

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Th23b

Addendum

November 9, 2012

To: Commissioners and Interested Persons

See the original staff report.

**From: California Coastal Commission
San Diego Staff**

Subject: Addendum to **Item Th23b**, Coastal Commission Permit Application
#6-12-040 (22nd District Agricultural Association), for the Commission
Meeting of November 15, 2012

After release of the staff report, dated October 25, 2012, the 22nd District Agricultural Association (applicant) expressed concern about the provisions of Special Condition 9. The condition requires that the applicant acknowledge that changes may be required to the Phase I South Overflow Lot (SOL) restoration in order to ensure compatibility with the future Phase II SOL restoration. These potential changes relate to the berm proposed to separate the two project phases and to the existing boardwalk public access trail. The boardwalk is currently located along the southern edge of the SOL, adjacent to the San Dieguito River. However, after implementation of the proposed Phase I SOL wetland restoration project and the future wetland restoration of the remainder of the SOL, the current alignment of the boardwalk would cut through the restored wetland habitat (Exhibit 7). The applicant has expressed concern about the possible realignment of the boardwalk and seeks clarification that it will not be held financially responsible for the boardwalk realignment, reconstruction or removal should it be deemed necessary in the future. Staff concurs; at the time that the boardwalk was initially approved by the Commission, it was made clear that the alignment of the boardwalk was an interim use and may need to be changed in conjunction with the restoration of the SOL to wetland habitat. Although the boardwalk is located on the applicant's property, the applicant was not a party to the coastal development permit approving the boardwalk alignment, did not construct the boardwalk, and is not responsible for maintenance of the boardwalk. Southern California Edison (SCE) and the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) were the permittees on Coastal Development Permit 6-04-088 for the boardwalk construction and currently hold an easement for the construction and maintenance of the boardwalk. Commission staff concurs that if the Commission requires the boardwalk to be realigned in the future, it will be the responsibility of SCE and the JPA and not the 22nd DAA. Thus, staff recommends the following changes be made to the above-referenced staff report. Language to be added is double underlined; language to be deleted is shown in ~~strikeout~~:

1. On Page 9 of the staff report, Special Condition 9 shall be revised as follows:

9. **Compatibility with South Overflow Lot (SOL) Phase II Restoration.**

- Changes to the SOL Phase I Restoration may be required in order to implement the SOL Phase II Restoration including, but not limited to, the following:

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

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

2. The first complete paragraph on Page 12 shall be revised as follows:

The applicant has provided an exhibit showing the relationship between the proposed Phase I SOL restoration and the conceptual plan for Phase II of the SOL restoration (Exhibit 7). Although grading and restoration plans for the Phase II restoration of the SOL have been prepared and submitted to the Commission, the SOL Phase II restoration is not a part of this permit application. The conceptual plans and documents submitted to the Commission in relation to the SOL Phase II restoration may be subject to change. Changes to SOL Phase II plans may include, but are not limited, changes to the following design characteristics. First, the existing JPA trail may be required to be relocated such that it does not bisect the planned restoration projects. Second, the elevations throughout the Phase II restoration area may need to be graded to a lower depth in order to provide additional subtidal habitat and to provide better connectivity with the SOL Phase I restoration area. Third, the proposed amount of upland transition area may need to be reduced in order to increase wetland habitat. The applicant's SOL Phase II restoration plan states that "...This restoration plan [Phase 2] has been designed to integrate with the Phase 1 Restoration Project, resulting in one large salt marsh complex. The Phase 1 and Phase 2 design elevation have been aligned to produce a unified and interconnected southern coastal salt marsh habitat." The Commission ecologist has concurred that the conceptual Phase II plan is, for the most part, compatible with the Phase I restoration proposed with this application. Special Condition 9 requires the applicant to acknowledge in writing the above

~~considerations such that this is not raised as an issue when Phase II is reviewed by the Commission.~~

3. On page 19 of the staff report, the last paragraph shall be revised as follows:

The boardwalk may have benefits, such as that discussed above, and also as a public education tool, that could ultimately allow it to be retained in its current location on a permanent basis. However, in approving the boardwalk in its current location, it was noted on the plans that "...The location of the boardwalk shall be addressed in the coastal development permit for the wetland restoration of the South Overflow Lot [SOL] and the boardwalk may be relocated at that time." Special Condition 6 of CDP 6-04-088 required that the following language be included on the final plans for the boardwalk:

d. A note indicating the following: The boardwalk (Segment 1b) is an interim use in the approved alignment within non-vegetated wetlands in the South Overflow Lot until such time as the South Overflow Lot is restored to functional wetland habitat. The location of the boardwalk shall be addressed in the coastal development permit for the wetland restoration of the South Overflow Lot and the boardwalk may be relocated at that time.

The Commission typically does not endorse public access through mitigation sites. Public access paths are typically placed at the perimeter of restoration projects in order to facilitate maximum wetland habitat restoration and tidal circulation. In addition, a public access path traversing the restored habitat area also has the potential to disturb sensitive wetland species and may increase the amount of refuse that enters the restoration area. The question of whether or not to realign the boardwalk in conjunction with the proposed SOL Phase I restoration is not included with this project because the remainder of the SOL will still be used for overflow parking during the fair and races until the SOL Phase II restoration is approved and completed; thus, realigning the boardwalk through the parking area would pose a safety concern for trail users. In addition, the Consent Orders, previously approved by the Commission, require that the 22nd DAA construct an extension to the existing public access trail from its terminus at the existing boardwalk through the northern portion of the SOL upon completion of the Phase II SOL restoration. Thus, following restoration of the entire SOL, a new public access trail will be constructed in the SOL, and even if the existing boardwalk is required to be realigned, there will not be an adverse impact to public access. As stated previously, Special Condition 9 requires that the applicant submit a written agreement to the Executive Director of the Commission acknowledging that the existing JPA trail within the entire SOL may need to be relocated in coordination with the SOL Phase II restoration. Southern California Edison (SCE) and the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) were the permittees on CDP 6-04-088, which approved the boardwalk trail and required that the permittees acknowledge the boardwalk trail may be relocated at such time that the SOL is restored. In addition, the 22nd DAA has executed an easement to SCE and the JPA for the construction and maintenance of the

boardwalk. Therefore, if in the future, the Commission determines that the boardwalk must be realigned, it will be the responsibility of SCE and the JPA to make any needed improvements.

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SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Th23b

Filed:	6/14/2012
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Staff:	E.Stevens-SD
Staff Report:	10/25/2012
Hearing Date:	11/15/2012

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 6-12-040

APPLICANT: 22nd District Agricultural Association

AGENT: Dustin Fuller

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

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

STAFF RECOMMENDATION: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of this restoration project, with conditions. The proposed project includes restoration of a disturbed historic wetland which has been used for years as an overflow parking lot for various events at the Del Mar Fairgrounds and restoration of an additional area adjacent to the north bank of the San Dieguito River (Exhibit 1). The proposed project will result in the restoration of 2.41 acres of salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.22 acre of upland transition habitat in the SOL. Also proposed is restoration of 1.07 acres of salt marsh habitat and 0.39 acre of upland transition habitat along the northern bank of the San Dieguito River (East Berm). Thus, the total amount of restoration proposed is 3.48 acres of salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.61 acre of upland transition habitat

The majority of the proposed restoration project is intended to resolve a long-standing Army Corps of Engineers (USACE) enforcement action, and is proposed in accordance with a restoration order from the USACE (the SOL Phase II restoration which will occur at a later date is not a part of the USACE enforcement action). The USACE enforcement action was a result of unpermitted grading and stockpiling of soil on the SOL in June of 1990. The USACE enforcement action requires the 22nd DAA to restore 2.14 acres of salt marsh habitat in the SOL and 0.93 acre of salt marsh habitat in the East Berm area. Since the majority of the restoration is required by another agency to address a past violation, that portion of the restored area cannot count as mitigation for any future Fairgrounds activity requiring a coastal development permit. The proposed restoration project does not mitigate any activity permitted by the Coastal Commission, such that, from the Commission's perspective this is a restoration project.

The proposed restoration project is not a part of the Consent Orders approved by the Commission on March 8, 2012 (the SOL Phase II restoration which will occur at a later date is related to the Consent Orders).

