

CALIFORNIA COASTAL COMMISSION

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Commission Action:

W 8b**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-05-086**APPLICANT:** County of Orange
Resources & Development Management Department (RDMD)**AGENT:** Christopher G. Kubasek, Chief, Regulatory Permits Section
Hualin Hsu-Wingard, County of Orange, RDMD**PROJECT LOCATION:** Along the western bank of the Santa Ana River – from just north of Pacific Coast Highway to just south of Adams Avenue adjacent to the existing service road, within a narrow strip of unincorporated County land between the cities of Huntington Beach and Newport Beach, Orange County**PROJECT DESCRIPTION:** Trail improvements including a rest area, landscaping, and the addition of a decomposed granite riding (horse) and hiking trail adjacent to the existing asphalt Class I Bikeway and service road.**LOCAL APPROVALS RECEIVED:** County of Orange Planning Department Approval in Concept, 1/26/05**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed project subject to 4 special conditions which require: 1) nesting bird surveys be conducted prior to commencement of construction and periodically thereafter during the nesting season; 2) the applicant comply with general construction responsibilities; 3) preparation and implementation of a Water Quality Management Plan; and, 4) native landscaping be carried out as proposed.

The special conditions are necessary to assure that the proposed development conforms to the biological resources and water quality policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: Mitigated Negative Declaration IP 04-401; Biological Constraints Analysis, prepared by PCR, 11.24.04.

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-05-086 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 policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

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 this permit is reported to the Commission. 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.

III. **SPECIAL CONDITIONS**

1. **Avifauna Surveys**

Prior to commencement of any construction activities and a minimum of every other week thereafter, between February 15 through August 15, a survey for avifauna by a qualified biologist shall be conducted within the project vicinity; if any occupied nests of any sensitive species are discovered, no work may occur within, a minimum, 50 feet of the nest until the nest is no longer occupied. The applicant shall implement a larger buffer if the biologist recommends a larger buffer from the nest area.

2. **General Construction Responsibilities**

A. The permittee shall comply with the following construction-related requirements:

1. Prior to commencement of any work approved by this permit, a temporary barrier or work area demarcation (such as but not limited to flagging, staking or plastic mesh fencing) shall be placed between the construction areas and adjacent flood control channel. All temporary flagging, staking, fencing shall be removed upon completion of the development. No work shall occur beyond the limits of the project as identified on the project plans submitted with the application (undated, exhibits 1 & 2 to the MND) and attached to this staff report as exhibit B.
2. No construction materials, debris, or waste shall be placed or stored where it may enter the flood control channel;
3. Construction materials, chemicals, debris and sediment shall be properly contained and secured on site to prevent the unintended transport of material, chemicals, debris, and sediment into the flood control channel and coastal waters by wind, rain or tracking. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. BMPs selected shall be maintained in a functional condition throughout the duration of the project. A pre-construction meeting shall be held for all personnel to review procedural and BMP/GHP guidelines.
4. Disposal of debris and excess material. Debris and excess material shall be disposed or recycled at a legal disposal/recycling site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is required.

No debris or excess material shall be placed where it may enter the flood control channel.

5. Debris and sediment shall be removed from the construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into the channel and coastal waters.
6. Any and all debris resulting from construction activities shall be removed from the project site within 7 days of completion of construction.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a site access, staging, work area and equipment storage plan(s) which conforms with the requirements of subsection A.1 through A.6 of this special condition. The permittee shall undertake development in accordance with the approved final plan(s). Any proposed changes to the approved final plan(s) shall be reported to the Executive Director. No changes to the approved final plan(s) shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Water Quality Management Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a Water Quality Management Plan (WQMP) that identifies specific Best Management Practices (BMPs) and Good Housekeeping Practices (GHP) to be incorporated into the project. BMPs and GHPs to be included in the project WQMP shall include, but are not limited to, measures to address minimizing polluted runoff from the trail and management practices for the collection, storage, and disposal of horse manure and pet waste.

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

4. Landscape Plan

A. Landscaping shall occur consistent with the proposed landscape plan, prepared by the U.S. Army Corps of Engineers, and received in the Commission's South Coast District office on August 31, 2005.

B. Consistent with the proposed plan, only non-invasive, native plants shall be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed.

