

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 6-11-066

APPLICANT: 22nd District Agricultural Association

AGENT: Dustin Fuller

LOCATION: 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 2.14 acres of salt marsh habitat in the SOL and 0.93 acre of salt marsh habitat along the northern bank of the San Dieguito River (East Berm) in compliance with a U.S. Army Corps of Engineers (USACE) restoration order in response to unpermitted grading of wetlands. 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, which will address an outstanding enforcement action by the U.S. Army Corps of Engineers (USACE) against the

applicant. The project site includes a disturbed historic wetland which has been used for years as an overflow parking lot for various events at the Del Mar Fairgrounds (Exhibit 1). The proposed project will restore the area to its pre-development historic elevations and habitat.

Recommended conditions include requirements to locate storage and staging areas so as to have the least impact on public access and sensitive resources, to prohibit disposal of graded soil within the Coastal Zone without obtaining an amendment to this CDP, to verify and receive written approval that the restoration area has been built to plan, that lighting impacts on wetlands be minimized, that all other permits be submitted to the Executive Director of the Commission, that project liability and any future attorney fees be paid by the applicant, and that uses within 100 foot wide wetland buffers shall be consistent with those permitted by the Consent Orders approved by the Commission.

Commission staff recommends **approval** of coastal development permit application 6-11-066, as condition.

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

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 6-11-066 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 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

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.** The permittee shall undertake development in accordance with the approved Salt Marsh Restoration, Maintenance, and Monitoring Plan dated April 2012. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an 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 by the 22nd DAA received 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. Disturbance to intertidal areas shall be minimized. 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) or 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.
 - d. A 100 ft. wetland buffer shall be delineated around the proposed restored wetlands.
 - e. Modify proposed alignment of fencing around the SOL restoration area to follow the alignment of the wetland buffer.
 - f. 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 THIS PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the 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 restoration ecologist must independently verify that the restoration area has been built to plan, which will require accurate measurements of elevations by someone other than the grading contractor; and as-built plans demonstrating that the site was graded and contoured to plan must be submitted to the Executive Director of the Coastal Commission for review and written approval.
5. **Lighting.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the applicant shall submit to the Executive Director for review and written approval detailed plans depicting the location of temporary lighting during the Fair and Races. The plans shall include, at a minimum, the following:
 - a. Temporary lighting is permitted adjacent to the wetland restoration areas for safety/security during the San Diego County Fair and horse racing seasons (Fair and Races) only.
 - b. All lighting equipment shall be located outside of the 100 ft. wetland buffers and shall be directed away from the wetlands.
 - c. 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.

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.

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).

IV. FINDINGS AND DECLARATIONS.

A. PROJECT DESCRIPTION

The proposed development includes restoration of a total of 3.07 acres of disturbed salt marsh 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, 2.14 acres of disturbed salt marsh habitat within the SOL and 0.93 acre of disturbed salt marsh habitat within the East Berm are proposed for restoration to salt marsh. 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. 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. The portions of the trail that cross through and are adjacent to the proposed wetland restoration project are completed and open to the public. Although the entirety of Coast to Crest trail has not been completed, numerous segments of trail are 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 restoration area is located north of the existing San Dieguito River Park Joint Powers Authority (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 will be created using the existing erosional feature south of the trail (Exhibit 4). The existing erosional feature will need to be widened and deepened to accommodate the full tidal range. 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 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. 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 unpermitted landform alteration within a wetland. As there are no currently pending enforcement actions associated with this proposal, the Commission is reviewing it solely as a restoration plan. 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.

Although the SOL is historic tidelands/wetlands, it has historically been used for parking during the annual Fair and Races for many years predating the Coastal Act. In past permit actions, the Commission has recognized the 22nd DAA's use of the SOL for parking to accommodate the annual Fair and Races. However, the 22nd DAA has been using the SOL to accommodate parking for additional events. The Consent Orders approved by the Commission will result in the complete restoration of the SOL to wetland habitat. The subject application incorporates the first of two restoration phases for the SOL. For this reason, the Phase I restoration has been designed to be compatible with the Phase II restoration of the entire SOL in the future (Exhibit 7). Phase II of the SOL restoration is not a part of this permit application, although a conceptual grading plan for the Phase II restoration of the SOL has been prepared. The Commission biologist has concurred that the conceptual Phase II plan is compatible with the Phase I restoration proposed with this application. Special Condition 4 requires that the Phase I restoration site is graded and contoured to plan to ensure that the Phase I restoration is compatible with the Phase II restoration in the future and to ensure that the subject restoration has been graded to appropriate wetland elevations. A detailed grading plan for Phase II of the SOL restoration will be prepared in compliance with the Consent Orders, which mandate that by September 2012 the applicant shall submit a plan for the Phase II restoration and that the SOL shall be a fully tidal salt marsh within 30 months of Commission approval of development on, or increased use of, the EOL.