The proposed restoration plan has been thoroughly reviewed by the Commission's staff ecologist, who has found that the proposed restoration project will greatly enhance the habitat value of the subject site. As this project is a result of a USACE enforcement action and involves other state agencies, there is a potential that the project may change prior to the commencement of construction. Special Condition 6 requires that the applicant shall submit any permits from other state or federal agencies to the Executive Director of the Commission in order to determine if any changes were made to the project that require an amendment to this permit. Special Condition 1 requires that the applicant submit a final restoration, maintenance, and monitoring plan which has been revised to include updated restoration monitoring language acceptable to the Commission ecologist. These conditions will ensure that the restoration project is consistent with the plan reviewed by the Commission and that the monitoring component of the plan will provide an accurate measure of restoration success.

The project location is adjacent to a popular public walking path and is also adjacent to an important east-west coastal access route (Jimmy Durante Boulevard). The restoration areas are also located in close proximity to existing wetland habitat. Thus, impacts to public access and

sensitive species must be considered. Special Condition 2 requires that the applicant submit revised final plans that minimize impacts on vehicular and pedestrian traffic, minimize disturbance to adjacent natural resources and nearby nesting birds, relocate a proposed fence to a location that will provide better protection for the restored habitat, and delete all references to a future trail, bus ramp and wall that are not included in the subject project proposal. Special Condition 4 requires that verification of as-built grading elevations be done by a licensed engineer or other competent licensed professional, who has not otherwise been involved in the restoration project. This condition will increase the likelihood of success for the subject restoration project. Special Condition 5 requires that temporary lighting within 200 feet of restored or existing wetlands be limited to the Fair and Races only and be limited to 4 lights in the SOL and a total of 5 lights in the East Overflow Lot and the Golf Driving Range (combined) and must be spaced a minimum of 250 ft. from one another. The number of lights, as defined above, in the SOL and along the southern border of the EOL and the GDR was proposed by the applicant as the minimum necessary to provide adequate light for the parking areas. In addition, lighting is not permitted within 100 feet of wetlands and must be shielded away from sensitive habitat areas. Special Condition 8 requires that 100 ft. wetland buffers be provided and the permitted uses within the buffers shall be limited to restoration and maintenance and public access on approved trails. Special Condition 3 requires that the applicant identify the location for the disposal of graded soils and obtain a CDP amendment if the disposal location is in the Coastal Zone. These conditions will ensure maximum public access opportunities during and after construction activities and will provide adequate protection of adjacent sensitive resources.

The subject application incorporates the first of two restoration phases for the SOL. Typically, planning for projects such as the Phase I and Phase II restorations of the SOL would occur simultaneously. Potential benefits of simultaneous planning of both portions of the site include greater certainty that compatibility will be achieved and less impact to the Phase I site from possible changes during construction of the Phase II site. However, in this case, the Commission ecologist has found that the temporal habitat gains from going forward with permitting and implementation of Phase I prior to the completion of planning for Phase II outweigh the potential benefits of simultaneous planning of the two phases. However, changes to the design of the Phase I restoration project may be required in the future in order to ensure compatibility with the SOL Phase II restoration. Therefore, Special Condition 9 requires that the applicant submit a written agreement to the Executive Director of the Commission acknowledging that changes to the approved SOL Phase I restoration may need to occur. This condition ensures that the restoration of the entire SOL will be compatible and that implementation of the Phase I restoration will not prejudice successful implementation of the Phase II restoration in the future. Finally, Special Condition 7 requires that project liability and any future attorney fees shall be paid by the applicant.

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

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Restoration Areas

Exhibit 3 – SOL Phase I Restoration Area

Exhibit 4 – SOL Phase I Tidal Inundation Simulation

Exhibit 5 – East Berm Restoration Area

Exhibit 6 – East Berm Tidal Inundation Simulation

Exhibit 7 – SOL Restoration – Phase I and Phase II (Conceptual)

Exhibit 8 – Changes to Monitoring Plan

Exhibit 9 – Salt Marsh Restoration, Maintenance, and Monitoring Plan (Dated April 2012)

I. MOTION AND RESOLUTION

Motion:

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

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:

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.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS.

The permit is subject to the following conditions:

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

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

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

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

- a. Storage and staging areas shall be located in a manner that has the least impact on vehicular and pedestrian traffic along Jimmy Durante Blvd and the public boardwalk/trail system.
- b. Shoreline material including, but not limited to, local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. During the construction period, the applicants shall monitor the intertidal areas and inlet area daily. Should the applicants discover any debris in the intertidal areas and/or inlet area during the construction period, it shall immediately remove the debris from those areas and dispose of it in a manner consistent with local, state and/or federal regulations, as applicable.

- c. Unless authorized in writing by the California Department of Fish and Game (DFG) and the U.S. Fish & Wildlife Service (Service), no work shall occur during the nesting seasons of any threatened or endangered avian species nesting in the vicinity within 500 feet of the project area. If work is allowed during the nesting season of such species, a bird monitor shall be onsite while work occurs, and any work will stop or move if the monitor finds that such species are being negatively affected by construction.
- d. A 100 ft. wetland buffer shall be delineated around the proposed restored wetlands.
- e. The alignment of the proposed wooden split rail fence around the SOL restoration area shall be modified to follow the alignment of the outer edge of the wetland buffer.
- f. Depictions and all reference to the “future walkway to be designed by others,” “proposed JPA/equestrian trail,” and “proposed bus ramp and walls (by others)” on plan sheets 2, 3, 11, 12, 13, 14, and 15 shall be deleted.
- g. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents.

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

- 3. **Disposal of Graded Spoils.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the disposal site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest. Placement of graded soil is prohibited on the South Overflow Lot (SOL), the East Overflow lot (EOL), or the Golf Driving Range (GDR).
- 4. **Grading Elevation Confirmation.** PRIOR TO PLANTING OR SEEDING, the applicant shall consult with an independent (one who has not participated in any manner with the planning of the proposed project) licensed engineer, or other competent independent licensed professional who can comply with this condition, to determine that the restoration area of Phase I has been graded in a manner consistent with the approved final plans. This determination shall be in writing and shall demonstrate that the site was graded and contoured to plan. This written determination must be submitted to the Executive Director of the Coastal Commission for review and written approval.

5. **Lighting.** Temporary lighting proposed to be used during the Fair and Races shall be consistent with the following:

- a. Temporary lighting is permitted adjacent to the wetland restoration areas for safety/security during the San Diego County Fair and Del Mar Horse Racing seasons (Fair and Races) only.
- b. Light spillover levels into the restored wetlands and the wetland buffers shall be minimized to the greatest extent practicable through the use of lighting shields which direct light away from the restored wetlands and buffers.
- c. A maximum of 5 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 ft. of restored or existing wetland habitat in the East Overflow Lot (southern edge) and the Golf Driving Range (southern edge). A maximum of 4 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 ft. of restored or existing wetland habitat within the South Overflow Lot.
- d. There shall be a minimum distance of 250 ft. between each light standard.
- e. All lighting equipment and lighting standards shall be located outside of the 100 ft. wetland buffers and lighting shall be directed away from the wetlands.

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

6. **Other Permits.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits, such as a permit from the U.S. Army Corps of Engineers (USACE), for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

7. **Assumption of Risk, Waiver of Liability and Indemnity.**

- a. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, erosion and flooding (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims,

demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

b. **Liability for Costs and Attorneys Fees:** The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

8. **Wetland Buffers.** A buffer of a minimum of 100 ft. in width shall be provided upland of the proposed created wetlands (excluding the northern edge of the SOL restoration area which is constrained by Jimmy Durante Boulevard). Permitted uses within the identified buffer shall be limited to the following:

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

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

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

- a. Widening and/or deepening the three proposed spillover locations (Exhibit 7)
- b. Grading of the entire berm that will separate the Phase I restoration from the remaining parking lot (and future Phase II restoration area) to wetland elevations consistent with the surrounding wetland topography
- c. Realignment of the existing San Dieguito River Park Joint Powers Authority (JPA) public access trail within the entire SOL

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

IV. FINDINGS AND DECLARATIONS.

A. PROJECT DESCRIPTION

The proposed development includes restoration of a total (within the SOL and the East Berm area) of 3.48 acres of disturbed salt marsh wetland habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.61 acre of upland transition habitat. The proposed restoration project includes two distinct areas which consist of a portion of the Del Mar Fairgrounds South Overflow Parking Lot (SOL) and a portion of the berm (East Berm) that separates the East Overflow Parking Lot (EOL) from the San Dieguito River. Specifically, 2.41 acres of disturbed salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.22 acre of upland transition habitat within the SOL are proposed for restoration and 1.07 acres of disturbed salt marsh habitat and 0.39 acre of upland transition habitat within the East Berm are proposed for restoration.