- C. All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- D. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant is proposing to construct trail improvements including a 1,600 square foot rest area, landscaping, and the addition of a decomposed granite riding and hiking trail adjacent to the existing asphalt Class I Bikeway and service road. The existing trail, known as the Santa Ana River Trail, runs along the west levee of the Santa Ana River flood control channel. No work is proposed within the river/flood control channel. Only native plants are proposed within the project site. The project site is located within a narrow strip of unincorporated County land between the cities of Huntington Beach and Newport Beach. The project site is owned in fee by the Orange County Flood Control District.

The proposed project is part of a larger County project that extends inland beyond the coastal zone boundary. The proposed project is part of Reach 1 of the overall project. Only a portion, about half, of Reach 1 is located within the coastal zone. Reach 1 extends from just north (inland) of Pacific Coast Highway inland to Adams Boulevard. The coastal zone boundary extends inland only to Hamilton Avenue (see exhibit C). The subject application addresses that portion of the project which falls within the coastal zone. The total extent of Reach 1 is a distance of approximately 2.7 miles, of that distance, approximately 1 ½ miles are located within the coastal zone.

Specific components of the proposed trail project include:

A new decomposed granite riding (horses) and hiking trail that would range in width between six to eight feet.

At the southern portion of the project, just north (inland) of Pacific Coast Highway, a 1,600 square foot rest area is proposed. The proposed rest area would include an entry sign, information kiosk, boulder seating, bicycle rack, and hitching post. The proposed kiosk would include a roof to protect informational displays from the elements, but no internal floor area.

Landscaping is proposed within the rest area and along the trail. Vegetation within the project area proposed to be removed includes both exotic weeds and planted native vegetation. The existing native vegetation was planted as part of an enhancement project (see discussion below) and was not part of any mitigation program. The existing planted area totals 208,900 square feet. At completion, the total planted area would be 209,060 square feet.

A new grouted riprap slope for retaining purposes is proposed on the western edge of the trail (not the channel side of the trail). The existing and proposed trails will be between the proposed riprap slope and the channel. No development is proposed within the channel or on the channel banks.

Construction of the existing trail and landscaping was part of the overall Santa Ana River Mainstem project which was reviewed and approved by the Coastal Commission under Consistency Certification No. 29-88 (U.S. Army Corps of Engineers & County of Orange).

B. Biological Resources

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation shall be compatible with the continuance of those habitat and recreation areas.*

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat area 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.

A biological constraints analysis (BCA) was prepared for the proposed project by PCR and is dated November 24, 2004. Under the heading "Existing Conditions," the BCA states:

*"Reach 1 [subject site] consists primarily of a paved access road on the western levee of the SAR. Portions of the paved access road are bordered by a narrow strip of native vegetation and non-native grasses. Vegetated portions contain a dominance of big saltbush (*atriplex lantiformis*), with associated species including brittle bush (*Encelia farinose*), California buckwheat (*Eriogonum fasciculate*), pickle weed (*salicornia sp.*), and buckwheat (*Eriogonum sp.*).*

*Wildlife observed within the vicinity of Reach 1 include the brown pelican (*Pelecnus occidentalis*), American crow (*corvus brachyrhynchos*), double-crested cormorant*

(Phalacrocorax auritus), western grebe (Aechmophorus occidentalis), mourning dove (Zenaida macroura), house finch (Carpodacus domesticus), red-tailed hawk (Buteo Jamaicans), eared grebe (Podiceps nigricollis), European starling (Sturnus vulgaris), and great egret (Ardea alba). Surrounding land uses include the channelized SAR to the east, Huntington State Beach to the south and the Orange County Sanitation Treatment Plant to the west.”

The results of the BCA found: “No sensitive plant communities, plant species, or wildlife species were observed within the study area.”

Although many of the native plants within the subject site are plants that are often associated with communities that are considered sensitive habitat, in this case, these native plants do not combine to constitute sensitive habitat. This conclusion is based on the following factors: the plants are limited in extent (occurring only along the narrow strip that borders the paved access road), they are interspersed with non-native grasses, and, they do not support any sensitive animal species. Taken together, these factors limit the existing native plants habitat function.

However, the BCA indicates that migratory birds may use habitat adjacent to the subject site. The least Bell’s vireo is a State- and Federally-listed endangered species that may use habitat in the project vicinity. The BCA recommends:

“Though construction crews will remain within existing access roads, it is recommended that construction activities occur outside of the nesting period, typically between February 15 and August 15, in areas where suitable habitat exists, to avoid indirect impacts to nesting migratory birds and to least Bell’s vireo. If construction will occur during the breeding season, a qualified biological monitor should conduct a pre-construction survey of the site prior to construction. If active nests are found, the tree or shrub should be flagged with a buffer, at a distance to be determined by the biological monitor, and avoided until nesting is complete.”

