project. The City's approval did not specifically address how public access will be maintained during and after construction.

The project is characterized as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside. However, it is noted that the weir would not provide 100-year flood protection. Such protection could only be assured with installation of berming around identified St. Malo properties. The certified "Standards For The Identification And Protection of Sensitive Habitat Areas", an implementing ordinance document, provides that flood control projects may be permitted within sensitive habitat areas provided the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain. The project is characterized as a flood control project; however, in light of the above with regards to the berming alternative for flood control, the City's approval did not address how this project represents the only feasible measure for protecting structures in the floodplain. The City's approval failed to discuss project alternatives as required in the certified LCP with regard to flood protection.

The certified LCP requires that coastal water quality be maintained in Buena Vista Lagoon. In its approval the City did not make findings on whether water quality was an issue with this project or whether any measures were proposed to ensure that water quality in Buena Vista Lagoon would be maintained during installation of the weir and its subsequent operation.

Project plans indicate that additional rip rap is proposed within the existing channel bottom and at new locations in the project area as a result of channel widening associated with the project. The permit made no findings as to whether this new rock was justified through a hydrological study as is required in Policy 6 of the certified LCP. The City's approval fails to specifically address the need for the additional rock or its potential impacts to sensitive resources and hydrology, or if the project design is the least environmentally damaging alternative as required by the LCP.