The SOL portion of the restoration is located south of the Del Mar Fairgrounds racetrack and is bounded by the San Dieguito River and Jimmy Durante Boulevard. Phase I restoration of the SOL, as proposed, will eliminate approximately 130 parking spaces. The loss of parking will be mitigated through measures such as off-site parking and shuttle programs, bicycle facilities, employee transit subsidies, discounted carpool parking, etc. The loss of these 130 parking spaces is not expected to significantly impact the public's ability to access the coast. The East Berm portion of the restoration is located several hundred feet northeast of the SOL, adjacent to the northern bank of the San Dieguito River (Exhibit 2). Extensive grading of both sites will be undertaken in order to achieve appropriate wetland elevations. The proposed project also includes removal of non-native vegetation and the installation of a split rail wooden fence along the northern and eastern edges of the SOL portion of the restoration project. No installation of temporary irrigation lines is proposed, as all irrigation will occur with water trucks and by hand watering.

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

The majority of the SOL Phase I restoration area is located north of the existing JPA Coast to Crest Trail, while a new inlet of the restoration area will cross beneath it. The new inlet will allow tidal water to enter the SOL restoration area from the San Dieguito River and will be created using an existing erosional feature south of the trail. The existing erosional feature will

need to be widened and deepened to accommodate the full tidal range (Exhibit 4). Currently, a boardwalk section of the JPA trail crosses over the existing erosional feature in the SOL. The existing boardwalk will be modified with a new pedestrian bridge to cross the inlet/outlet channel (Exhibit 3). The new bridge will act as a viewing area for the restoration site, which will allow for additional educational opportunities for the public.

The East Berm restoration area is located immediately adjacent to the north bank of the San Dieguito River (Exhibit 5). The restoration area will receive tidal water through a primary tidal channel that will flood during lower high tides and the restoration area is designed so that the site will be inundated during moderately high tides, which will overtop the bank separating the restoration area from the San Dieguito River (Exhibit 6). No bridges or changes in trail alignment adjacent to the East Berm restoration area are proposed, as the restoration area is located entirely to the south of the existing trail.

The majority of the restoration project is intended to resolve a long-standing Army Corps of Engineers (USACE) enforcement action, and is proposed in accordance with a restoration order from the USACE. The USACE enforcement action was a result of unpermitted grading and stockpiling of soil on the SOL in June of 1990. Specifically, the USACE enforcement action requires the 22nd DAA to restore 2.14 acres of salt marsh habitat in the SOL and 0.93 acre of transitional habitat in the East Berm area. Because other agencies have been involved with this project, and may have their own regulatory requirements, Special Condition 6 requires submittal of copies of any other required permits before the construction begins. Modifications to the project by other agencies may require an amendment to this CDP or may require a separate CDP. As there are no currently pending enforcement actions associated with this proposal, the Commission is reviewing it solely as a restoration plan.

In a separate enforcement action, the Commission issued Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (Consent Orders) on March 8, 2012 to address unpermitted activities at the Del Mar Fairgrounds including landform alteration within a wetland. The Consent Orders approved by the Commission will result in the complete restoration of the SOL to wetland habitat (Phase II).

The subject application incorporates the first of two restoration phases for the SOL. For this reason, the Phase I restoration has been conditioned to be compatible with the Phase II restoration of the entire SOL in the future. Special Condition 9 requires that prior to issuance of this permit, the applicant provide a written agreement to the Executive Director that acknowledges changes may need to be made to the SOL Phase I restoration in order for it to be compatible with the SOL Phase II restoration in the future. These potential changes may include, but are not limited to, widening and/or deepening the three proposed spillover locations, grading of the entire berm that will separate the Phase I restoration area from the Phase II restoration area to appropriate wetland elevations, and/or realigning the existing JPA public access trail in the SOL. Typically, planning for projects such as the Phase I and Phase II restorations of the SOL would occur simultaneously. Potential benefits of simultaneous planning for both portions of the site include greater certainty that compatibility will be achieved and less impact to the Phase I site from possible changes during construction of the Phase II site. However, in this case, the Commission ecologist has found that the temporal habitat gains from

going forward with permitting and implementation Phase 1 prior to the completion of planning for Phase II outweigh the potential benefits of simultaneous planning of the two phases.

The applicant has provided an exhibit showing the relationship between the proposed Phase I SOL restoration and the conceptual plan for Phase II of the SOL restoration (Exhibit 7). Although grading and restoration plans for the Phase II restoration of the SOL have been prepared and submitted to the Commission, the SOL Phase II restoration is not a part of this permit application. The conceptual plans and documents submitted to the Commission in relation to the SOL Phase II restoration may be subject to change. Changes to SOL Phase II plans may include, but are not limited, changes to the following design characteristics. First, the existing JPA trail may be required to be relocated such that it does not bisect the planned restoration projects. Second, the elevations throughout the Phase II restoration area may need to be graded to a lower depth in order to provide additional subtidal habitat and to provide better connectivity with the SOL Phase I restoration area. Third, the proposed amount of upland transition area may need to be reduced in order to increase wetland habitat. The applicant's SOL Phase II restoration plan states that "...This restoration plan [Phase 2] has been designed to integrate with the Phase 1 Restoration Project, resulting in one large salt marsh complex. The Phase 1 and Phase 2 design elevation have been aligned to produce a unified and interconnected southern coastal salt marsh habitat." The Commission ecologist has concurred that the conceptual Phase II plan is, for the most part, compatible with the Phase I restoration proposed with this application. Special Condition 9 requires the applicant to acknowledge in writing the above considerations such that this is not raised as an issue when Phase II is reviewed by the Commission.

Pursuant to section 13056(g) of the Commission's regulations, the Commission may require an applicant to reimburse it for any additional reasonable expenses incurred in processing permit applications including litigation costs or fees that the Commission may incur in defending a judicial challenge to the Commission's approval of the permit. Therefore, the Commission, in approving this permit, imposes Special Condition 7, requiring the applicant to reimburse the Commission in full for all Coastal Commission costs and attorneys fees in connection with defending any action brought by a party, other than the applicant, challenging the Commission's approval or issuance of this permit. In addition, Special Condition 7 ensures that the applicant assume all risk associated with this project and its development within the floodplain.

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

B. WETLANDS/PARKING

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

Section 30121 of the Coastal Act states:

“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

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

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.*

[...]

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

[...]

Virtually the entire Fairgrounds property was created by filling tidelands back in the 1930's. Although much of the site is now developed, there are several areas still containing wetland resources, including the EOL, SOL, and most of the Golf Driving Range (GDR). In addition, these areas are within the 100-year floodplain of the adjacent San Dieguito River and experience periodic inundation during average winter rainy seasons. Based on previous Commission findings (Consent Orders), the degraded wetlands on the EOL and SOL, when only used for parking during the annual San Diego County Fair which runs from early June to early July and the Annual Del Mar Horse Racing season which runs from mid July to early September (Fair and Races), still provide some wetland habitat function outside of the Fair and Races.

When not used for parking, sparse wetland vegetation returns, and the areas are used for loafing, resting and feeding by shorebirds and migratory species. Depending on the specific species, some nesting may also occur, although most species' nesting seasons continue into the summer months when the lots have historically been used for parking. Past delineations have found that EOL, SOL, and the GDR are, for the most part, defined as wetlands. However, the amount of wetlands actually present on the overflow parking lots has been the subject of some debate over the years. In compliance with the Consent Orders approved by the Commission in March 2012, the applicant has recently submitted a new wetlands delineation study for the EOL and the GDR (the applicant did not conduct a delineation a new delineation for the SOL, as it is planned to be fully restored to salt marsh habitat pursuant to the USACE enforcement action and Commission Consent Orders). Commission staff will review the recently submitted wetland delineation in connection with the SOL Phase II restoration at a future time.

