

## CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: Cities of Carlsbad and Oceanside

DECISION: Approval with Conditions

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

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 the approval of the weir project by the Cities of Oceanside and Carlsbad, alleging that the project was inconsistent with the certified LCPs. The applicant waived the right to a hearing within 49 days of the appeal. The two appeals are being addressed in one report because they are both components of one project that crosses two different jurisdictions. In addition to the subject appeals, a related application, CDP #6-02-14, is before the Commission at its July 2002 meeting. This is because a portion of the project is also located within the Commission's original jurisdiction (i.e., within the open water area of Buena Vista Lagoon). Unless the Commission finds that the appeals do not raise a substantial issue regarding the conformity of the project with the Cities' certified LCPs, a de novo hearing will occur for the subject appeals in conjunction with the Commission's hearing on CDP #6-02-14. The standard of review is consistency with the certified City of Oceanside and Carlsbad (Mello II segment) Local Coastal Programs and the Chapter 3 policies of the Coastal Act. The motions for Substantial Issue begin on Page 4 of this report and the motions for de novo and for the original jurisdiction permit begin on Page

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 approval, with conditions, of the applications on de novo because the applicant has demonstrated that wetland impacts associated with the project are unavoidable, that the project represents the least environmentally damaging flood control alternative, and that project as conditioned provides sufficient mitigation for wetlands impacts associated with the development.

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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

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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.

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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 City of Carlsbad Planning Commission approved the proposed development 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)

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### 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.

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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.

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## 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. Currently it 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 woodpiles held in place by steel supports. The north and south sides of the channel banks at the mouth of the lagoon are stabilized by riprap.

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 half of the weir is in the City of Carlsbad and is owned by the State of California and Beach Condominium Homeowners Association located further to the south.

The proposed project consists of replacing the 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 (Exhibit 3). The proposed replacement weir structure would occupy approximately an additional 15 feet to the north and 15 feet to the south than the current weir, maintaining the centerline exactly on the jurisdictional boundary between the cities of Oceanside and Carlsbad. A sub-surface, 20-foot wide "transition" structure (riprap and concrete) would be constructed east (upstream) of the weir and a sub-surface 10-foot wide transition structure would be constructed west of the replacement weir, resulting in the placement of a structure with a total width of 40 feet of rip rap and concrete, 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 thereby reducing the potential for upstream flooding. The crest elevation of the new weir will be 5.6 feet above MSL, the same elevation as the existing weir. The existing wood soldier pile headwalls would be replaced with decorative concrete sidewalls constructed with a river rock pattern and colored to match the existing earth in the project vicinity. 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 reduce the flooding potential of existing upstream development.

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 very quickly. 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. Such changes would be subject to future review pursuant to the requirements of the Coastal Act.

Construction is anticipated to take 90 to 150 days and will occur between September 15, 2002 and April 15, 2003 to avoid the Least tern foraging season. Storm events may delay construction during this time period. Heavy construction equipment anticipated to be used would 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.

Placement of the weir would permanently impact about 253 sq.ft of brackish/freshwater habitat that is proposed to be mitigated at a 1:1 ratio near the area of impact and with similar habitat. After installation of the concrete weir, rip-rap would be replaced west of the weir to correspond to the new terminus of the weir and tie into existing rip-rap channel sides. East of the weir the slopes would 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 1,200 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 1,687 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 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 Local Coastal Programs of the Cities of Oceanside and Carlsbad and the public access and recreation 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. The LCP expressly states that 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 was originally characterized as a flood control project, originally proposed for the residents of the St. Malo residential community in the City of Oceanside, located immediately north of the weir. The applicant now identifies one of the purposes of the project as protecting existing public improvements in the area (e.g., the old Highway 101 and railroad crossings of lagoon). However, as proposed, the replacement weir, by itself, would not provide 100-year flood protection for either private or public improvements 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 and the others 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 avoids or 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 development in floodplains.

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. 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. However, 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. The appellants contend that the project as approved by the Cities is inconsistent with the public access policies of the LCPs and of the Coastal Act.

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 of Oceanside'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. Walkers, fishermen and naturalists currently use the beach and this portion of the lagoon. 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 boundary line 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 addresses 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. Compliance with the NPDES permit is sufficient to satisfy the requirements of the LCP as it requires best management practices regarding handling of toxic wastes and materials, including hydrocarbons, be employed during the life of the project. Additionally, it requires best management practices regarding proposed surface improvements and landscaping.

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.

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## STAFF RECOMMENDATION ON THE COASTAL PERMIT

### STAFF NOTES:

This item was scheduled to go to the Commission's October 2001 hearing but was postponed by the applicant to respond to staff's recommendation of denial. At that time the project was characterized as providing flood protection to primarily private properties within the St. Malo residential community. Subsequently, the applicant has presented new information indicating that the project would provide flood control benefits to both private and existing public improvements surrounding Buena Vista Lagoon. These include old Highway 101 as it crosses the lagoon near the Oceanside/Carlsbad boundary and a railroad bridge that is located west of the highway within the lagoon. The Commission's engineer has reviewed the information and has determined that the project provides flood protection to these public improvements (although not 100-year flood protection). Without such protection, these facilities are subject to inundation at lesser storm events. Also, based on their proximity to wetland resources, other measures to protect the road and railroad from flooding would result in greater impacts to coastal resources than the proposed project. Thus, the project represents the least environmentally damaging flood control alternative which is the finding that must be made for the project to be found consistent with Section 30236 of the Coastal Act and with the applicable provisions of the certified LCPs.

The De Novo staff report on the appeals has been combined with the 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 City of Oceanside and Carlsbad certified LCPs and the public access and recreation policies of the Coastal Act. The standard of review for the regular coastal development permit are the Chapter 3 policies of the Coastal Act with the certified LCPs used as guidance.

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### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed development with special conditions. As conditioned, it is consistent with all applicable Chapter 3 policies and LCP provisions regarding stream alteration, the protection of environmentally sensitive habitat areas, and public access. The wetland impacts associated with the project are unavoidable, the project represents the least environmentally damaging flood control alternative, and the proposed development as conditioned provides adequate mitigation.

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I. The staff recommends the Commission adopt the following resolutions:

- A **MOTION I:** *I move that the Commission approve Coastal Development Permit No. 6-02-14 for the development proposed by the applicant.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

- B. **MOTION II:** *I move that the Commission approve Coastal Development Permit No. A-6-CII-00-124 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

- C. **MOTION III:** *I move that the Commission approve Coastal Development Permit No. A-6-OCN-00-125 pursuant to the staff recommendation.*



**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions.**

See attached page.

**III. Special Conditions.**

The permits are subject to the following conditions:

1. Conformance with Site Mitigation Plan /Final Wetland Mitigation Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall comply with the "Buena Vista Lagoon Weir Replacement Plan," prepared by Merkel & Associates, Inc., received August 2001. Additionally, the applicant shall submit for review and written approval of the Executive Director, a final wetland mitigation program for all wetland impacts associated with the proposed project. The program shall be developed in consultation with the California Department of Fish & Game and at a minimum shall include:

- a. A detailed site plan of the wetland impact area that substantially conforms with the plan submitted to the Commission by the applicant on August 13, 2001. The final plan shall delineate all impact areas on a map that shows elevations, surrounding landforms; the types of impact (both permanent and temporary); and the exact acreage of each identified impact.
- b. The baseline ecological assessment of the wetland impact area submitted on August 13, 2001

- c. A detailed final site plan of the mitigation site that substantially conforms with the site plan submitted to the Commission on August 13, 2001 as shown generally on Exhibit 5.
- d. The following goals, objectives, and performance standards for the mitigation site:
  - 1. Permanent impact to 0.006 acre of freshwater/brackish marsh habitat shall be mitigated by creation of 0.024 acre (a 4:1 ratio) of new freshwater/brackish marsh habitat within the expanded width channel. An updated mitigation site plan shall be submitted showing the required 4:1 mitigation site.
  - 2. Success criteria and final performance monitoring should be based on sampling each of the vegetation layers to provide at least a 90% coverage in 5 years. Estimates of cover shall have a confidence interval no larger than 20% of the mean.
- e. The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards.
- f. Provisions for the full restoration of all wetland impacts that are identified as temporary (e.g., temporary fill areas). Restoration of temporarily impacted areas shall include at a minimum, restoration of before-impact elevations, restoration of before-impact hydrology, removal of all non-native plant species, and replanting with locally collected native wetland plant species.
- g. Provisions for submittal, within 30 days of completion of initial restoration work, of "as built" plans demonstrating that the wetland mitigation site has been established in accordance with the approved design and construction methods.

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

2. Final Monitoring Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director in consultation with the California Department of Fish and Game, a final detailed monitoring program designed by a qualified wetland biologist for monitoring of the wetland mitigation site. The monitoring program shall at a minimum include the following:

- a. No maintenance or remediation activities, other than weed control, for 3 years prior to final performance monitoring.
- b. Provisions to ensure that the mitigation site will be remediated within 90 days of a determination by the permittee or the Executive Director that monitoring results indicate that the site does not meet the goals, objectives, and performance standards identified in the approved mitigation program.
- c. Provisions for monitoring and remediation of the mitigation site in accordance with the approved final mitigation program for a period of 5 years.
- d. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the "as-built" assessment. Each report shall evaluate the status of the wetland mitigation project in relation to the performance standards.
- e. Provisions for submission of a final monitoring report to the Executive Director at the end of the five-year reporting period. The final report must be reviewed by a qualified wetlands biologist. The report must evaluate whether the mitigation site conforms to the goals, objectives, and performance standards set forth in the approved final mitigation program.

If the final report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program which did not meet the approved performance standards. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

The permittee shall monitor and remediate the wetland mitigation site in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the weir the permittee shall remove all debris deposited on the beach or in the water as a result of construction of the weir. The permittee shall also be responsible for the removal of debris resulting from failure of, or damage to, the weir. In addition, the permittee shall maintain the permitted weir in its approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the weir, future additions or reinforcement of the weir, or other changes in the design of the weir may require an amendment to this permit or a separate coastal development permit. **If after inspection, it is apparent that repair and maintenance is necessary, the**

permittee shall contact the Commission office to determine whether an amendment to this permit or a separate coastal development permit is legally required, and shall subsequently apply for any legally required permit amendment or coastal development permit for the necessary maintenance.