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 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/ENVIRONMENTALLY SENSITIVE HABITATS/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 30240 of the Coastal Act states, in part:

[...]

- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

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 Fair and Races, still provide some wetland habitat function outside of the Fair and Races. At that time, 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.

Based on a 1993 USACE delineation associated with the enforcement action to be resolved by the subject salt marsh restoration project, the EOL contains approximately seven acres of wetlands, the approximately sixteen-acre SOL is entirely wetlands, and the fifteen-acre GDR is

mostly wetlands (minimum 12+ acres of wetlands). However, the amount of wetlands actually present on the overflow parking lots has been the subject of some debate over the years, since the 1993 delineation was conducted using the federal protocol. The applicant contested this delineation and has since conducted its own wetland delineations. The applicant's delineations found substantially less wetland area, but were never accepted by the USACE or other resource agencies. The discrepancy between the delineation by the USACE and the delineations conducted by the applicant has not been explained. The Consent Orders approved by the Commission in March 2012 require that a new wetlands delineation study in conformance with Coastal Commission standards be conducted and submitted to the Commission by September 2012.

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 according to Commission protocol, 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 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 particularly 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 due to sediment deposits 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 subject project is a restoration project, one of the allowed uses in wetlands. 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 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. The Commission's staff ecologist has reviewed the proposed restoration plan and concurs that the proposed project is the least environmentally-damaging method of restoration, and will not adversely impact any existing wetland habitat.

With respect to Section 30240, the project will expand the amount of riparian habitat in this area. Although there is existing, functioning wetland habitat immediately adjacent to both restoration areas; none of the existing sensitive habitat will be harmed or removed. In most cases, the first 100 feet upland from a wetland is generally 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 adverse impacts 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 Order which requires that by September 2012, the 22nd DAA must submit a wetlands delineation for the SOL, the EOL, and the Golf Driving Range (GDR). Also by September 2012, subject to the results of the wetland delineation, the 22nd DAA shall submit 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. 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 a public parking reservoir during the annual Fair and Races. Because use of the lots for parking for these two main yearly events predated the Coastal Act, the Commission has not challenged the continued use of this area 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 this area 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 proposed project will restore 3.07 acres of salt marsh habitat, mostly within delineated but degraded and unvegetated wetlands that are currently used for overflow parking. 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 3 requires that 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 the accepted delineation classifies large portions of these areas as wetlands. The proposed project will not encroach into, nor have any adverse impact upon, existing vegetated wetland resources. 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 was added to guard against any increase in ambient lighting for the wetland areas which could adversely affect wetland resources. Temporary lighting is only permitted 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 currently 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. While this provides a good opportunity for public education, there is also the potential for adverse impacts to the wetlands through the human presence on the trail. This aspect has been fully addressed in the previous finding and through the special conditions. 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 #6-04-088-A10). 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 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 is conditioned by the Commission for pedestrians only (CDP #6-04-088). It consists of a raised boardwalk to minimize 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 will channel traffic across the site and minimize the potential for people to wander through the wetland vegetation itself. Since this is public land, the public has historically walked throughout the parking lot areas, especially along the banks of the river. The elevated boardwalk provides views of the river without the necessity to walk through habitat to get close enough to see the water. 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 protection for the wetland habitat and the wetland buffer.

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. However, in this particular case, the restoration does not mitigate any activity permitted by the Coastal Commission, such that, from the Commission's perspective this is a restoration project,

not mitigation. Thus, the Commission is not requiring a monitoring or maintenance program of its own to determine success or failure of the restored wetlands, and is not requiring relocation of the public boardwalk at this time. Since the restoration is required by another agency to address a past violation, however, the restored area itself cannot count as mitigation area for any future Fairgrounds activity requiring a coastal development permit. 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 I and Phase II restoration area (Exhibit 7). The applicant has stated that this alternate alignment could also serve as an additional public trail through the SOL restoration 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.