Both the Coastal Commission and the California Department of Fish and Game (CDFG) determine the presence of wetlands on a site if any one of the three wetland indicators is present. The Commission's regulations provide detailed criteria/indicators for the delineation of wetlands in the coastal zone:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity

or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR §13577(b)(1).)

In the absence of a formal delineation accepted by the Commission, and in view of the facts presented above and the historic patterns of use of the areas for seasonal parking, there has been loss of wetlands or at least significant deterioration. Restoration of these degraded areas as proposed herein can thus be supported by the Commission. The size and location of the SOL Phase I restoration and the East Berm restoration are a result of discussions between the applicant and the USACE, and were found acceptable by USACE to satisfy its enforcement action.

The proposed project raises issues under Section 30233 of the Coastal Act since it will directly impact existing wetlands. As cited above, under the Coastal Act, dredging and/or filling wetlands is severely constrained. Coastal Act Section 30233(a) sets forth a three-part test for all projects involving the fill of coastal waters and wetlands. These are:

- 1) That the project is limited to one of the seven stated allowable uses;
- 2) That the project has no feasible less environmentally damaging alternative; and,
- 3) That adequate mitigation measures have been provided to minimize adverse environmental effects.

In this particular case, with the special conditions attached, the proposed development meets the above requirements. As a restoration project, the development is an allowable use in wetlands under Section 30233. There is no way to complete the restoration project without impacting existing high coastal salt marsh habitat, since the proposed grading is necessary to lower existing elevations in that area to historic levels so that the tidal influences, which are necessary for the re-establishment of salt marsh habitat in the restoration, can be successfully implemented. The proposed wetland impacts are associated solely with actions necessary to remove sediments and re-contour the area for restoration of coastal salt marsh. Impacts have been minimized to the maximum extent feasible, and only that grading necessary to restore habitat is proposed.

The portion of the SOL proposed to be restored currently functions as a wetland during parts of the year. However, the proposed project will allow for the functionality of the wetland habitat year round. Therefore, the proposed project is self mitigating, as impacts to existing degraded wetland habitat will be mitigated by the restoration of fully functioning wetland habitat. Existing vegetation on the SOL restoration area consists of incidental nonnative species such as ice plant and grasses, although the majority of the site is bare compacted dirt. The proposed project will result in the restoration of 2.41 acres of salt marsh habitat, 0.55 acre of high marsh habitat above the acceptable wetland elevation for the San Dieguito Lagoon, and 0.22 acre of upland transition habitat in the SOL.

The existing East Berm area is highly disturbed by human activity, including historic placement of graded material and disposal of remnant cement and asphalt. In addition the East Berm area is dominated by non-native and invasive vegetation. Rather than filling wetlands, the project will

re-contour the site to appropriate elevations to support salt marsh wetland habitat. Temporary impacts to 0.27 acre of habitat north of the East Berm restoration area will occur as a result of equipment access during construction. This area that will be disturbed is currently vegetated, and consists predominantly of disturbed upland habitat with scattered natives and a high cover of nonnative shrubs and annuals. The disturbed area will be revegetated with seed and container plants prior to completion of the installation phase and at the end of the 120-day plant and hydrology establishment period. The proposed project will result in the restoration of 1.07 acres of salt marsh habitat and 0.39 acre of upland transition habitat along the northern bank of the San Dieguito River (East Berm).

The Commission's staff ecologist has reviewed the proposed restoration plan and concurs that there is no feasible less environmentally damaging alternative method of restoration and that the proposed project will not adversely impact any existing wetland habitat. Further, the proposed project will result in major habitat enhancement through the creation of additional native habitat and through increased wetland connectivity between the restoration area and the San Dieguito River. The Commission's staff ecologist has also reviewed the applicant's Maintenance and Monitoring program and found that it will appropriately maintain the proposed project and that it will provide timely and pertinent monitoring data about the project's success. However, the Commission's staff ecologist did raise one concern regarding the success parameters proposed in the program. Special Condition 1 is included to address this concern and requires that section numbers 6.3.1, 6.3.2, 6.3.4, and 6.6 of the program be revised to include more detailed provisions for determining the success of the restoration effort (the proposed changes were provided by the applicant following discussions with the Commission's staff ecologist) (Exhibit 8).

Although there is existing functioning wetland habitat immediately adjacent to both restoration areas; none of the existing sensitive habitat will be impacted or removed. In most cases, the first 100 feet upland from a wetland is reserved as a buffer to provide transitional habitat between the actual wetland and permitted development. Although the size of an individual buffer can vary depending on site-specific circumstances, 100 feet is generally accepted as a minimum. A buffer provides a distance barrier and a percolating medium, and reduces the chance that any adverse impact associated with development will find its way into the wetlands. In addition, buffers provide upland habitat that acts as a refuge area for birds and other species that use the various wetlands throughout the river valley. The applicant is proposing a 100 foot buffer around the entirety of the East Berm restoration area and around the SOL restoration area (excluding the northern edge which is constrained by Jimmy Durante Boulevard). Special Condition 2 requires that the wetland buffer areas be identified on the final project plans. Special Condition 8 identifies that the only permitted uses within the buffer areas are restoration, maintenance and public access on approved trails. In addition, the condition requires that restoration and preservation of the buffer area be completed consistent with the requirements of the Consent Orders. The Consent Orders required that by September 2012, the 22nd DAA must have submitted a wetland delineation for the EOL and GDR. Also by September 2012, subject to the results of the wetland delineation, the 22nd DAA shall have submitted a plan for removal of materials from, and restoration of, a 100 foot wide buffer along the southern edge of the SOL, the EOL, the GDR, and around the wetlands to be restored pursuant to this CDP. The 22nd DAA has submitted a new wetland delineation and multiple restoration plans. However, Commission

staff is still in the process of reviewing the submittal for consistency with the Consent Orders. In addition, the Consent Orders require that the 22nd DAA record an offer to dedicate (OTD) for the buffer areas by March 2013. Therefore, the 100 foot buffers around existing and restored wetland habitat will be adequately protected.

Historically, the EOL, SOL and GDR have been used by the applicant as public parking reservoirs during the annual Fair and Races. Because use of the areas for parking for these two annual events predated the Coastal Act, the Commission has not challenged the continued use of these areas for overflow parking during these events, even though major portions of these three areas are wetlands. In addition, in past permit actions, the Commission authorized use of these areas for parking during the five years the Grand Prix was held at the Fairgrounds (CDP 6-88-077), and allowed the installation of an at-grade paved tram track in the EOL outside USACE delineated wetlands (CDP 6-94-013). The tram is used during the annual Fair and Races to transport Fairgrounds patrons to the entrance ticketing windows. With these two exceptions, the Commission has not reviewed or approved parking by patrons or employees or any other uses of these lots, except use of the GDR for its primary golfing purposes, which also predates the Coastal Act.

The applicant proposes to restore 3.48 acres of salt marsh wetland habitat (2.41 acres within the SOL and 1.07 acres within the East Berm area), mostly within degraded and unvegetated wetlands that are currently used for overflow parking. The USACE enforcement action requires the 22nd DAA to restore 2.14 acres of salt marsh habitat in the SOL and 0.93 acre of salt marsh habitat in the East Berm area. Since the majority of the restoration is required by another agency to address a past violation, that portion of the restored area cannot count as mitigation for any future Fairgrounds activity requiring a coastal development permit.

The grading associated with the proposed project will result in approximately 13,390 cu. yds. of material to be exported from the site. Special Condition 4 requires that verification of as-built grading elevations be done by a licensed engineer or other competent licensed professional, who has not otherwise been involved in the restoration project. This condition will increase the likelihood of success for the subject restoration project. The applicant must further, receive written approval from the Executive Director of the Coastal Commission that the site has been graded to the approved elevations prior to planting or seeding. Special Condition 3 requires that the graded material be exported outside the Coastal Zone or that a separate permit be applied for to place the graded material within the Coastal Zone. Placement of graded soil is prohibited on the SOL, EOL, and GDR; as large portions of these areas are wetlands. Special Condition 2 protects the nesting activities of listed bird species in the area by prohibiting construction during the nesting season without clearance from the wildlife agencies (DFG and Service). In addition, Special Condition 5 is added to guard against any increase in ambient lighting for the wetland areas which could adversely affect wetland resources. A limited amount of temporary lighting is permitted only during the Fair and Races and must be shielded and located outside the 100 ft. wetland buffer. As conditioned, the Commission finds the proposed restoration activities consistent with the cited policies of the Coastal Act.