4. Storage and Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:

- a. No overnight storage of equipment or materials shall occur on sandy beach or within 20 feet of the lagoon. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to flooding. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the project. Construction equipment shall not be washed near the lagoon.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

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

5. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development authorized by CDP #6-02-14. The applicant shall inform the Executive Director of any changes to the project required by other state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

6. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final site, building and elevation plans for the permitted development that have been approved by the Cities of Oceanside and Carlsbad. Said plans shall be in substantial conformance with the plans submitted by Merkel Associates, dated August 14, 2001.

7. State Lands Commission Review. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall obtain a written determination from the State Lands Commission that:

- a) No state lands are involved in the development; or
- b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

8. Maintenance of Water Quality. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director in consultation with the Regional Water Quality Control Board, a final detailed water quality program consisting of the following:

- a. The applicant shall submit a Best Management Practices (BMP) Program addressing construction BMPs. This program shall include, but is not limited to, the following:
  - i. Machinery or construction materials not essential for the proposed project shall not be allowed in the lagoon or on the beach.
  - ii. Debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
  - iii. Discharge of any hazardous materials into the lagoon and/or beach areas shall be prohibited.
  - iv. The applicant shall immediately retrieve and properly dispose of any materials that fall into the water.
  - v. The BMP program shall include a detailed plan for clean-up of accidental spill of petroleum-based products, cement, or other construction related pollutants. The plan shall be retained on-site with the contractor or engineer throughout construction. It shall include, but not be limited to, use of absorbent pads and floating broom.

The permittee shall undertake development in accordance with the approved final BMP program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved BMP program shall occur without a

Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### IV. 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 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.

2. Environmentally Sensitive Habitats/Hazards and Flood Control/Coastal Act Consistency. Section 30233 of the Coastal Act states in part:

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

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

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.

Because Section 30236 is the more specific Chapter 3 addressing stream alterations, the wetland protection policies of Section 30233 do not apply to wetlands that are filled as a direct result of construction of the weir.

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.

Prior to the 1940s, the lagoon was subject to extreme water level fluctuations as a result of varying levels of precipitation and flooding. Wave action caused sand and cobble to create a barrier beach across the lagoon mouth. In 1940, outlet culverts were installed within the lagoon to regulate the maximum water levels. These were constructed to reduce flooding of residences and Pacific Coast Highway, and to improve the quality of the wildlife habitat by retaining a ponded environment in what frequently became a dried salt flat. The culverts were subsequently washed out in the flood of 1969, and replaced with the existing weir in 1971. At that time, the weir was designed to be 80 feet wide, but only a 50-foot wide weir was constructed due to difficulty in driving piles through the dense cobble layer.

Subsequent flooding of adjacent residences in 1978 and 1980 renewed the need to widen the weir to its original design width of 80 feet. At that time, it was acknowledged that widening the weir alone was insufficient to provide 100-year flood protection without raising the perimeter dikes as well. The 100-year flood flow for the lagoon at the time was 3,500 cubic feet per second (cfs) based on studies by the County flood control district (1976).

Over the past two decades, this peak flow has increased due to upland urbanization. A hydrology study performed by Hunsaker and Associates (1996) for the City of Oceanside indicated the peak 100-year flow at the Buena Vista Lagoon weir is 5,517 cfs. This value is considered representative of current conditions in the watershed. This value represents a 58% increase in the 100-year flow since 1976 when the previous hydrologic study was performed. Several regional detention basins have been constructed further up in the watershed to reduce the flow rates during large events. However, the discharge rate is still significantly higher than was planned for in the 1970s and no other watershed improvements are anticipated to substantially reduce the lagoon discharge conditions to a flow less than was contemplated in the original 80-foot weir design. As such, the 80-foot design width of the weir in 1971 is and will remain inadequate to handle the full 100-year event flows anticipated under the current developed watershed conditions. It would improve conditions where flooding currently occurs on Pacific Coast Highway, South Hill Street, the railroad corridor, and on private lands, including the St. Malo development, but it would not provide full 100-year flood protection to these facilities.

Under Section 30236, channelizations or substantial alterations of streams are only permitted when no other method of flood control is feasible and when necessary to protect existing development. In this case the proposed weir replacement project is a flood control project being undertaken by a local municipality for protection of existing public and private structures and transportation facilities in the floodplain. These facilities are subject to flooding partly because the weir was not built to its original specifications in 1971, and partly because of increased rates of storm discharge from the heavy development of the watershed over the recent decades. The applicant indicates that while the project would not resolve flooding issues and provide 100-year flood protection to all structures, it would provide a reasonable reduction in flooding frequency. Because of this, the St. Malo development would still need to implement an upland berm to protect that development against flooding in order to achieve 100-year flood protection St. Malo desires. Providing this level of protection to St. Malo is not a part of the City's proposed project but is being pursued separately by St. Malo through additional upland structures.

The Buena Vista Lagoon Flood Protection Plan (July 27, 2001) was submitted by Moffatt & Nichol engineering at direction of Commission 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 (Exhibit 7). No other flood protection improvements were assumed to be in place. The report finds 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 report also provides historical documentation of flooding to surrounding public and private improvements.

The applicant indicates that while the St. Malo development would be a beneficiary of flood flow improvements at the weir, a berm alternative around St. Malo would not alleviate flooding in other surrounding lands, including other essential public facilities such as Old Highway 101, the railroad trestle and the PCH bridge over which flooding creates public health and safety hazards. Further, a more expansive berm or wall could not be used around such facilities as the railroad and PCH because these facilities cross the lagoon rather than being peripheral to the lagoon and as such, protection using walls and berms would create greater impediments to flows and would exacerbate flooding upstream. Further, the applicant indicates that improvements at PCH would result in greater impacts to wetlands than would expansion of the weir, given the extremely narrow margin between the roadway surface and the adjacent wetlands. As a result, the applicant concludes no other less damaging method of providing flood protection to provide for public safety and protection of existing development is believed feasible, consistent with Section 30236 of the Coastal Act.



The applicant indicates that the concerns regarding impacts to coastal wetlands and coastal waters has been considered as has the need to conform with Section 30236 of the Coastal Act. The applicant indicates that wetland impacts associated with the project are unavoidable and have been reduced to the maximum extent feasible, and that appropriate mitigation is proposed for all unavoidable impacts. To this end, the applicant indicates that proposed project has taken several steps to limit impacts and provide a solution that has minimal impacts to the environment, provides greater habitat benefits than currently exist, and provides the minimum amount of additional flood protection that is deemed required by the City of Oceanside. These measures are summarized as follows:

- 1) The project is located at the present site of the undersized aging weir that will eventually require replacement, repairs, or removal. This location was selected because it is the narrowest and most disturbed area of the lagoon within which this hydraulic control structure may be developed. It supports predominantly cobble bottom with no vegetated wetlands downstream of the weir and only intermittently developed wetlands upstream due to the frequent high velocity flows through the narrow channel. It also occurs within the original 1971 drainage and maintenance access easement originally designed to encompass an 80 foot weir and thus would not create significant conflicts to other land-uses, including adjacent and overlapping conservation and access easements recorded later in 1984. Any other location for this flood control would require acquisition of new easements across lands that would have prior easements for public access or conservation purposes.
- 2) The project is not designed to provide ideal flood protection to facilities, but rather lesser protection is provided as a means of minimizing adverse effects to the environment. The construction of the weir to the original design discharge conditions of 1971 provides the level of flood protection to public and private structures that was reasonably contemplated, but does not address the gradual increase in flows associated with the developing watershed. Lowering the weir sill, widening the weir, or widening the effective flow channel through the constrained portions of the lagoon could provide better protection. These levels of alteration would result in greater flood protection but would also result in vastly more significant impacts to the existing lagoon environment.
- 3) The Ogee-type weir is primarily a gravity structure that is proposed to address the complications encountered in construction when the initial weir was partially constructed in 1971. This design requires a relatively shallow footing into the cobble and avoids the problems of driving piles through cobbles or excavating and dewatering a larger hole deep enough to provide a pile footing. In addition, it provides greater efficiency in passing flows than does a vertical weir.
- 4) In contemplating the project, the City considered a number of design options as well as non-construction measures that could be implemented to minimize initial impacts and provide greater long-term benefits to wetland habitats of the lagoon.

These included the location and design originally discussed, as well as the following:

- a) A removable block was designed into the weir to provide flexibility of water level management within the lagoon in the event that such management is determined to be desirable under the future Coastal Conservancy plan. This feature was added to the design at the request of the Regional Water Quality Control Board to increase operational flexibilities.
- b) A commitment was made by the City to ensure funding for the removal of the weir in the event that a future option for Lagoon management includes tidal connection. This commitment of funding was made in recognition that a final determination as to the future enhancement, restoration, or management of Buena Vista Lagoon may be years away and, depending upon the alternative selected, completion of construction could be well into the future. The funding commitment provides the City the ability to address present flood protection risks while ensuring that lagoon planning is not adversely impacted, and in fact, benefited by having resources to remove the weir in the event it is warranted by the selected alternative.
- c) The channel widening proposed as a part of the project increases total wetland area and reduces flow velocities through the channel. This is anticipated to provide greater stability to existing wetlands, potential for greater sediment accretion over the rocky bottom, and increased overall water surface and wetland area.
- d) Mitigation for project impacts is proposed to be located on-site and would take advantage of the enhanced physical conditions of the channel following construction to provide suitable locations to mitigate the unavoidable impacts to coastal wetlands. By doing the restoration and mitigation within the impact area, the net effect would be enhancement of the local site rather than exporting the values to another location around the lagoon.
- e) Use of water-bladder dams for construction period isolation of the project is proposed to protect existing wetlands upstream and minimize impacts to wetlands under the coffer dams. Water bladders were specifically incorporated as a best management practice to avoid the potential damage associated with imported fill dikes.
- f) The use of open cellular concrete matting such as Armorflex has been proposed by the City for the lagoon-side of the weir where vegetation growth can reasonably be expected to occur. On the downstream side of the weir, rip rap is still proposed because of both cost and liability

associated with the slick surface created by sand on unvegetated concrete mats.

To determine consistency with Section 30236 of the Act, the Commission's engineer has looked at the design of the weir and several alternatives. After reviewing the applicant's flood mapping information, the Commission's engineer concurs that the project can be characterized as a necessary flood control project. Although it would not provide 100-year flood protection, the Commission's engineer notes that some areas that flood now during small events would not experience flooding with the proposed project. Regarding the need for the weir, the Commission's engineer notes it is unlikely that any upstream flood control measures are in place or would be constructed that would obviate the need for the proposed project. Such measures would most likely be done within the overall lagoon restoration effort that is being reviewed by the Coastal Conservancy. Regarding design alternatives, the Commission's engineer found that if an 80' wide embedded structure (pile supported or cantilevered) were to be installed, it would require a large excavation area to dig through the cobble lenses and reach material which could provide a stable weir foundation. The proposed gravity structure will rest on the creek bottom and will minimize site disturbance for excavation.