According to the DAA, the salt marsh restoration project in the SOL will reduce the number of informal parking spaces that are now used during the annual Fair and Races by approximately 130 spaces. In compliance with the Consent Orders, the applicant will submit a transportation demand management plan to the Commission which will reduce demand for the lost parking spaces. The transportation demand management plan will include incentives to reduce vehicle miles traveled to and from the Del Mar Fairgrounds and will encourage 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 DAA 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 30233 (a) 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 30233 (a) 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 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 <-1 to + >4.5 feet NGVD and the East Berm restoration area will be graded to elevations ranging from <0 to + >4.5 feet NGVD. Thus, the proposed development includes a large amount of grading (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 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 these areas east and south of Jimmy Durante, that are not part of the existing storm drain system that operates on the developed Fairgrounds. 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

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

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, and local planning documents are used only 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.

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, disposal of graded spoils and monitoring of the effects of public access on the restoration efforts 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\2011\6-11-066 22nd DAA SOL Staff Report.doc)

PROJECT LOCATION

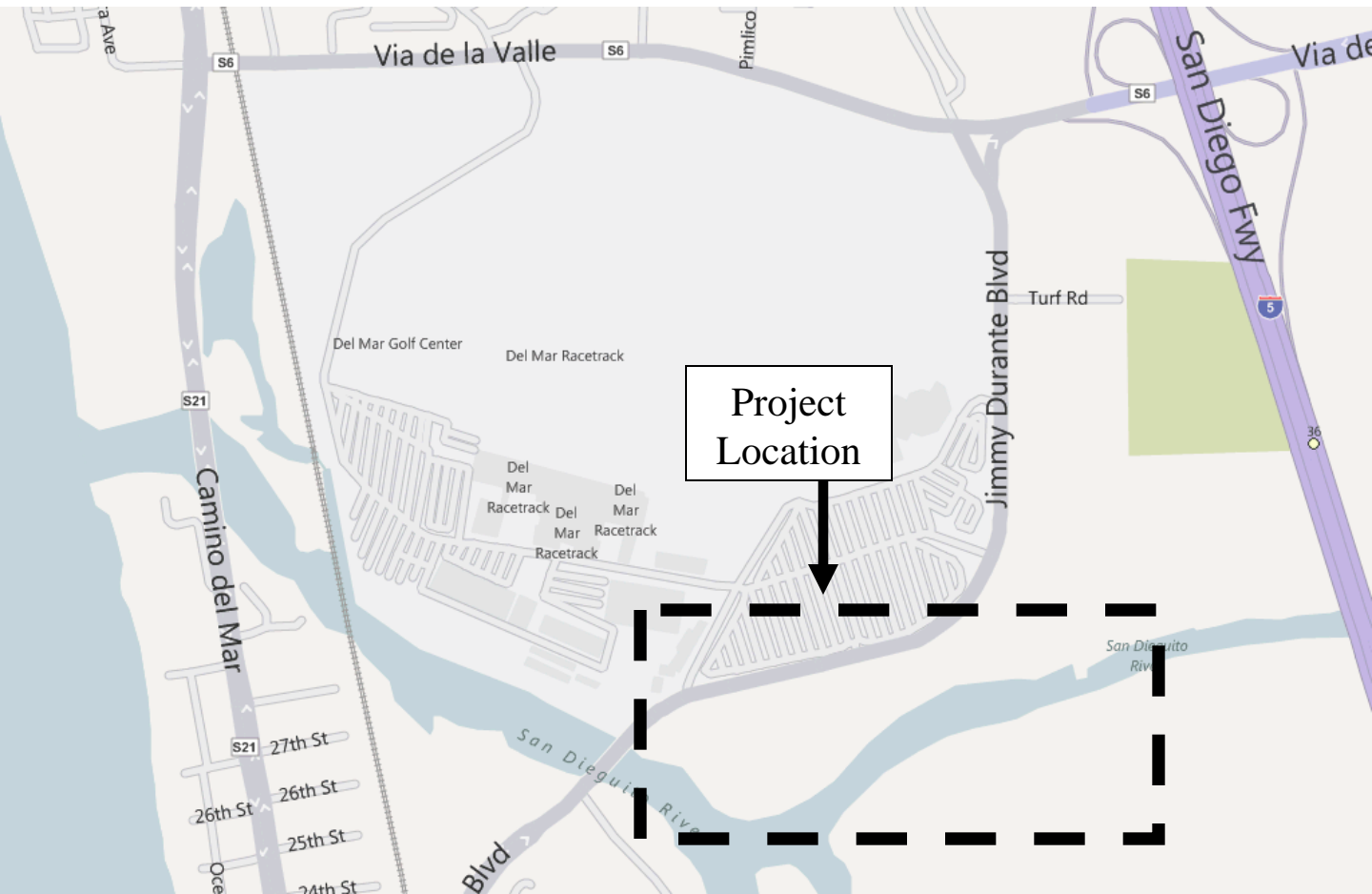


EXHIBIT NO. 1
APPLICATION NO. 6-11-066
Project Location
 California Coastal Commission

RESTORATION AREAS



SOL Phase I
Restoration Area

East Berm
Restoration Area

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.