C. PUBLIC ACCESS.

The following Coastal Act policies are most pertinent to this issue, and state in part:

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

[...]

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

[...]

Section 30604 of the Coastal Act states, in part:

[...]

- (c) *Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*

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

Segments of the Coast to Crest Trail have already been constructed on the Del Mar Fairgrounds property. A portion of the Coast to Crest trail on the SOL is built as a slightly elevated boardwalk. Because the trail is elevated on the boardwalk and the existing berm, it allows good views of the river and the existing and restored wetlands. The trail begins at the western most point of the SOL at Jimmy Durante Blvd. and continues east along the San Dieguito River, crosses underneath I-5, and continues until the eastern edge of the Horse Park property. The Commission recently approved an extension of the trail that is currently under construction, which will cross the Horse Park Property and connect the trail to El Camino Real (CDP 6-04-029-A1). The public trail system is a significant component of the San Dieguito Wetlands Restoration Plan and significantly enhances low-cost public access in this area. This trail also formalizes and enhances public access through the Fairgrounds property. However, there is currently no connection between the Fairgrounds and the beach other than on busy urban streets.

The portion of the trail crossing the SOL was conditioned for pedestrians only as part of the Commission's approval of the San Dieguito Wetland Restoration (CDP 6-04-088). The raised boardwalk minimizes impacts to the delineated, but non-vegetated wetlands currently existing on the site. The USACE, whose enforcement action is being addressed in this proposal, has accepted the presence of the boardwalk within the restoration area, and does not consider that any significant adverse impacts will result from its pedestrian-only use. On the contrary, the boardwalk may actually channel traffic across the site and minimize the potential for people to wander through the wetland vegetation itself. The elevated boardwalk provides views of the river without the necessity to walk through habitat to get close enough to see the water.

The boardwalk may have benefits, such as that discussed above, and also as a public education tool, that could ultimately allow it to be retained in its current location on a permanent basis. However, in approving the boardwalk in its current location, it was noted on the plans that "...The location of the boardwalk shall be addressed in the coastal development permit for the

wetland restoration of the South Overflow Lot [SOL] and the boardwalk may be relocated at that time.” The Commission typically does not endorse public access through mitigation sites. Public access paths are typically placed at the perimeter of restoration projects in order to facilitate maximum wetland habitat restoration and tidal circulation. In addition, a public access path traversing the restored habitat area also has the potential to disturb sensitive wetland species and may increase the amount of refuse that enters the restoration area. As stated previously, Special Condition 9 requires that the applicant submit a written agreement to the Executive Director of the Commission acknowledging that the existing JPA trail within the entire SOL may need to be relocated in coordination with the SOL Phase II restoration.

The applicant has included, within the conceptual Phase II restoration plan, a potential alternative alignment for the trail along the northern edge of the proposed Phase II restoration area (Exhibit 7). This alternative trail alignment is not a part of the current application. The applicant has stated that this alternate alignment could also serve as an additional public trail in the SOL which may be available for equestrian use, bicyclists, and pedestrians. A special condition of CDP 6-04-088 states that “...At such time as a feasible trail connection to the beach is identified, the applicants may request an amendment to this coastal development permit to review the potential for equestrian use on any trail segment west of the turnaround point on Segment 5 [I-5], excluding the boardwalk.” Thus CDP 6-04-088 must be amended before an alternative trail or equestrian use west of I-5 on the SOL can be permitted. This alternative/additional trail is not proposed as a part of the subject CDP.

Following completion of Phase I of the SOL restoration, the applicant proposes to install a split rail fence along the northern and eastern edges of the restored wetland area in the SOL. The fence will be consistent with the natural character of the surrounding environment, further channeling the public to the boardwalk. The fence and the existing boardwalk will also be signed to identify the site as a restoration area and not to be entered by people, dogs, bikes, or vehicles. Special Condition 2 requires that the fence location be modified to follow the alignment of the wetland buffer of the SOL restoration area. Relocating the proposed fence from the edge of the restored wetlands to the edge of the buffer will provide additional protection for the wetland habitat and the wetland buffer.

According to the DAA, the salt marsh restoration project in the SOL will reduce the number of informal parking spaces that are now used only during the annual Fair and Races by approximately 130 spaces. In compliance with the Consent Orders, the applicant has submitted a transportation demand management plan to the Commission which proposes multiple strategies to reduce demand for the lost parking spaces. The transportation demand management plan includes incentives to reduce vehicle miles traveled to and from the Del Mar Fairgrounds and encourages non-automobile circulation through measures such as off-site parking and shuttle programs, bicycle facilities, employee transit subsidies, discounted carpool parking, etc. In any case, the applicant acknowledges that the loss of the 130 spaces at this time will not significantly impact the ability of the public to access the fairgrounds during its main events (Fair and Races). Furthermore, given the temporary and infrequent nature of the Fair and Races events at the fairgrounds, the loss of 130 parking spaces for those events is not expected to significantly impact the public’s ability to access the coast.

Special Condition 2 requires, among other things, that the applicant identify staging and storage areas for the proposed development, and provides that these must not be located on wetlands, native vegetation or the existing public boardwalk. The condition also requires that these features be located in a manner that maintains optimum traffic flow on Jimmy Durante Boulevard, a major coastal access route, and maximizes access to the boardwalk/trail system. As conditioned, the Commission finds the proposed development consistent with the cited Chapter 3 policies of the Coastal Act and consistent with all other public access and recreation policies as well.

D. WATER QUALITY

The following Coastal Act policies are most pertinent to this issue, and state:

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

Currently, the SOL restoration area has elevations ranging from +3.2 to +5.5 feet National Geodetic Vertical Datum (NGVD) and the East Berm restoration has elevations ranging from +4.2 to +8.1 feet NGVD. In order to achieve appropriate wetland elevations, the SOL restoration area will be graded to elevations ranging from approximately -1 to approximately +4.5 feet NGVD and the East Berm restoration area will be graded to elevations ranging from approximately 0 to approximately +4.5 feet NGVD. Thus, the proposed development includes a large amount of grading (approximately 13,390 cu. yds. of cut and 1,300 cu. yds. of fill) to attain the desired elevation for salt water marsh. The applicant has proposed BMP's to control erosion and thus, with the special conditions of this permit, the grading will not adversely affect water quality. Additionally, the proposed project will not involve creating any new impervious surfaces or the introduction of any pollutants. Rather, by restoring historic wetlands (removing fill and revegetating mostly bare areas); the proposed development increases the runoff filtration potential along the north bank of the San Dieguito River. Therefore, the surface water entering

the San Dieguito River from the project site will carry a lower level of sediments and pollutants. The applicant's existing storm drain system collects all site drainage from the developed portions of the Fairgrounds (i.e., those portions north and west of Jimmy Durante Boulevard, including the existing race track, training track, and horse arena). That drainage passes through existing grease traps in the inlets draining the main parking lot, and then discharges into the river channel. The proposed project will enhance the quality of the surface water that collects on the areas east and south of Jimmy Durante, that are not part of the existing storm drain system that operates on the developed portions of the Fairgrounds property. Therefore, the Commission finds the development, as conditioned, consistent with the cited policies of the Coastal Act with respect to water quality concerns.

E. VISUAL RESOURCES

Section 30251 of the Act addresses visual resources, and states, in part:

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

[...]

The proposed wetlands restoration project will not have any significant effect on the overall appearance of the Fairgrounds. The project occurs along the southern border of the site, adjacent to existing similar resources. The relatively small scale of the proposed restoration will expand those resources over a wider area. This will be noticeable only to those in the immediate vicinity, and would be considered by most to be a visual enhancement. While there will be some visual impacts associated with the proposed construction activities, those will be minor and temporary. The Commission therefore finds the proposal, as conditioned, will not adversely impact public views or scenic resources and is consistent with Section 30251 of the Act.