Regarding scour up- and down- stream of the proposed weir resulting from the proposed transition areas, the Commission's engineer notes the transition structures are the primary stability for the ogee weir foundation and the structure needs to be the proposed size to function properly. Regarding whether the concrete apron on the seaward side of the weir is the best design to pass water (considering riprap has to be placed in the channel bottom to prevent it from scour) the Commission's engineer notes the concrete apron is the transitional element of the weir foundation and the riprap on the surface is for required energy dissipation.

Regarding whether all the proposed riprap is necessary, the Commission's engineer notes the current design has riprap in the upstream channel and on the upstream banks. The design proposes "armorflex" in place of riprap on the upstream side of the weir. This approach is preferred because it would allow vegetation growth along the shoreline areas near the weir. The Commission's engineer notes the banks on either side of the weir, downstream of the weir, already have rock slope protection. If any new bank protection were added it would be in the small zone between the weir sidewalls and the existing riprap. Some riprap is planned for the transition area and the concrete apron. There is also riprap beyond the apron, for protection from scour – both from ocean waves and from flow over the weir. Using armorflex could accommodate this; however, this could become slippery and be a hazard to access.

Regarding whether increased flows could scour out the beach affecting existing public access along the shoreline from Carlsbad to Oceanside, most of the "beach" seaward of the existing weir is cobble overlain by a thin veneer of sand. The Commission's engineer notes the proposed weir will accommodate higher flows both by allowing more efficient flow over each foot of the weir, and also by providing a wider weir over which water can flow. The downstream flow will also be wider and will extend over a wider area of

beach. The increased velocity per foot of flow width will be fairly small; it will be the increased flow width that will provide the major improvement in flood conveyance. As such, the stream obstruction between Carlsbad and Oceanside, during peak flows, will be wider but should not be any deeper. The water elevation is to remain the same between the existing and proposed designs, and the increase in velocity will be minor and should not be enough to scour a deeper channel than exists currently.

Finally, the "no project" alternative appears to result in greater impacts to coastal resources than the proposed project. As noted by the applicant, a more expansive berm or wall could not be used around such facilities as the railroad and road because these facilities cross the lagoon rather than being peripheral to the lagoon and as such, protection using walls and berms would create greater impediments to flows and exacerbated flooding upstream. Further, such improvements at Old Highway 101 would result in greater impacts to wetlands than would expansion of the weir, given the extremely narrow margin between the roadway surface and the adjacent wetlands.

The project is proposed as a flood control project and includes the fill of wetlands as a result of installation of a portion of the transition structure on the upland side of the weir. Installation of the proposed project results in impacts to 0.027 acre of coastal wetlands consisting of 0.021 acre of temporary impacts for the cofferdams proposed during construction of the project and 0.006 acre of permanent impact to freshwater/brackish marsh. The Commission's engineer has indicated the impacts are unavoidable. The location and design of the project is such that all other alternative sitings and designs would result in greater environmental impacts. Additionally, Section 30233 (b) and (d) provide dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems and erosion control and flood control facilities constructed on water courses should place dredged material from these facilities on the shoreline where feasible mitigation measures have been provided to minimize adverse environmental effects. As noted, the approximately 2,000 cubic yards of dredged spoils resulting from construction of the project will be placed on the beach consistent with the above subsections. Thus, the Commission finds, based on the preceding, impacts are unavoidable and there is no feasible less environmentally damaging alternatives

The project proposes a mitigation plan that includes timing restrictions to avoid adverse impacts to the endangered least tern, proposes the mitigation of temporary and permanent impacts to freshwater and brackish marsh and submerged marsh aquatic vegetation, proposes invasive exotic species removal and additional water quality measures as required by resource agency permits and agreements. Mitigation consists of the on-site restoration and enhancement, through exotic species removal, of areas that are temporarily impacted by construction. The mitigation of permanent impacts shall be accomplished by creation of 0.024 acre (a 4:1 ratio) of new freshwater/brackish marsh within the expanded width channel. This mitigation ratio is necessary in order to compensate for the difficulty of successfully restoring such habitat.

The following is a summary of special conditions that bring the project into conformance with the three standards of review that this project is being evaluated against. Special Condition #1 requires the applicant to comply with the provisions of the "Buena Vista Lagoon Weir Replacement Project" (applicant's mitigation plan) as identified above, including an updated mitigation site plan showing the required 4:1 mitigation site, and additional performance standards typically required by the Commission to mitigate project impacts. Special Condition #2 requires the applicant to submit a detailed monitoring program for the mitigation site that includes requirements for evaluation of the mitigation success and provisions for remediation if not successful. Special Condition Nos. 4 and 6 require final project plans and final plans for access and storage in substantial conformance with the submitted plans to ensure no impacts to nearby resources and public access. Special Condition #3 requires any future maintenance activities and/or vegetation removal be reviewed. Within 15 days of project completion all debris deposited on the beach or in the water must be removed. Special Condition #5 requires the submittal of any required discretionary permits from other agencies. Should any project modifications be required as a result of other permits, an amendment to this permit may be necessary. Special condition #7 requires review from the State Lands Commission to assure any proposed work on State Lands is approved. The above conditions apply to all three applications (Coastal Commission and Cities of Oceanside and Carlsbad Coastal Development Permits).

As such, the Commission finds the project has been designed as a flood control project, that no other method for protecting existing structures in the floodplain is feasible, that such protection is necessary for public safety or to protect existing development (private and public), and that the project as conditioned provides the best mitigation measures feasible. Consequently, the Commission finds the project is consistent with the applicable policies of Chapter 3 of the Coastal Act.

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

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. The following forms of development are allowed in sensitive habitat areas.

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.

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 noted above, the applicant has presented new information indicating that the project would provide flood control

benefits to existing public improvements in Buena Vista Lagoon and can be found the least environmentally damaging flood control alternative.

The proposed unavoidable impacts to wetlands are acceptable as the Commission finds the project represents the least environmentally damaging flood control alternative and has no feasible less environmentally damaging alternative and will provide adequate mitigation and monitoring to minimize adverse environmental effects. The Commission finds the project as conditioned above is consistent with the requirements of the certified Oceanside local coastal program.

Similarly, as noted in the findings above, regarding conformance with Policy 4-7(e) and Section 21.203.040(E) of the Carlsbad LCP, because this is a flood control project, it is a permitted use within the floodplain and is compatible with periodic flooding. As conditioned above the project is consistent with the Carlsbad LCP.

In summary, the proposed development, as conditioned, will not result in significant impacts to environmentally sensitive resources which could be avoided if other alternatives were implemented. The proposal has been designed to avoid impacts to the extent feasible and be the least environmentally damaging flood control alternative and appropriate mitigation is proposed. Therefore, the proposed development is consistent with applicable policies of Chapter 3 of the Coastal Act and the certified Carlsbad and Oceanside LCPs.

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 and 30223. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, and protecting suitable upland recreational sites.

Section 30210 of the Coastal Act states:

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

Section 30211

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

Section 30212

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, [or]
  - (2) adequate access exists nearby....

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

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. Walkers, fishermen and naturalists currently use the beach and this portion of the lagoon. 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. Public access through the City of Carlsbad side of the lagoon has been dedicated by the adjoining property on Map 11007, Carlsbad Tract No. 81-35 (The Beach). The public access and recreational use easement was granted March 30, 1984. The California State Lands Commission was also deeded a portion of the Carlsbad side property by the Native Sun Investment Group pursuant to a 1984 title settlement agreement. These easements extend to the utility and drainage easements that define the weir's footprint and are south, east and west of the site. Although a portion of the weir will encroach into the easements to the east, public access will not be adversely affected because this area is a wide sandy beach that extends well upland of the weir and as such gives the public ample area to recreate in the area near the weir.

The southern portion of the weir and widened lagoon mouth would be constructed within existing easements established for the drainage facilities and maintenance access in 1971. The northern portion of the weir would similarly be located within the 1971 and 1972 easement areas. The widening of the channel on the northern edge of the lagoon would be accomplished by shifting existing private tennis courts to the north and cutting into a private lot along the northern edge of the channel. Neither of these two expansion areas would interfere, physically or legally, with existing beach access as this is a locked gate community unavailable to beach goers. Flows over the weir would not adversely affect public access.

As proposed, construction access, work areas, and staging would occur within private lands to the north and predominantly within the drainage structures maintenance access easement on the Carlsbad side of the project. A temporary equipment storage/staging area on the south side of the project overlaps into Lot 3 of Map 11007 by approximately 500 square feet. The proposed storage/staging area would be sited completely within disturbed weedy lands which are predominantly unvegetated.

The use of this staging/storage site and allowance for temporary public access around the fenced storage yard would require approval by the Beach Homeowner's Association (APN 203-010-21). In the event that this authorization is not granted, less efficient use of the northside storage areas or reconfiguration of the southside storage area to fit fully within the easement while providing public passage would be adopted. The facilities

would be present for the term of the construction and would then be removed. As such, the storage/staging area would not impair or preclude physical and legal public access around the construction site. Additionally, Section 30233 (b) and (d) provide dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems and erosion control and flood control facilities constructed on water courses should place dredged material from these facilities on the shoreline where feasible mitigation measures have been provided to minimize adverse environmental effects. As noted, the approximately 2,000 cubic yards of dredged spoils resulting from construction of the project will be placed on the beach consistent with the above subsections.

Special Conditions Nos. 3, 4, 6 and 7 address access concerns with the project, its construction and its timing. Special Condition Nos. 4 and 6 require final project plans and final plans for access and storage in substantial conformance with the submitted plans to ensure no impacts to nearby resources and public access. Special Condition #3 requires any future maintenance activities and/or vegetation removal be reviewed. Within 15 days of project completion all debris deposited on the beach or in the water must be removed. Special condition #7 requires review from the State Lands Commission to assure the project is acceptable for any components on State Lands. The above conditions apply to all three applications (Coastal Commission and Cities of Oceanside and Carlsbad Coastal Development Permits).

In summary, access opportunities would not be adversely affected because of the relatively small expansion of the weir into existing easements within a wide sandy beach area. The widening of the channel upstream of the weir will also displace area historically available to the public but again not in a significant way. There is at least 150 feet between the weir and the nearest residential project in Carlsbad. The widening of the channel and weir in Oceanside will occur within a locked gate community and the widening of the channel seaward of the weir is in an area that will continue to be available to the public as the channel will be shallow and not have water flowing most of the year. Therefore, public access will remain available to those who wish to walk from Carlsbad to Oceanside along the shoreline seaward of the weir. As such, the Commission finds the project is consistent with the above access policies of the Coastal Act and of the certified Local Coastal Programs of the Cities of Carlsbad and Oceanside.