6-11-066

Restoration Areas



California Coastal Commission

SOL RESTORATION AREA



2.14 Acres

100 Ft. Wetlands Buffer

EXHIBIT NO. 3
APPLICATION NO.
6-11-066
SOL Restoration Area
 California Coastal Commission

SOL TIDAL INUNDATION SIMULATION

Minimum
Low Water

Mean Tide
Level

Mean Higher
High Water



EXHIBIT NO. 4

APPLICATION NO.

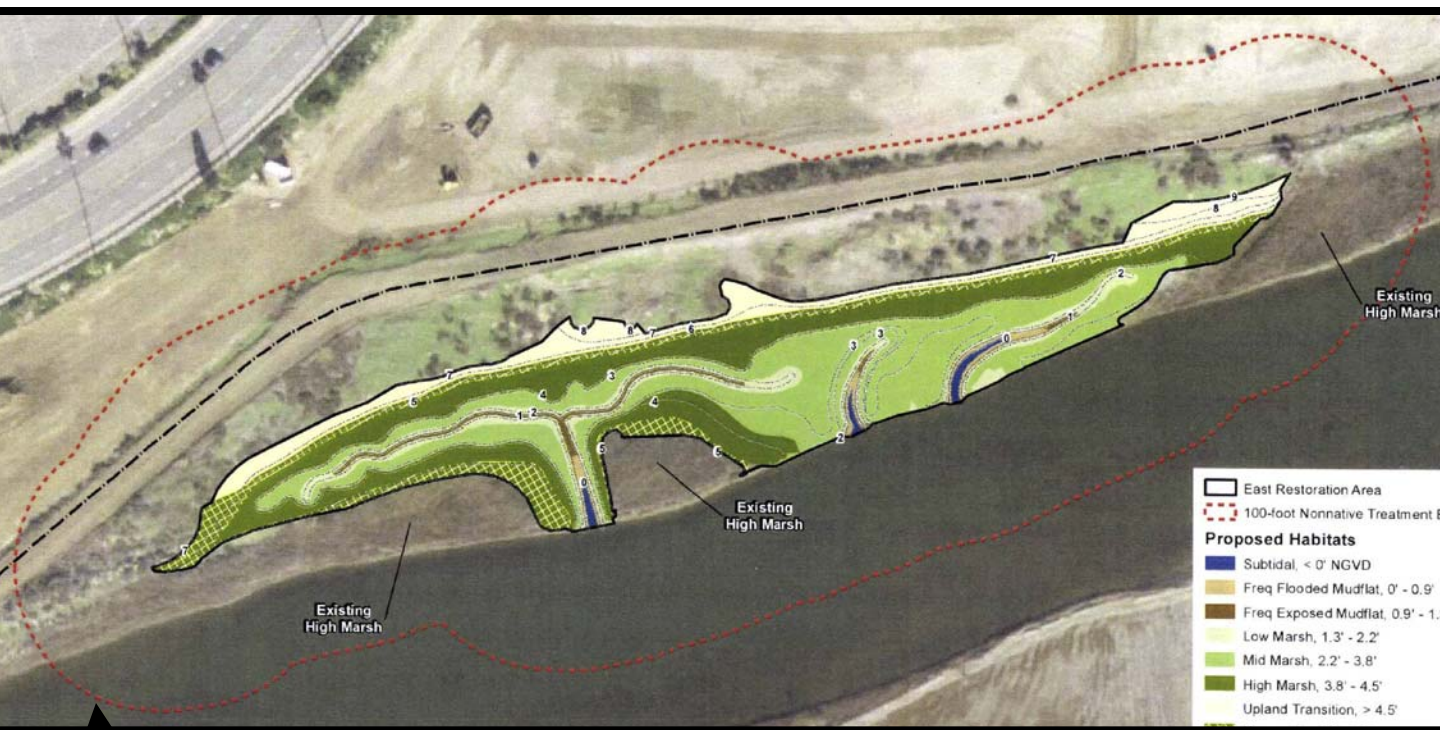
6-11-066

SOL Inundation



California Coastal Commission

EAST BERM RESTORATION AREA



0.93 Acres

100 Ft. Wetlands
Buffer

EXHIBIT NO. 5

APPLICATION NO.