F. LOCAL COASTAL PLANNING

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

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

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing project timing, location of staging/storage areas, and disposal of graded spoils will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- Cities of Del Mar and San Diego certified LCPs
- Plans received 5/21/2012
- Public Agency Notice of CEQA Exemption dated 9/16/2011
- 22nd District Agricultural Association Salt Marsh Restoration, Maintenance, and Monitoring Plan – Final dated April 2012
- USACE 1991 Order of Corrective Measures dated 2/10/1991
- USACE 1993 Restoration Order dated 4/26/1993
- CDP Nos. 6-06-119 (Upland Restoration Project), 6-04-088 (San Dieguito Wetland Restoration), 6-04-088-A10 (Horse Park Trail), 6-94-013 (Tram), and 6-88-077 (Grand Prix)
- Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (Consent Orders)

(G:\San Diego\Reports\2012\6-12-040 22nd DAA SOL Staff Report.doc)

PROJECT LOCATION

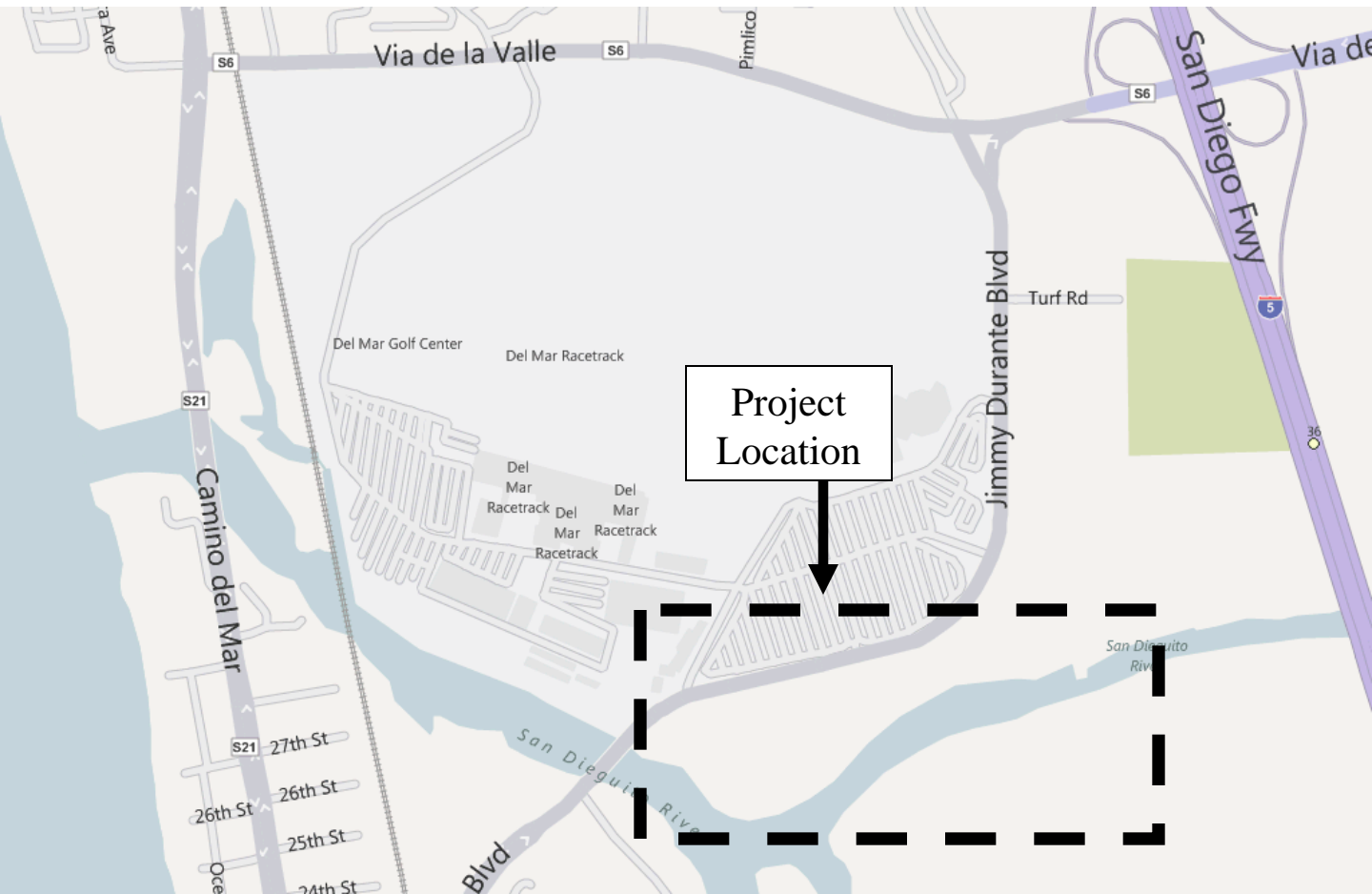


EXHIBIT NO. 1

APPLICATION NO.

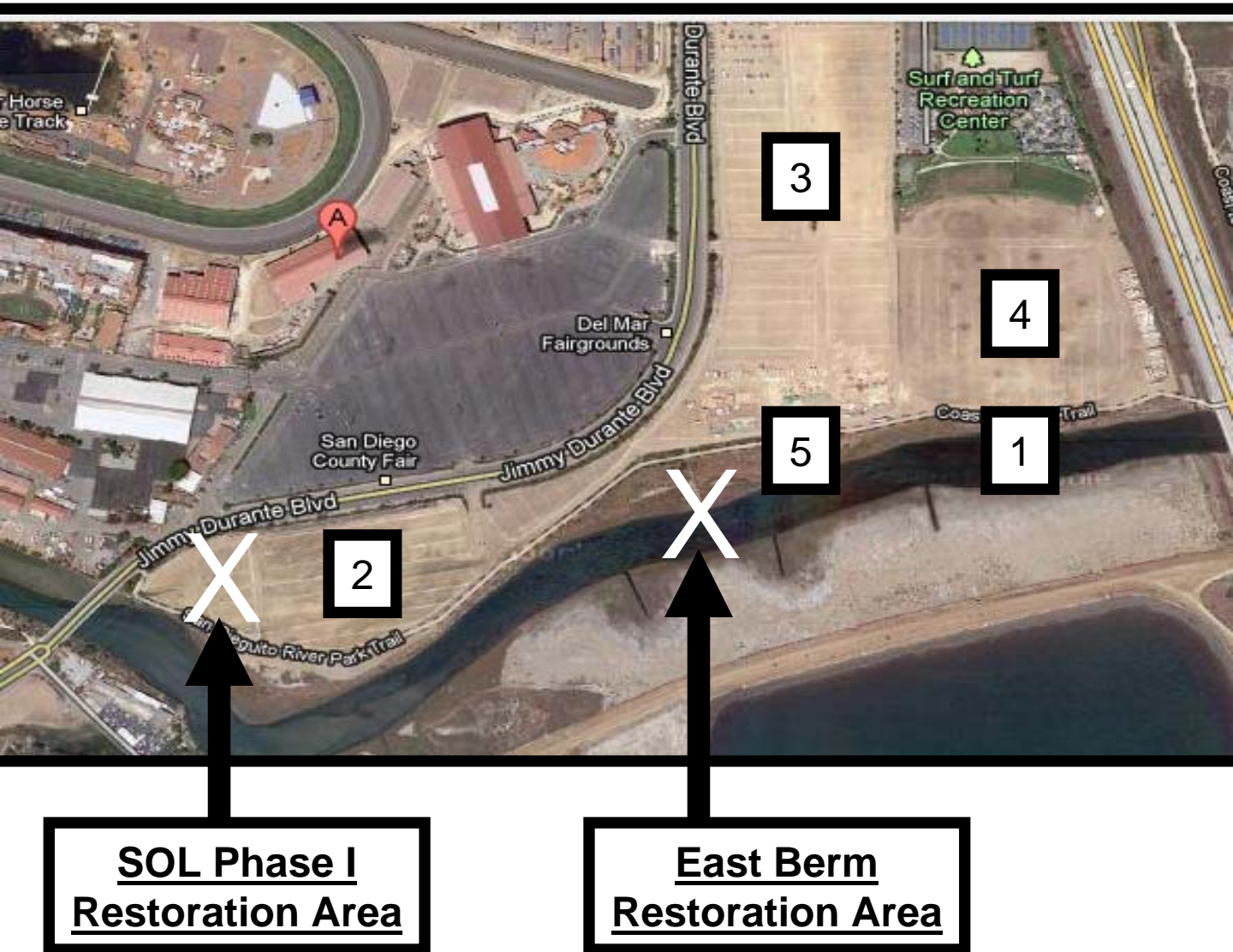
6-12-040

Project Location



California Coastal Commission

RESTORATION AREAS



1. San Dieguito River
2. South Overflow Lot (SOL)
3. East Overflow Lot (EOL)
4. Golf Driving Range (GDR)
5. East Berm

EXHIBIT NO. 2

APPLICATION NO.