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:
  - h. 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.
  - i. Minimizing the alteration of landforms.
  - j. 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, during and after construction, the potential for adverse impacts to lagoon water quality exist from construction equipment and materials and runoff from the improved areas of the site (i.e., the asphalt maintenance vehicle access road). Special Condition #8 requires the applicant to provide best management practices to address these water quality concerns.

Section 30231 of the Coastal Act also requires that water quality in coastal waters be maintained. At this location and in recognition of the heavy equipment and construction materials that will be necessary to construct the project the goals of the required water quality plan are as follows:

- 1) Minimize the potential for a spill of oil or hazardous materials;
- 2) Protect environmentally sensitive areas (lagoon, wetlands, etc.)
- 3) Ensure a safe and organized response should a spill occur;
- 4) Contain any spillage to the smallest area possible; and
- 5) Ensure that all appropriate notifications have been completed.

With these goals in mind, the attached special condition requires a number of measures to ensure compliance with Section 30231.

In summary, as conditioned to require a drainage and runoff control plan which includes BMPs designed to treat, infiltrate, or filter construction materials and stormwater from each runoff event, the proposed development will reduce any impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project consistent with Section 30231 of the Coastal Act.

5. Visual Resources. Because Buena Vista Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and major recreational resource, it was the subject of a detailed Land Use Plan prepared by the City and certified by the Coastal Commission. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of views to and from the lagoon.

#### Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed replacement weir will be much larger than the existing structure. It will be 30-feet wider than the existing weir. However, it is proposed at the same elevation as the existing weir and much of its added bulk will be submerged within channel waters. Thus, no significant adverse visual impacts are anticipated. As such, the proposed development is consistent with Section 30251 of the Coastal Act regarding scenic preservation.

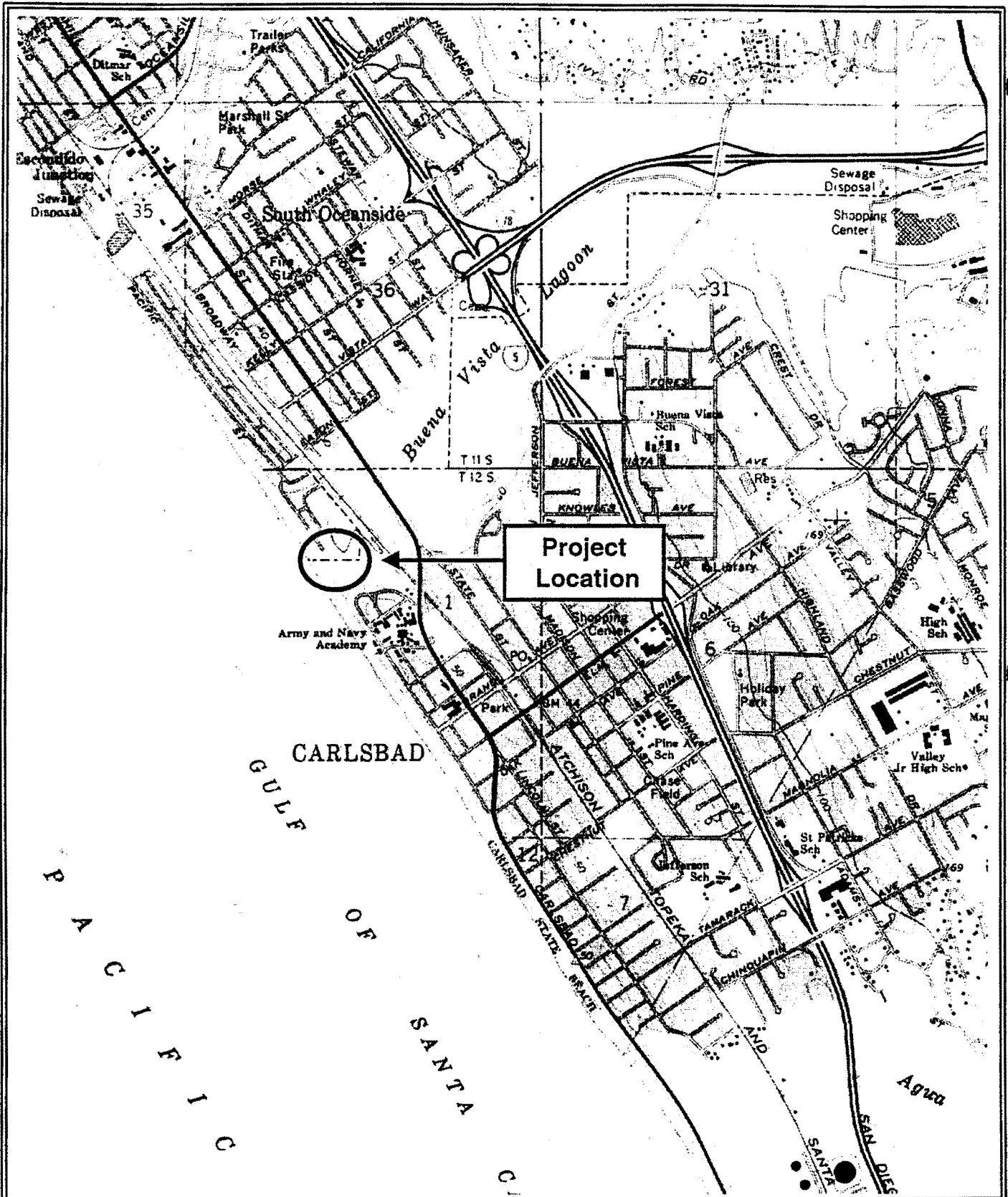
#### 6. Consistency with the California Environmental Quality Act (CEQA).

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.

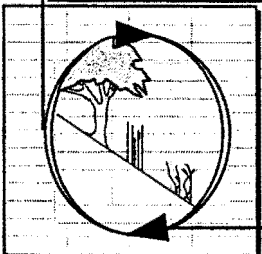
The proposed project has been conditioned to be consistent with the resource, visual and public access protection policies of the Coastal Act. The required mitigation measures regarding wetlands impacts will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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



**Project Location**



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 Scale: 1"=2,000'

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

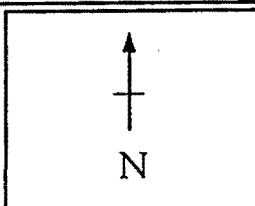
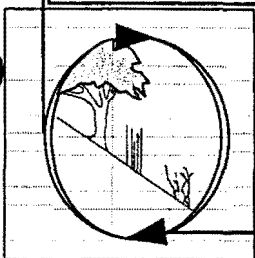
EXHIBIT NO.  
 APPLICATION NO.  
 A-6-CII-00-124  
 A-6-OCN-00-125  
 6-02-14  
 Location Map

Merkel & Assoc



Directions to site from Interstate 5:

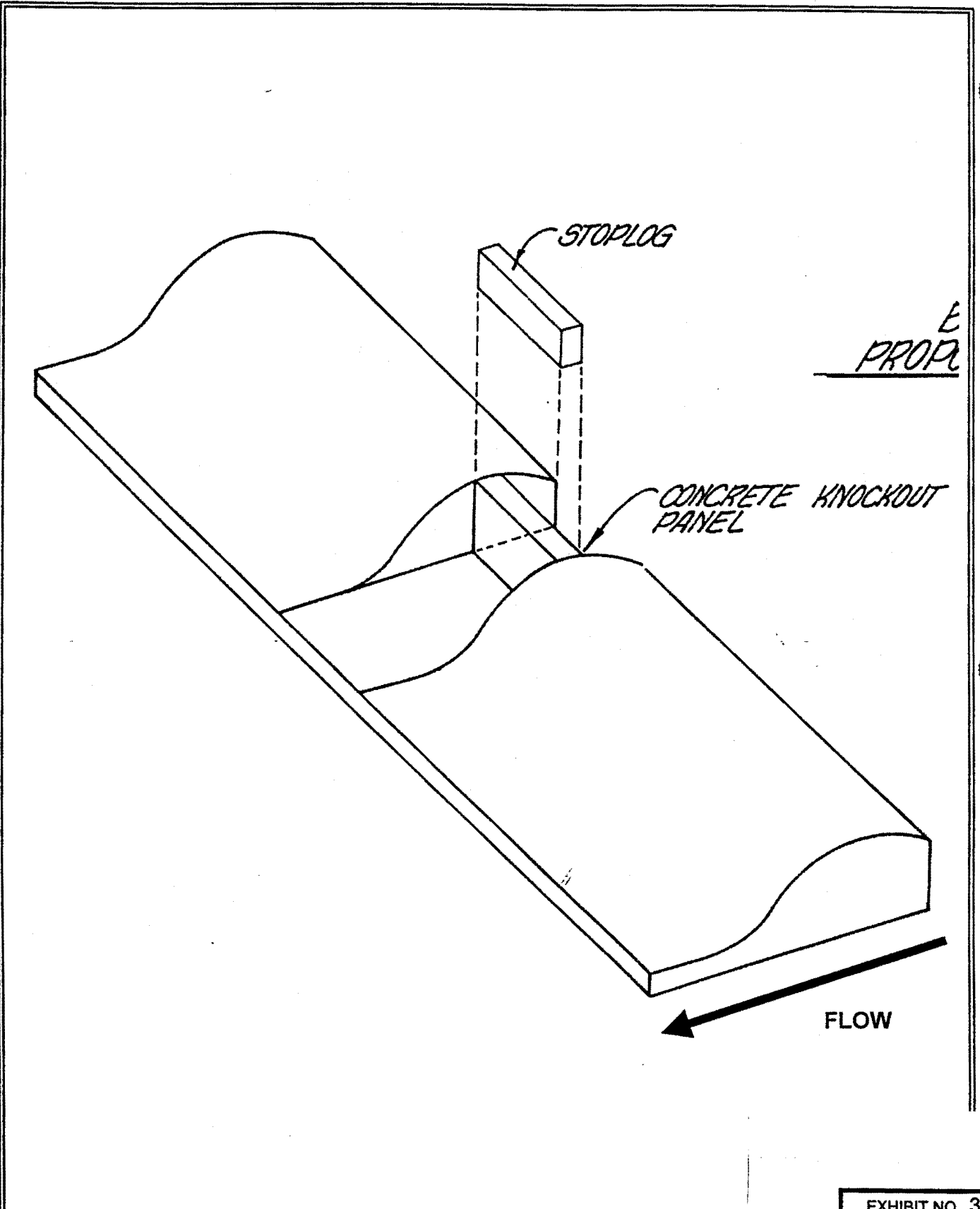
- Exit I-5 at Vista Way in Oceanside
- Follow Vista Way west to Coast Highway
- Turn south on Coast Highway and follow across lagoon into Carlsbad
- Take first right after crossing lagoon onto Mountain View Drive.
- Take first right onto dirt road, next to tennis courts, down to lagoon and weir site.