Sensitive birds have not been detected nesting within the project site. Potential impacts to nesting birds within the general project vicinity associated with the proposed project are expected to be limited to noise generated during construction. With appropriate measures, potential impacts to nesting birds can be substantially minimized or even eliminated. In order to minimize to the greatest extent feasible possible impacts during construction, appropriate measures must be incorporated into the proposed project. Avoidance and minimization measures should be incorporated into the proposed project in order to assure that potential impacts are reduced or eliminated.

Although biological monitoring is recommended for the proposed development, it is not currently part of the project proposal. Without biological monitoring, adverse impacts may occur to sensitive bird species such as the least Bell’s vireo, inconsistent with Section 30240 of the Coastal Act.

In order to assure that sensitive bird species are protected, prior to the start of construction, between February 15 and August 15, a qualified biologist must conduct surveys for nesting birds within 100 feet of the project site. In addition, surveys must be conducted every two weeks for nesting birds during the breeding season (February 15 – August 15). If nesting birds are detected at any time during the breeding season, the applicant shall monitor the nest site to ensure that nesting activities are not adversely affected (as a result of evident disturbance); and, if necessary, construction will be suspended within 50 feet (at a minimum, a greater distance may be required if deemed necessary by the biological monitor) of the nesting sites until such time as the impacted nest(s) is vacated. Therefore, a special condition is imposed which requires that biological monitoring, by a qualified biologist, occur as part of the proposed project whenever development occurs during the nesting season (February 15 through August 15). Further, the special condition requires a minimum buffer area of 50 feet between any development activities and an active nest. A greater buffer must be observed if deemed by the biological monitor to be necessary to protect the resource.

The project would also result in the removal of native vegetation. However, the vegetation to be removed was not found to support any sensitive species, nor is the vegetation itself considered to be rare or endangered. Moreover, the project would remove weedy exotics and replace them with native vegetation. Further, native plantings are expected to do well in the subject location because the existing native plants at the site were planted as part of an enhancement project. They did not establish on their own. The existing habitat value is marginal and the proposed disturbance is minimal. The landscaping plan for the proposed development indicates that the following plants will be used: *Encelia californica*, *Ceanothus maritimus*, *Salvia leucophylla*, *Arctostaphylos*, *Rhus integrifolia*, and *Polonium californica*. The native plants to be removed were planted as part of an enhancement plan and are not part of any mitigation requirement. The portion of the proposed project that includes their removal will not run afoul of the requirements of Section 30240 of the Coastal Act and will not create any adverse impacts on sensitive habitat.

Therefore, the Commission finds that, only as conditioned is the proposed development consistent with Section 30240 of the Coastal Act which requires that development be compatible with the continuance of sensitive habitats.

C. Water Quality

Section 30231 of the Coastal Act states:

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

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

Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be maintained and, where feasible, restored. The proposed development will drain into the Santa Ana River flood control channel before discharging into the Pacific Ocean. Because runoff from the subject site ultimately drains into the ocean, the quality of the runoff is required by Section 30231 of the Coastal Act to be restored.

Potential Construction Impacts

Potential construction impacts to the waters of the channel would likely be limited to inadvertent discharge of side-cast soils during construction operations. With appropriate measures (as outlined below), these potential impacts during construction can be avoided.

Measures that could be included as part of the proposed project to protect the quality of the channel waters include that prior to the start of grading, silt fencing, sand bags, or other appropriate erosion control devices will be installed between the project boundary and the channel. Silt fences, in addition to preventing silt from entering the channel, also provide identification of the limits of work to the construction crew, helping workers to avoid inadvertent fill within the channel. In addition, the placement of sand bags will provide further protection of the channel from fill sloughing in. Further, additional measures exist which would provide protection of the channel. These include prohibiting any construction materials, debris, or waste from entering the channel, properly containing any construction materials, debris, and sediment such that they do not enter the channel, implementation of Best Management Practices and Good Housekeeping Practices to prevent spillage and/or runoff from entering the channel, appropriate disposal of debris and excess materials, and removal of all construction debris within seven days of completion of construction.

Due to the proximity of the proposed development to the channel, it is necessary to assure that the proposed project's construction methods not result in adverse impacts to the channel, though none are anticipated. In order to protect the channel waters, a special condition is imposed which requires the applicant to incorporate these general construction responsibilities into the proposed project. The special condition requires that a General Construction Responsibilities Plan be submitted by the applicant for the review and approval of the Executive Director, and that the approved plan be implemented by the applicant. Only as conditioned is the proposed development consistent with Section 30231 of the Coastal Act regarding maintaining the quality of coastal waters.