6-12-040

Restoration Areas



California Coastal Commission

SOL RESTORATION AREA



EXHIBIT NO. 3

APPLICATION NO.

6-12-040

SOL Restoration Area



California Coastal Commission

SOL TIDAL INUNDATION SIMULATION

Minimum
Low Water

Mean Tide
Level

Mean Higher
High Water



Figure 61
South Lot Phase
Tidal Inundation Simulation

EXHIBIT NO. 4

APPLICATION NO.

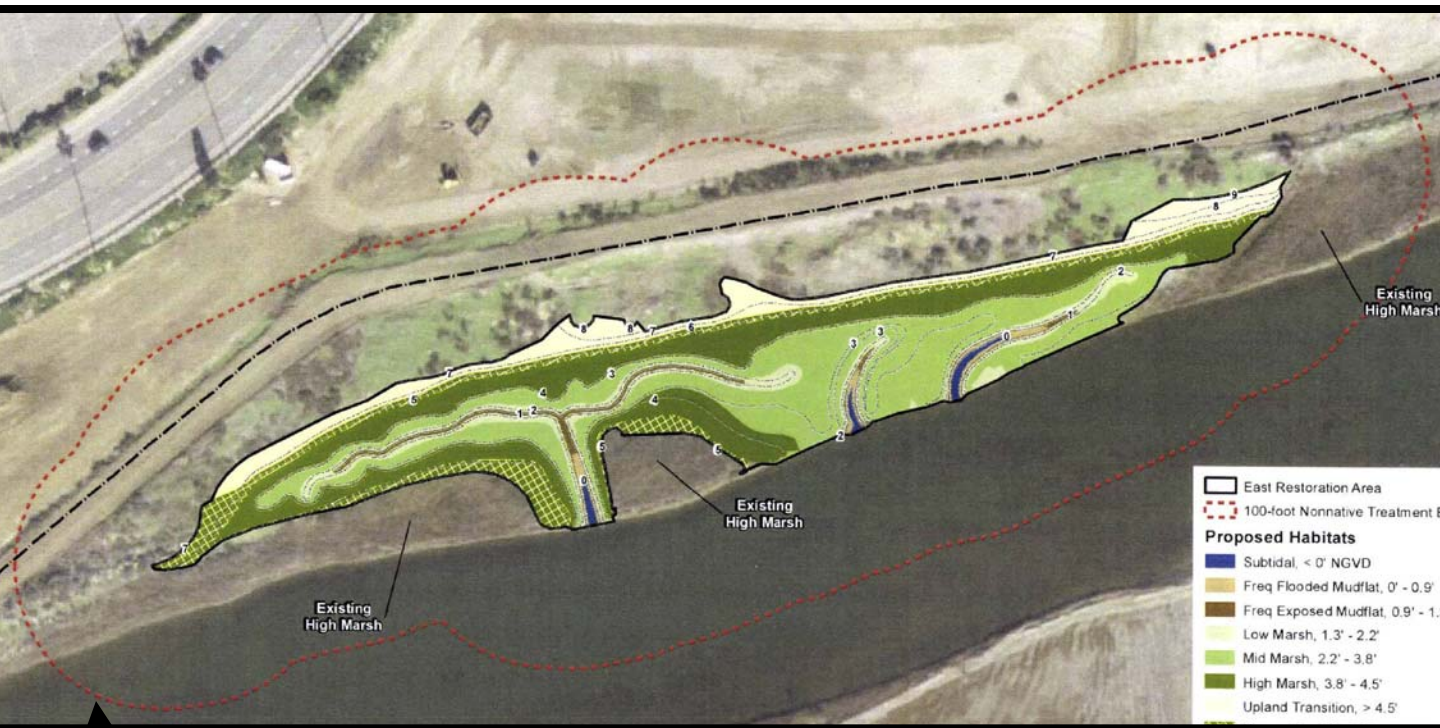
6-12-040

SOL Inundation



California Coastal Commission

EAST BERM RESTORATION AREA



100 Ft. Wetlands
Buffer

EXHIBIT NO. 5

APPLICATION NO.

6-12-040

East Berm Area



California Coastal Commission

EAST BERM TIDAL INUNDATION SIMULATION

Minimum
Low Water

Mean Tide
Level

Mean Higher
High Water

San Deguito Lagoon Minimum Low Water, -14 NGVD

Mean Tide Level (MTL), +0.19 NGVD

Mean Higher High Water (MHHW), +2.77 NGVD



Figure 71

East Berm

Tidal Inundation Simulation

EXHIBIT NO. 6

APPLICATION NO.

6-12-040

East Berm Inundation



California Coastal Commission

SOL RESTORATION - PHASE I AND PHASE II (Conceptual)