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

EXHIBIT NO. 2
APPLICATION NO. A-6-CII-00-124
A-6-OCN-00-125 6-02-14
Aerial of Location
California Coastal Commission

*Merkel & Associates*

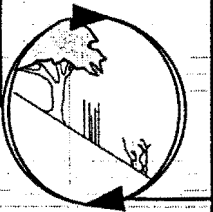


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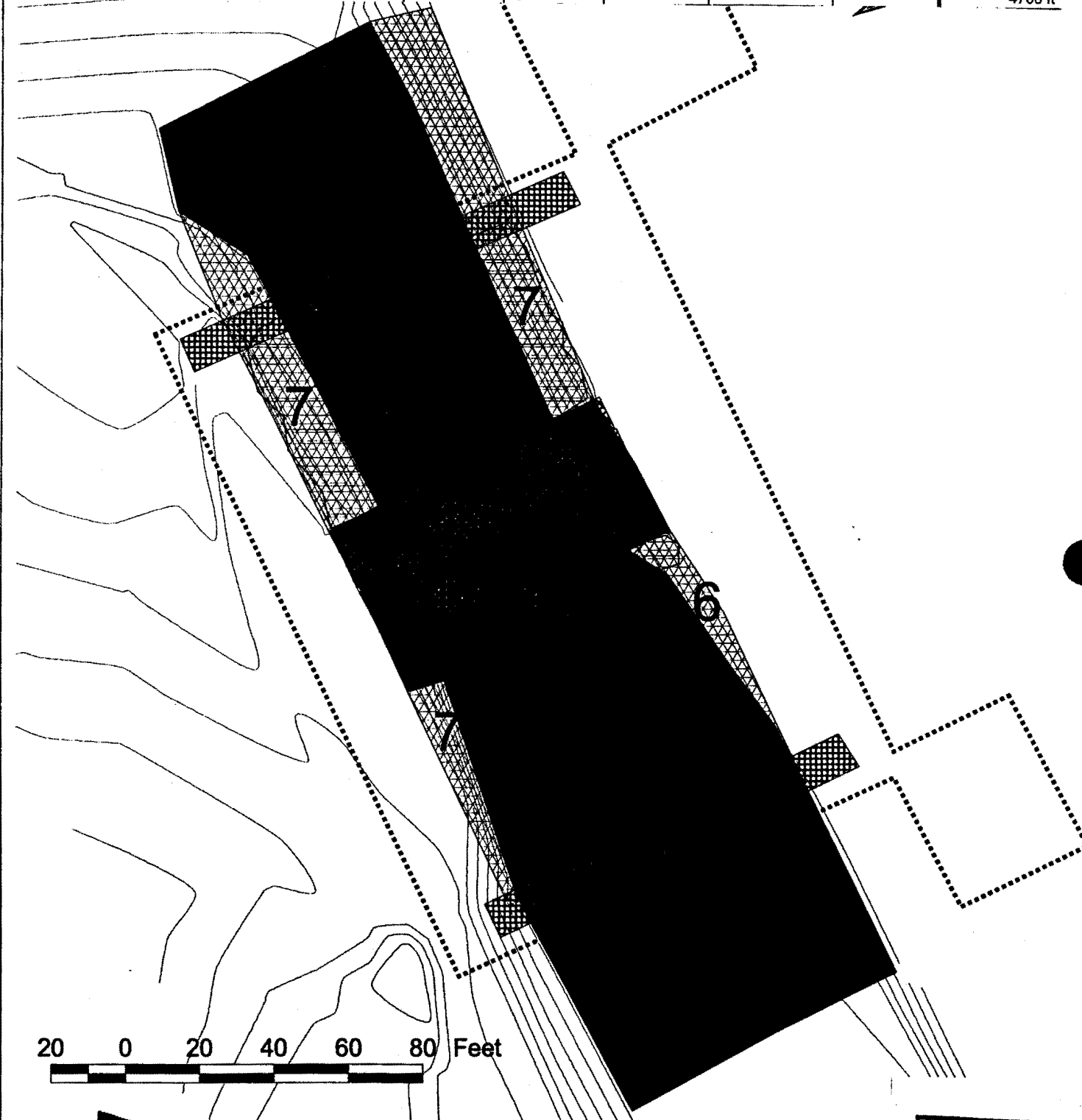
Ogee Type Weir

EXHIBIT NO. 3
APPLICATION NO A-6-CII-00-124 A-6-OCN-00-125 6-02-14
Proposed Replacement Weir
California Coastal Commission





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



20 0 20 40 60 80 Feet



**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-OCN-00-125  
 6-02-14  
 Impacts and  
 Mitigation  
 California Coastal Commission

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
75 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: 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:

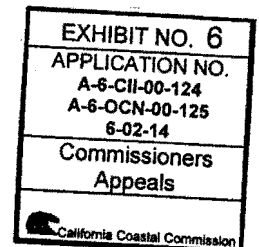
Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

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

DATE FILED: 8/23/2000

DISTRICT: San Diego



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

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

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

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.)

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*See attached*

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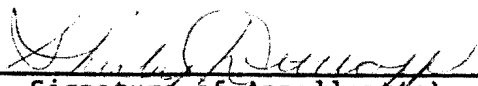
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Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, 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 of Appellant(s) or  
Authorized Agent

Date 8/23/00

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  
7575 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  
7575 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-00-125

DATE FILED: 8/23/2000

DISTRICT: 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: *Laura 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

175 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").

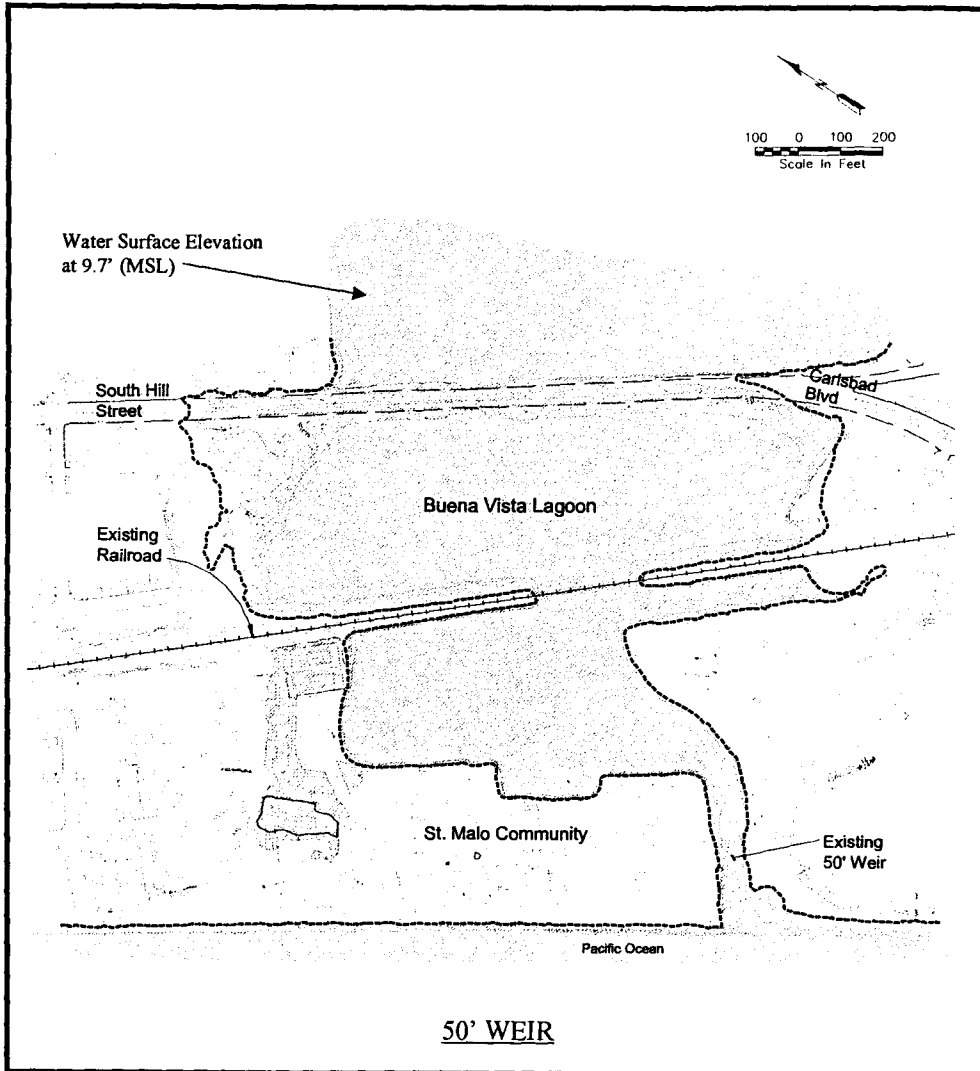
According to the State Lands Commission part of the project is located on state lands and part of the project is subject to a public access easement and open space dedication. State Lands has identified that the submitted depiction of the public access and recreational use easement is incorrect. The 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.