6-11-066

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

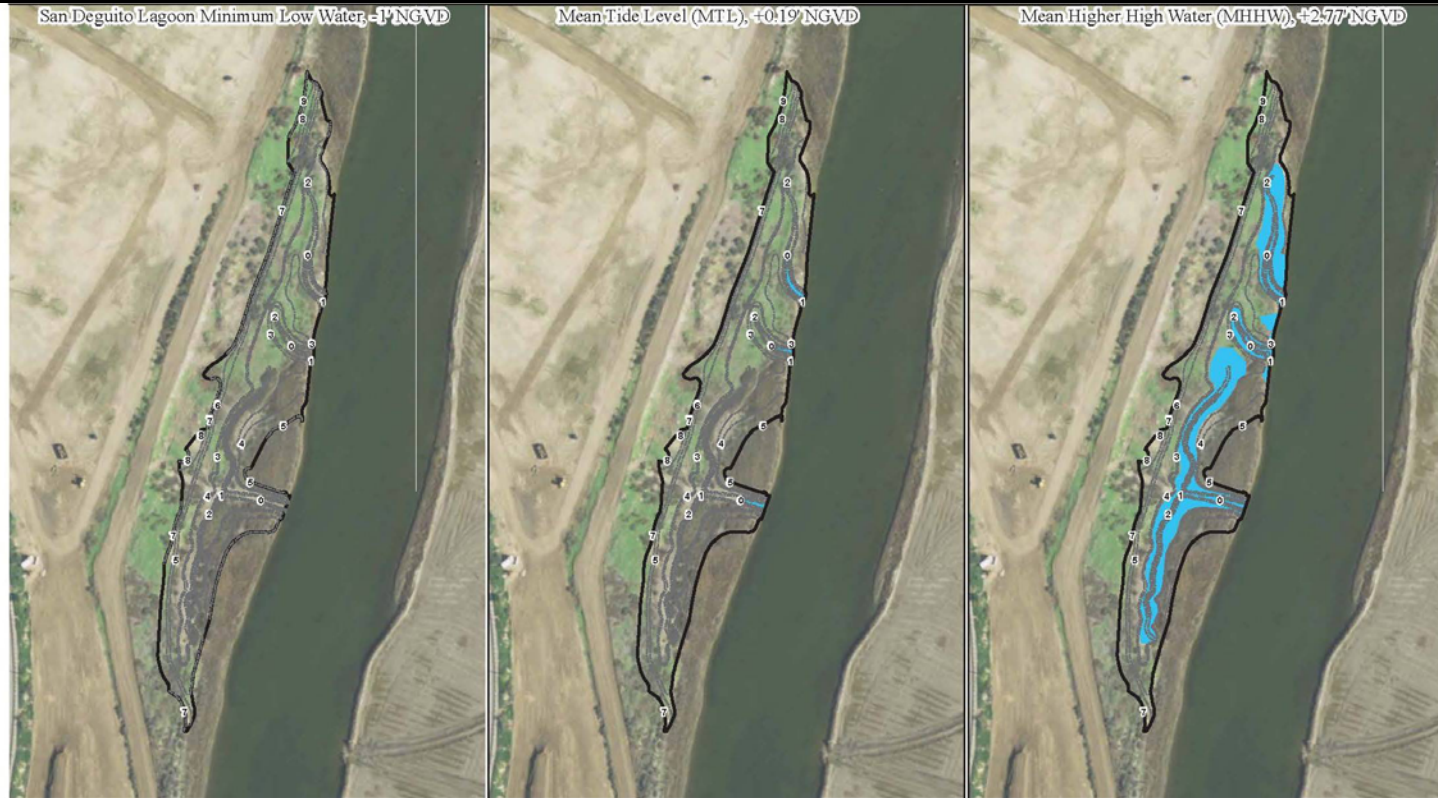


Figure 71

East Berm

Tidal Inundation Simulation

EXHIBIT NO. 6

APPLICATION NO.

6-11-066

East Berm Inundation



California Coastal Commission

SOL RESTORATION - PHASE I AND PHASE II (Conceptual)

Alternative/Additional JPA
Coast to Crest Trail Alignment



Existing JPA Coast to
Crest Trail Alignment

EXHIBIT NO. 7

APPLICATION NO.

6-11-066

Phase I and Phase II

California Coastal Commission