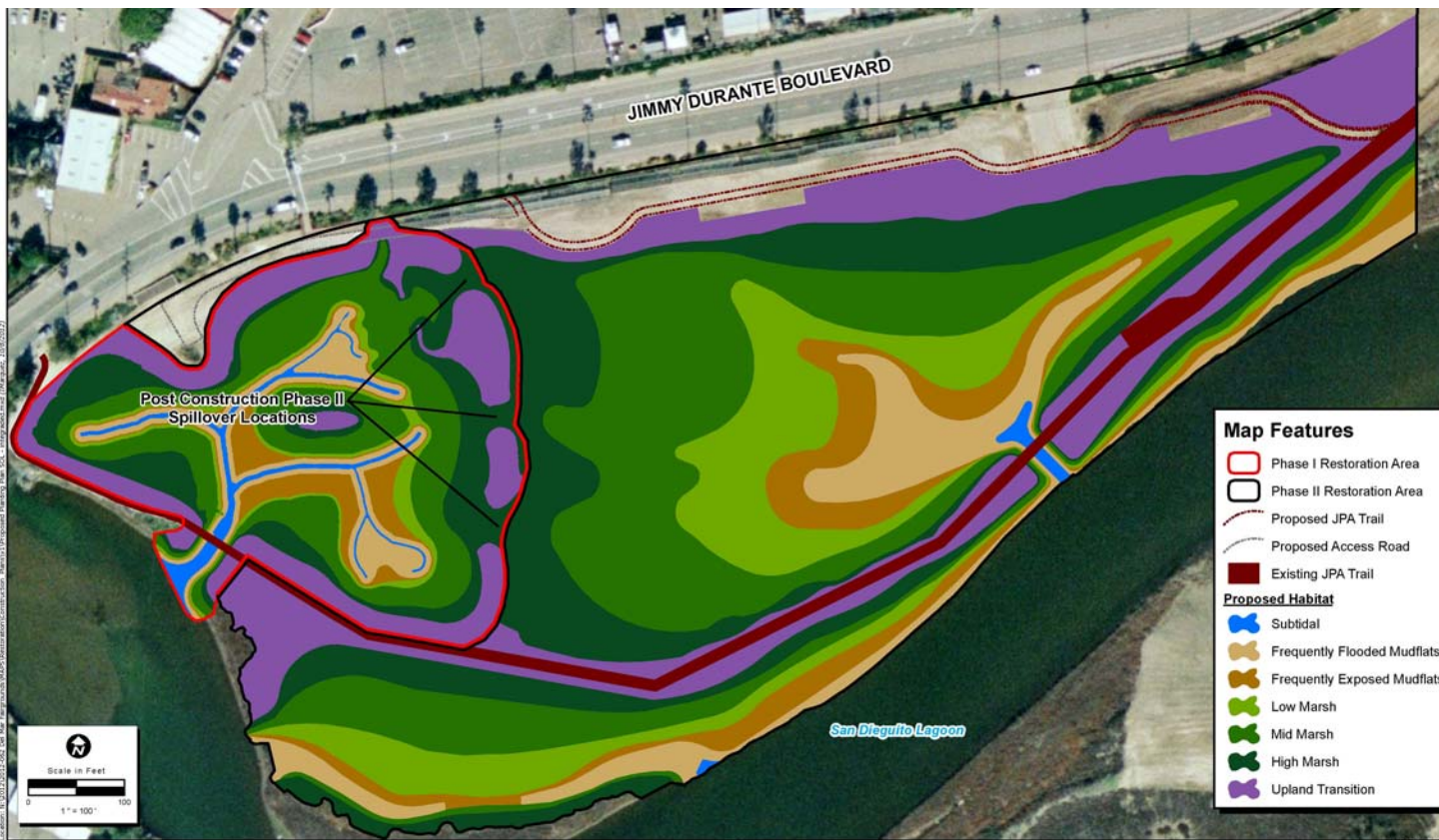


Figure 5. Proposed SOL Phase I and Phase II Habitat Restoration Integration

2012-062 Del Mar Restoration

EXHIBIT NO. 7
APPLICATION NO. 6-12-040
Phase I and Phase II
 California Coastal Commission

CHANGES TO THE MONITORING PLAN

6.3.1 Point Intercept and Diversity Belt Transects Quantitative Monitoring

The vegetation community will be quantitatively measured using permanent 1-square-meter quadrats that will be established throughout the various habitat elevation ranges at each restoration area. The use of permanent quadrats as a sampling design allows for the removal of spatial variability and increases the ability to detect annual changes in the site. This improves the ability to detect positive or negative trends in the restoration area and allows the project biologist and DAA to make prompt adaptive management decisions.

Specifically, pPermanent 150-square-meter-long quadratspoint-intercept transects will be placed at a density of 10 per 1.00.5 acre, and will be used to determine native and nonnative cover across each of the restoration areas during the 5-year maintenance and monitoring program. This will result in 30five quadrats transects for the South Lot and 10two quadrats transects for the East Berm. However, to allow for averaging and confidence intervals for the East Berm, a third transect will be added, for a total of three transects. For both restoration areas, the quadrats transects will be randomly stratified within three primary habitat elevation ranges including low marsh, mid marsh, and high marsh. Fewer quadrats will be placed in the low marsh habitat due to the low cover expected for this area. Specifically, for the South Lot restoration area, 5 quadrats will be placed and for the East Berm restoration area 3 will be placed in the low marsh range. placed perpendicular to the primary tidal channels (i.e., San Dieguito River for the East Berm restoration area) at random starting locations across each restoration area. In addition to the wetland quadrats, 5 additional quadrats will be placed in the upland habitat at each restoration area.

Within each 1-square-meter quadrat At 0.5-meter intervals along each transect, every cover of each plant species will be recorded in addition to bare ground. that intercepts the transect will be recorded. This sampling method is based on the field sampling protocol designed by the California Invasive Plant Council (Cal-IPC) (Sawyer and Keeler-Wolf 1995). During Year 1, two opposite corners of each quadrat will beeach transect will be installed and marked at the higher elevation end with a 24-foot-tall metal rebar post (4-foot-tall posts will be used in the upland habitat). All posts T postwill also be flagged with neon whiskers for visibility. The location of all quadrats transects will be marked using a Global Positioning System (GPS) unit and displayed on a site map in the annual report. Data will be collected each year during late spring/early summer (May to July), and sampling times will be consistent from year to year to minimize variation in the data.

A complete list of additional species occurring within a 5-meter band along each 50-meter transecteach restoration area will also be recorded to measure species richness and diversity. Separate lists will be generated for the wetland and upland habitat as each has distinct success

EXHIBIT NO. 8

APPLICATION NO.

6-12-040

Monitoring



California Coastal Commission

CHANGES TO THE MONITORING PLAN (CONT.)

criteria. As each restoration area is small, species richness will be recorded by walking the entire restoration area and noting each unique species. Beginning in Year 4 species richness and total native and nonnative cover will be used to compare each restoration area to the reference site. Each restoration area must be within 15% of the standards in the reference site.

~~Additionally, one end of each vegetation transect will be used as a photo station to visually record the progress of the restoration over the 5-year maintenance and monitoring period.~~

~~In addition to the transects described above, during Year 5 (or the final monitoring program year), random quadrats will be used to assess each restoration area. At least 10 randomly placed 1-square-meter quadrats will be placed in each restoration area and the reference site. Within each quadrat, the percent cover of each species, total native cover, and total nonnative cover will be recorded. Species richness and total native and nonnative cover will be used to compare each restoration area to the reference site. Each restoration area must be within 15% of the standards in the reference site.~~

6.3.2 Sampling Design and Statistical Rigor

After Year 2, a power analysis using the paired (permanent) quadrat data will be conducted to ensure-determine if 90% power is being achieved for each restoration area with a sample size of 4-30 or 103 (depending on the restoration area), an alpha of 0.1, and a minimum detectable change of 15% native cover. If 90% power is not being achieved, additional quadrats transects may be added.

A subsequent power analysis will be done in Year 4 using the observed variability at each restoration area. Specifically, a statistical power analysis will be conducted using a two-sample t-test (between the means of the reference site and each restoration area), to determine the necessary replication to achieve 90% power to detect a difference of 15% cover with $\alpha=0.10$. If needed additional quadrats will be added at this time. It should be noted that the power calculated in Year 2 using the paired samples may be different (likely higher) than the two-sample t-test in Year 4. This is a result of the potential spatial variability that is removed from the paired sampling design but not accounted for in the two-sample t-test.

In addition to power analyses~~Additionally,~~ 90% confidence intervals will be calculated each year around native and nonnative cover of the restoration areas. These confidence intervals will be compared to vegetation success standards calculated based on the reference site to determine if success is being achieved. For native cover, the entire confidence interval must be higher than the success standard for success to be achieved. For nonnative cover, the entire confidence interval must be less than the success standard for success to be achieved.

CHANGES TO THE MONITORING PLAN (CONT.)

6.3.4 Reference Site

Quality salt marsh habitat exists immediately east of the proposed South Lot Phase I restoration area. This area is proposed to serve as a reference site for species cover, diversity, richness, and wetland conditions as part of the success criteria for comparison with the restoration areas. ~~Three~~ Fifteen 1-square50-meter quadrats~~point-intercept transects~~ will be used to determine native and nonnative cover at the reference site for comparison to the South Lot and East Bern restoration areas. ~~The transects-quadrats~~ will be installed during Year 1, and data will be collected at the same time as the annual monitoring for the restoration areas. As with the restoration areas, the quadrats will be randomly stratified within three primary habitat elevation ranges including low marsh, mid marsh, and high marsh. ~~Transects will be placed perpendicular to the San Dieguito River and span from the river bank to 50 meters or to the upper edge of the vegetated area. If a 50-meter transect does not fit in this area, then shorter transects are acceptable. Species data will be recorded, as described above, for both the point-intercept transect and the band transectquadrats and the overall survey area.~~

In addition, one CRAM AA will be placed in the reference site and used to track the conditions of the reference area over time. It is expected that the restoration areas will eventually exceed the conditions observed in the reference area, as the reference area does not typify the physical structure that the restoration is attempting to achieve.

6.6 Photographic Documentation

~~In addition to the photo stations associated with the permanent vegetation transects,~~ Up to five fixed photo stations will be set up at representative points for both the South Lot and East Bern restoration areas (ten total stations). These photo stations will be established during the implementation phase and used to document the installation process. After installation, photos will be collected twice per year (June and December) for the first 2 years of the 5-year maintenance and monitoring program, and then once a year (June), concurrent with botanical monitoring, for the remaining 3 years. Representative photos taken from these points will be included in annual reports to document progress of the restoration areas. All photo stations will be marked using GPS units and displayed on a site map in the annual report.

SALT MARSH RESTORATION, MAINTENANCE, AND MONITORING PLAN (DATED APRIL 2012)

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Commission website

EXHIBIT NO. 9

APPLICATION NO.

6-12-040

Restoration Plan



California Coastal Commission