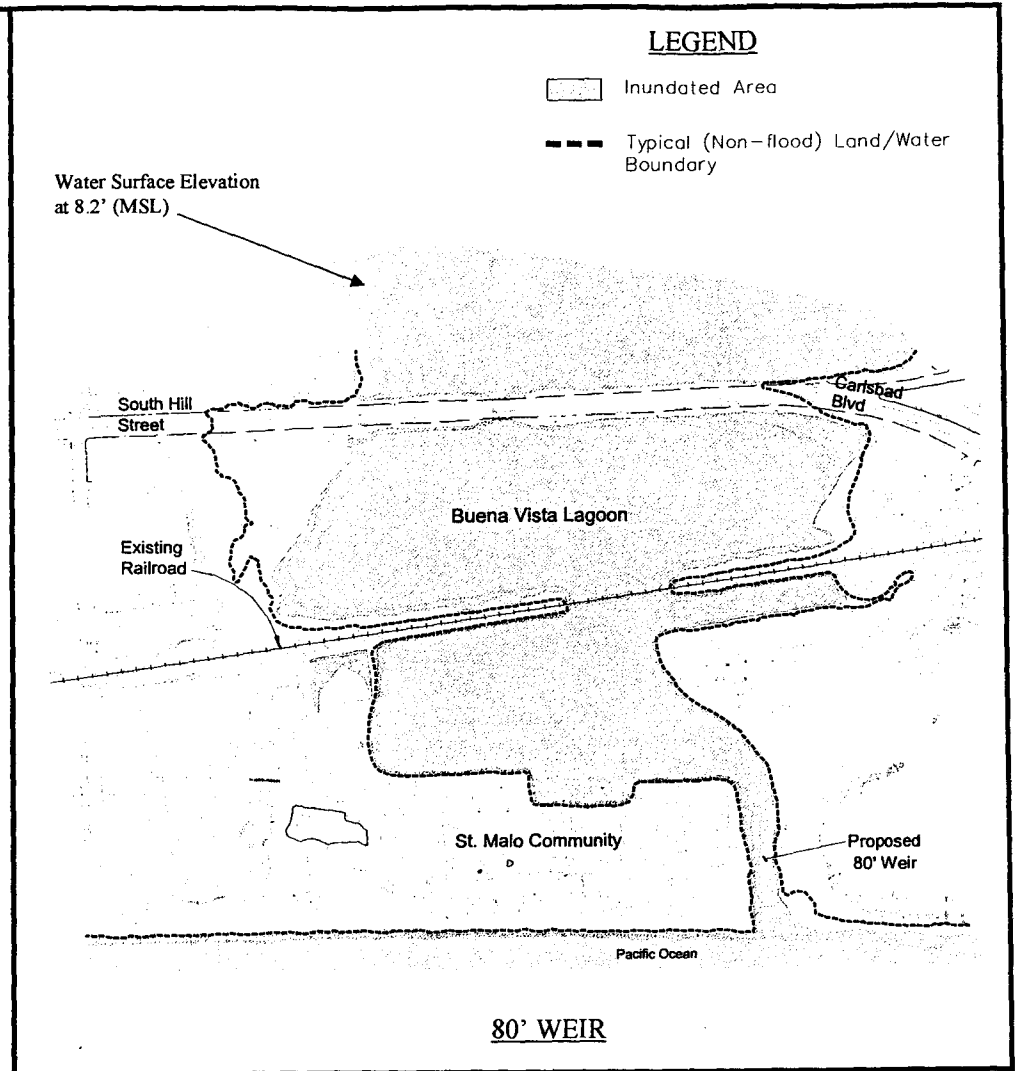
The project is characterized as a flood control project, primarily for the residents of the St. Malo residential community in the City of Oceanside. However, it is noted that the weir would not provide 100-year flood protection. Such protection could only be assured with installation of berming around 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.



50' WEIR



80' WEIR

Buena Vista Lagoon Flood Analysis

FLOOD COMPARISON EXHIBIT  
INUNDATED AREAS FOR 2 YEAR STORM

California Coastal Commission

Flood Comparisons

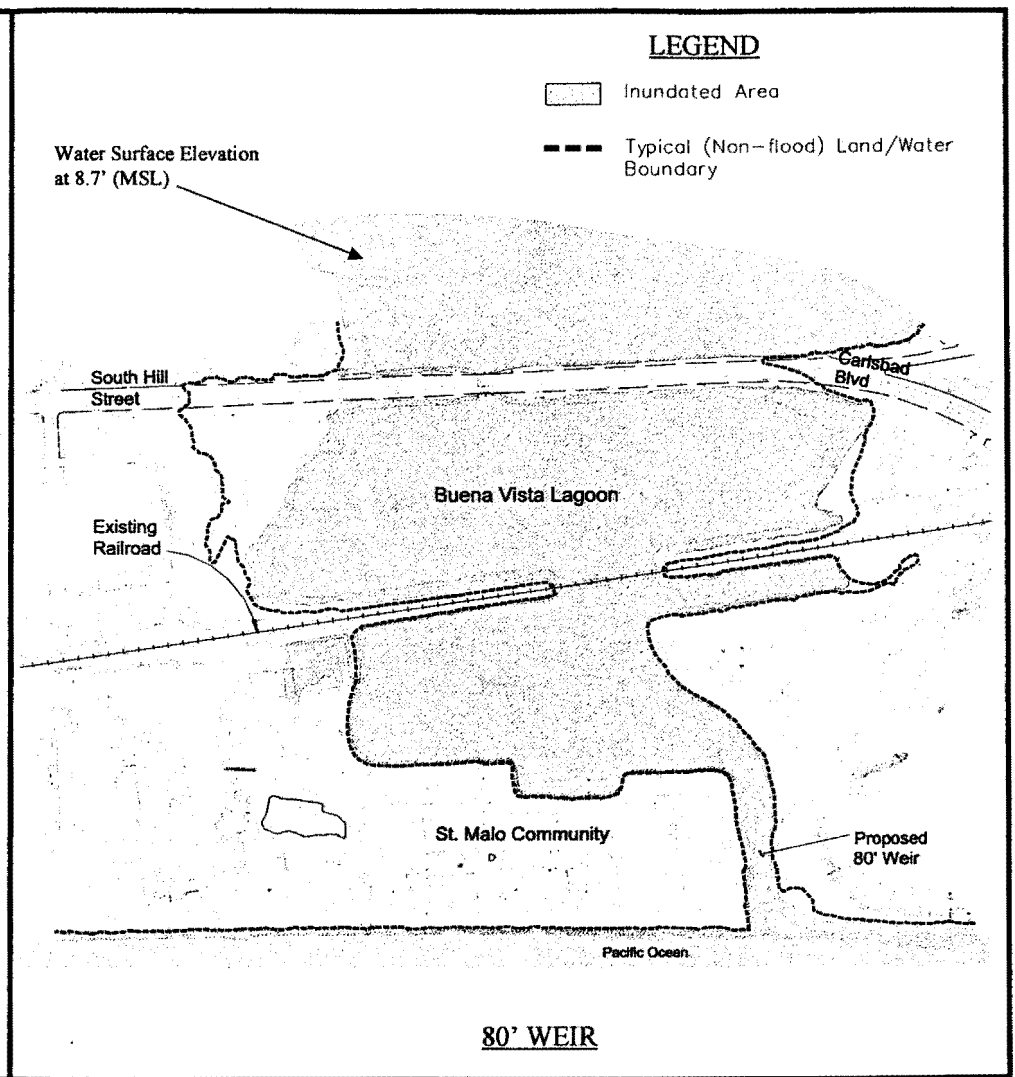
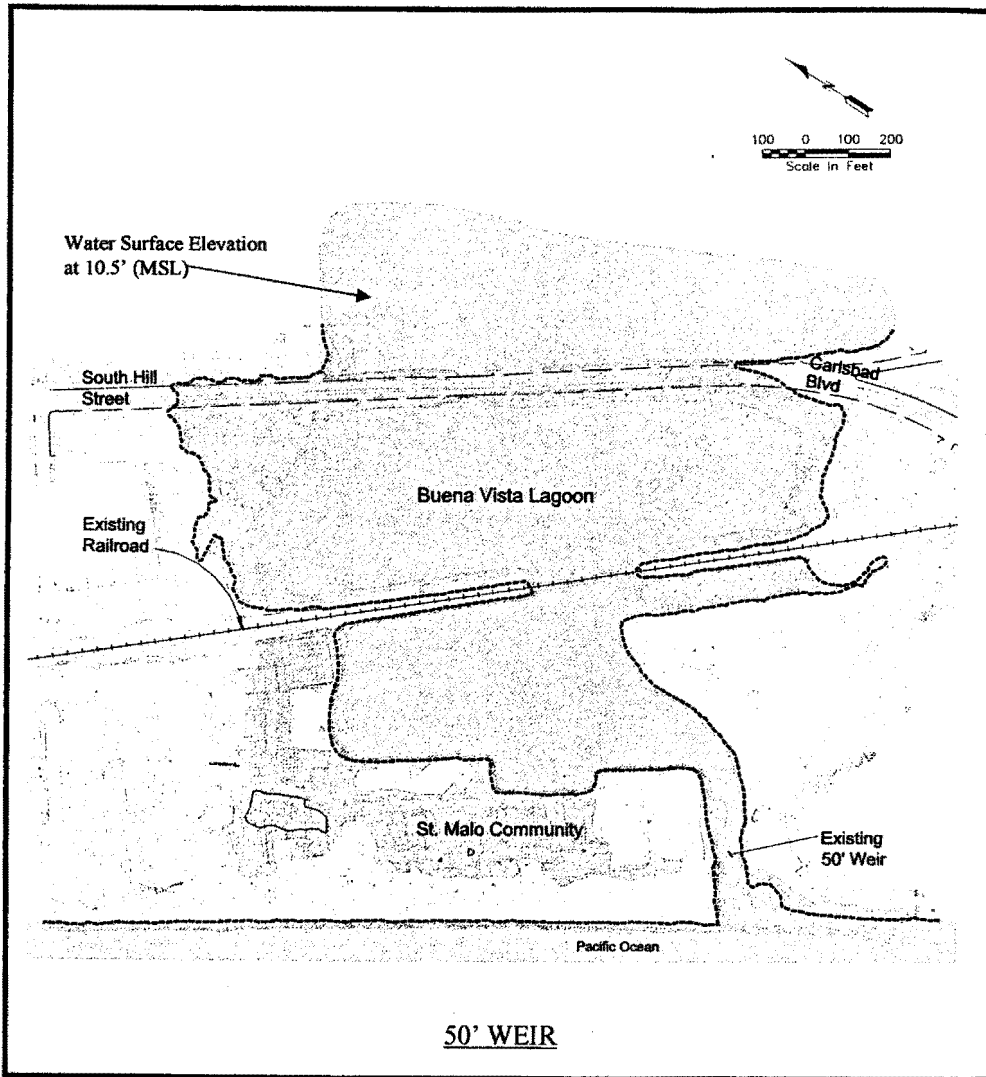
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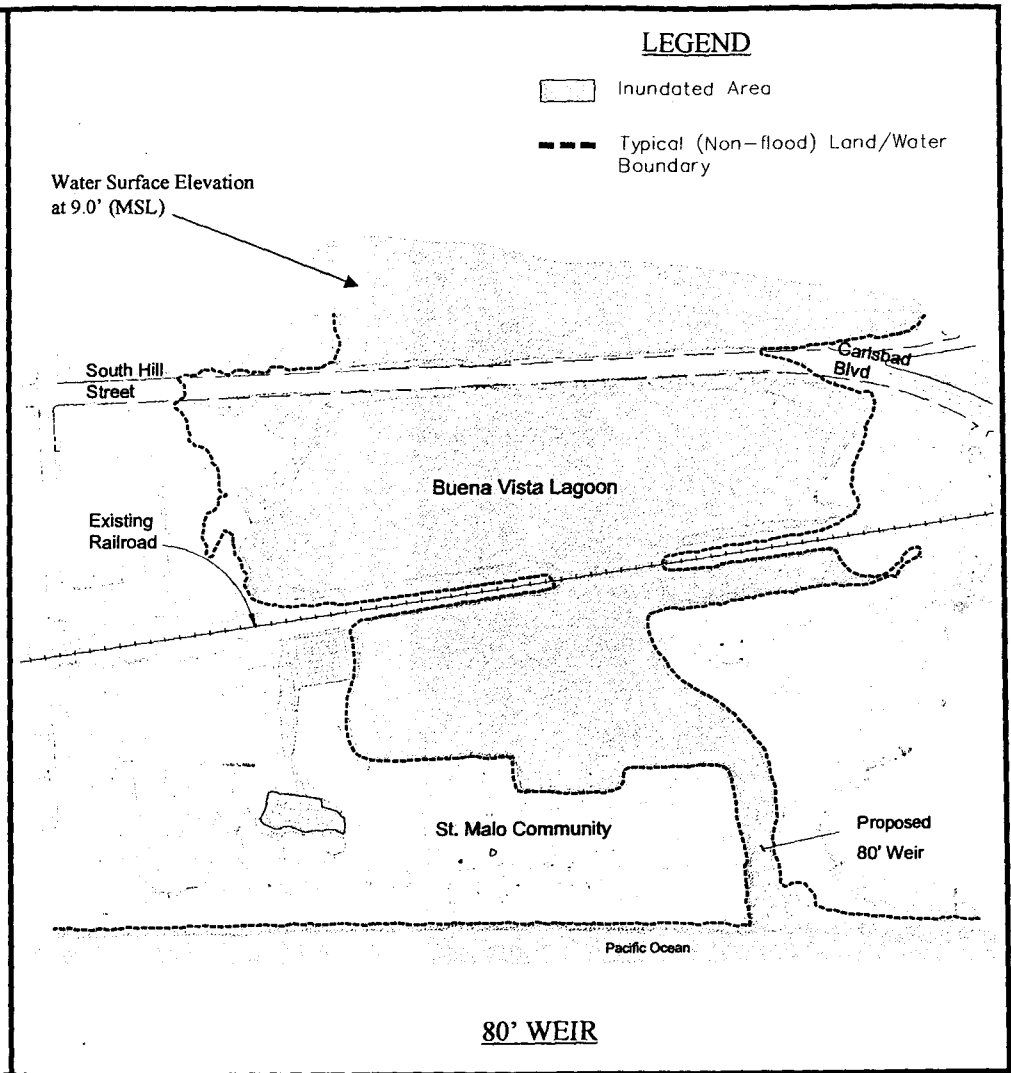
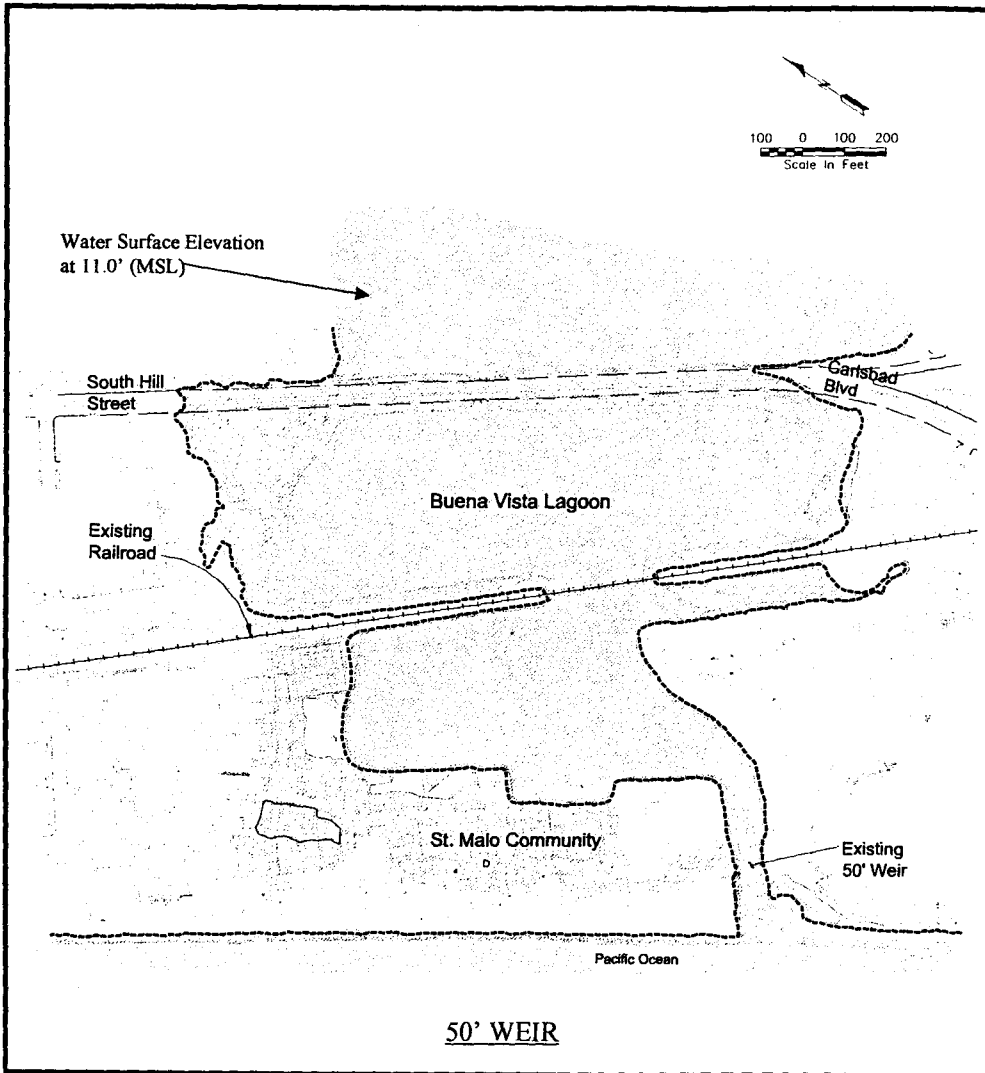
APPLICATION NO.