Potential Post- Construction Impacts

The subject site drains into the Santa Ana River flood control channel. The flood control channel, just downstream of the project, enters into the ocean. Section 30231 of the Coastal Act requires that the quality of coastal waters be maintained and, where feasible, restored.

The applicant has indicated that no drainage plan was prepared because the proposed project will not change the existing drainage pattern of the levee. The applicant has indicated: "Currently the levee is sloped towards the channel. Any precipitation falling on the levee sheet flows across the levee and into the channel." In addition, no new impermeable area is proposed.

However, although the drainage of the site is not changing, the use is. The proposed project includes a new horse-riding trail where none currently exists. This use raises specific new water quality concerns. In addition, the use of the trail may be expected to increase with the development of the proposed amenities. Moreover, Section 30231 requires that, where feasible, water quality be restored. The proposed project provides an optimum opportunity to enhance the quality of the water that leaves the site, especially because it drains directly into the flood control channel and thence into the ocean.

Currently, the site drains untreated directly into the channel. The site drainage carries with it sediment, trash, and animal waste. The addition of a horse trail at the site introduces a new potent pollutant – manure, potentially carrying bacteria and pathogens. Feasible measures are available to minimize adverse impacts to water quality due to the proposed development. If the site is allowed to continue to drain untreated into the channel, the proposed project could not be found to be consistent with the requirement of Section 30231 of the Coastal Act to restore the quality of coastal waters.

The applicant has included some Best Management Practices (BMPs) within the permit application. However the BMPs submitted, while commendable, are not site specific, and it is not clear how and whether each measure will actually be incorporated into the project. In order to assure that all appropriate post-construction BMPs are incorporated into the proposed project, a detailed, site specific Water Quality Management Plan (WQMP) must be prepared and implemented. The WQMP must clarify which BMPs will be applied at the subject site and specify how each will be implemented. In addition, the WQMP must identify expected pollutants of concern and explain how these will be addressed. The WQMP would likely include a suite of post-construction BMPs that contains site design management measures, source control measures, and treatment control measures.

A primary objective of site design management measures is to preserve and enhance the ability of a site to capture, filter out and assimilate polluted runoff. Source control or "pollution prevention" BMPs are geared to avoiding or eliminating the introduction of pollutants at the site and thus avoiding or eliminating their introduction into coastal waters. Treatment control BMPs are structural methods that are used to control stormwater volumes and peak discharge rates, as well as to reduce the magnitude of pollutants (e.g. through containment or flow restrictions designed to allow settling, filtration, percolation, chemical treatment, or biological uptake). Furthermore, the WQMP should specify how the BMPs will be maintained regularly in order to continue to function properly. A WQMP must be prepared that includes appropriate maintenance measures to be implemented with the project. Specific to the proposed project, the WQMP must include measures to address

animal waste, especially from horses and dogs, that would be expected in conjunction with the proposed horse trail use. Only as conditioned to prepare and implement a WQMP can the proposed development be found to be consistent with Section 30231 of the Coastal Act regarding protection of water quality.

D. Public Access

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 30210 places a high priority on maximizing public access and recreational opportunities. In addition Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing non-automobile circulation and substitute means of transportation.

The proposed development will provide a significant public access and recreation benefit. The proposed expansion and enhancement of the existing public trail use will increase both public access and recreational opportunities. The project will provide non-automobile circulation which connects inland areas to the coast. It provides a scenic, recreational means of accessing the coast. This aspect of the project is consistent with the goals of Sections 30210 and 30252 of the Coastal Act.

There is a possibility that continued public access may be interrupted during construction of the proposed development. However, the applicant has indicated that the trail will remain available to the public during construction. Trail detours may be necessary during construction, but will generally only require that trail traffic be re-routed onto the adjacent, existing service road. However, it may occasionally be necessary to re-route trail traffic onto the nearby public street for short distances and for short durations. These detours will be temporary construction impacts, and will not create significant adverse impacts. The impacts are not considered to be significant because they will be short in duration and access to the coast will be maintained. Therefore, the Commission finds that the proposed project is consistent with the requirements of Sections 30210 and 30252 of the Coastal Act with regard to maximizing public access and recreation.

E. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity

with Chapter 3. The segment of unincorporated Orange County has neither a certified LCP nor a certified Land Use Plan. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

F. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 as conditioned has been found consistent with the public access, biological resources, and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.