EXHIBIT NO. 7A-E



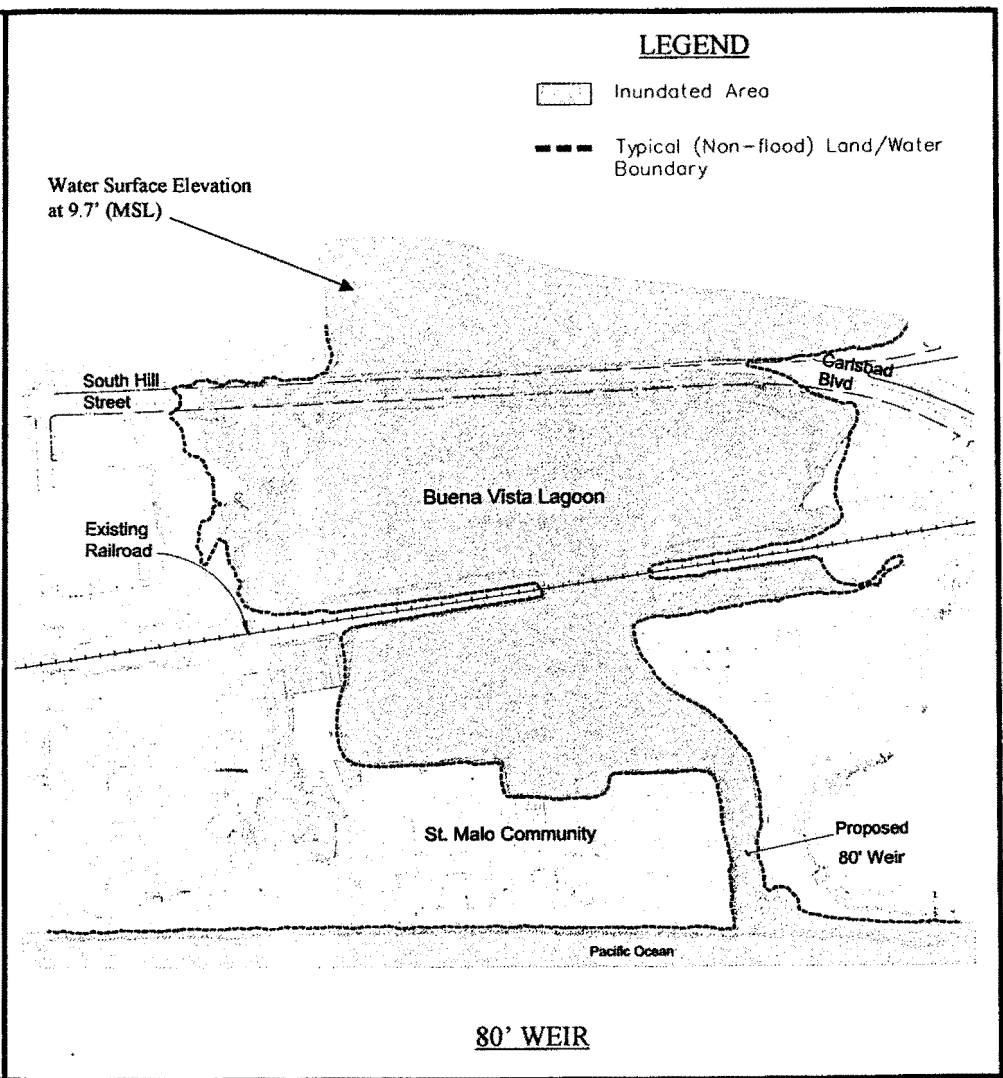
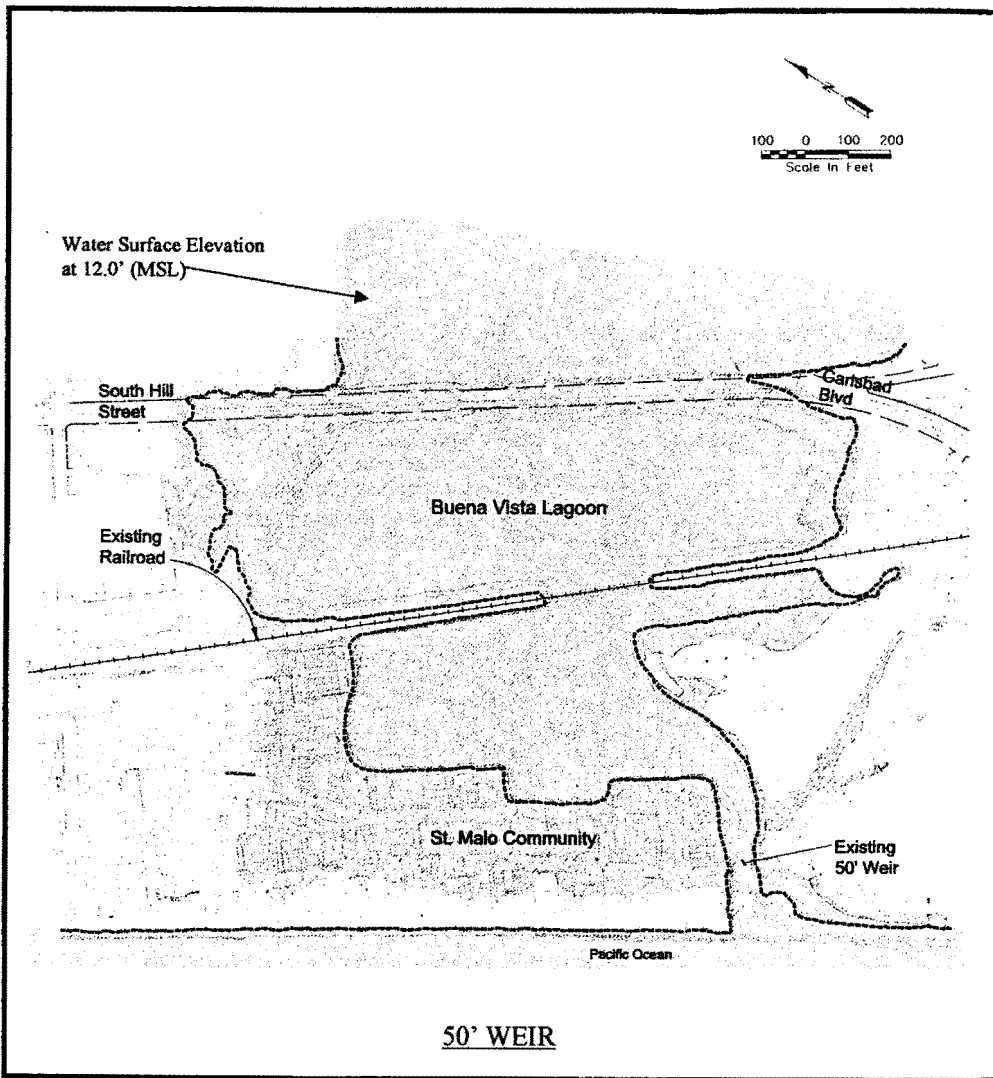
Buena Vista Lagoon Flood Analysis

FLOOD COMPARISON EXHIBIT  
INUNDATED AREAS FOR 5 YEAR STORM



Buena Vista Lagoon Flood Analysis

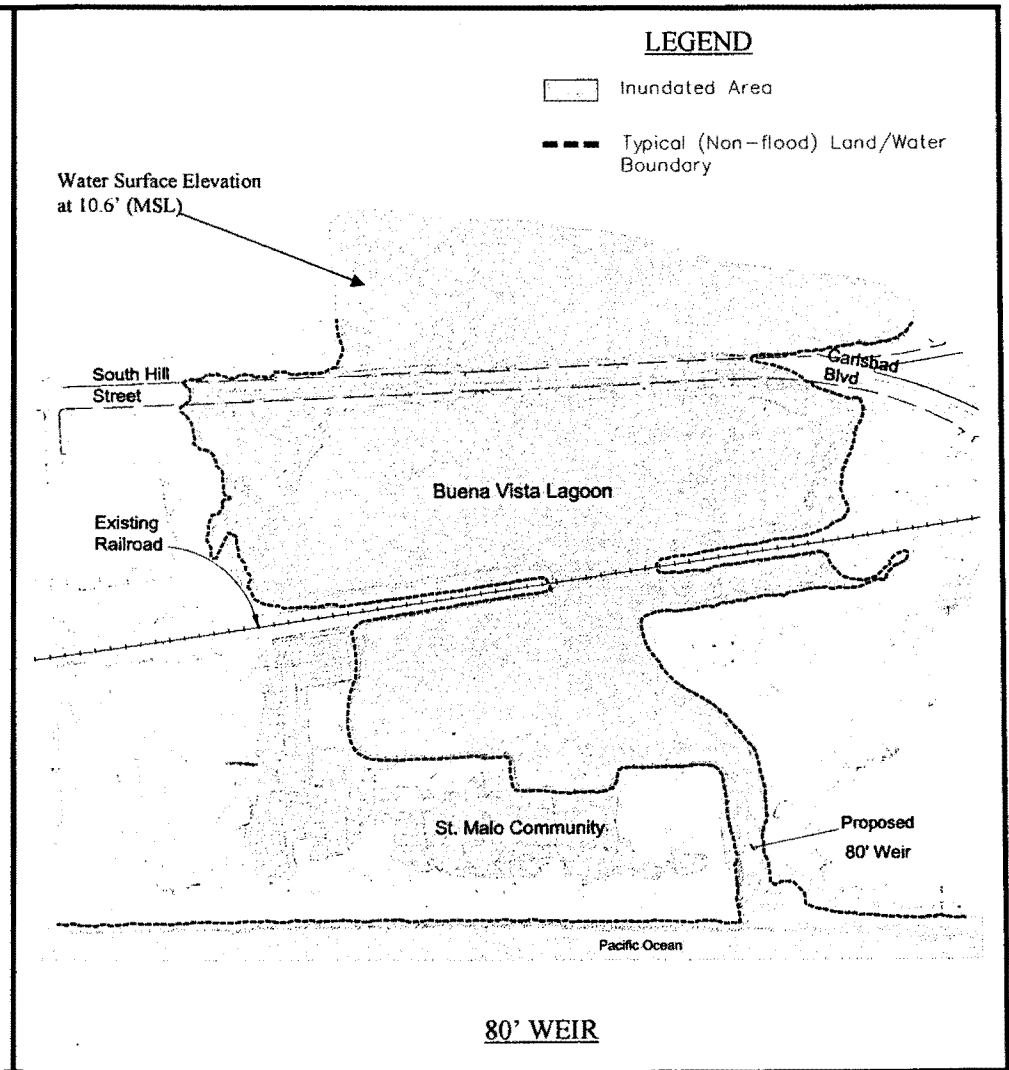
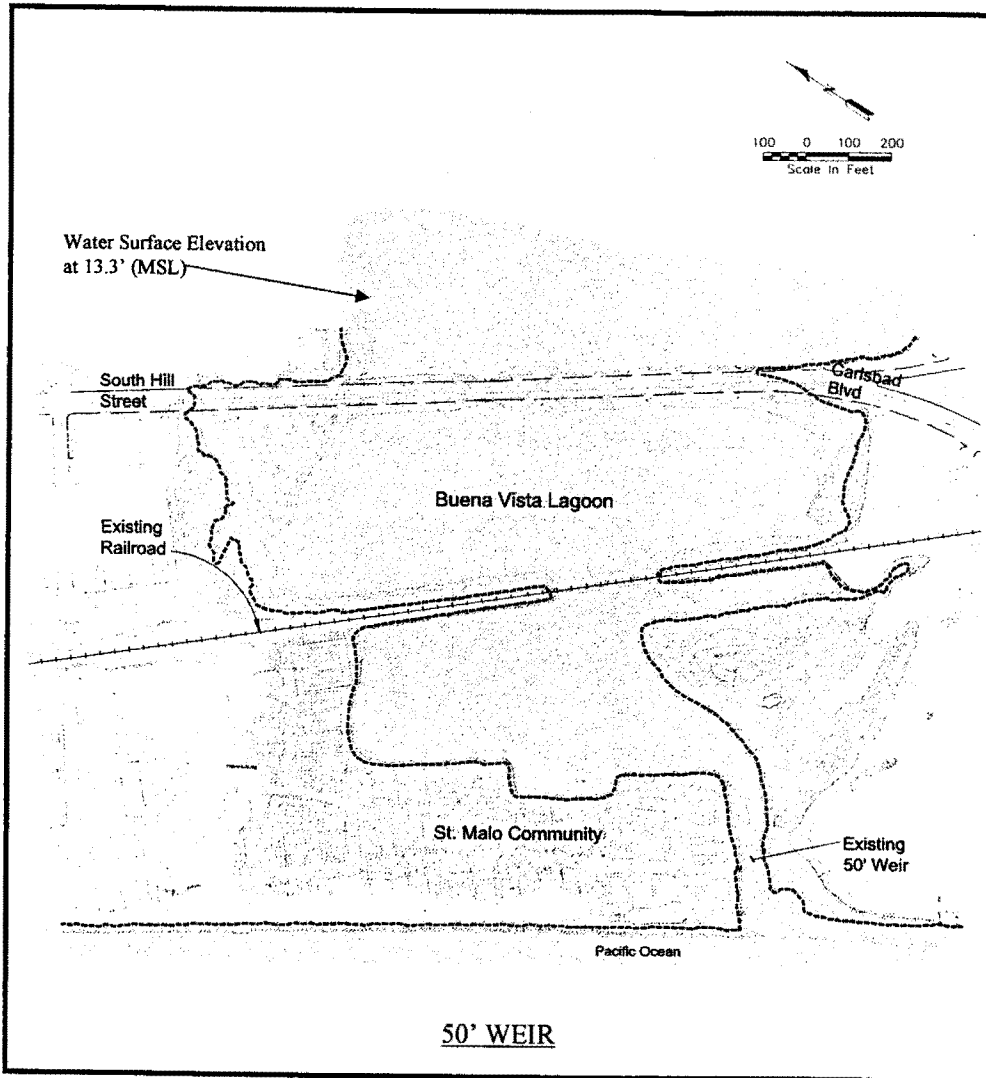
FLOOD COMPARISON EXHIBIT  
INUNDATED AREAS FOR 10 YEAR STORM



Buena Vista Lagoon Flood Analysis

FLOOD COMPARISON EXHIBIT  
 UNDATED AREAS FOR 25 YEAR STORM





Buena Vista Lagoon Flood Analysis

FLOOD COMPARISON EXHIBIT  
INUNDATED AREAS FOR 50 YEAR STORM

