

CALIFORNIA COASTAL COMMISSION

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F14a

Filed: 7/30/2013
180th Day: 1/26/2014
Staff: E. Stevens-SD
Staff Report: 12/20/2013
Hearing Date: 1/10/2014

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-12-070

Applicant: City of Encinitas

Agent: Greg Shields

Location: 5 locations on the bank and adjacent to Coast Highway 101 near the Cardiff State Beach parking lot and the San Elijo Lagoon, Encinitas and Solana Beach, San Diego County

Project Description: Reinstallation of slope backfill on the bank of the highway in 5 locations, replacement of portions of a 24" storm drain pipe and installation of a rip rap energy dissipater at pipe outlet, and restoration and monitoring of 0.94 acre of native habitat area. Proposed project consists of follow-up to an emergency permit and new proposed development.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed development with conditions. The applicant proposes to repair the slope backfill on the bank of the highway in 5 locations, to replace portions of a 24" storm drain pipe and to install a rip rap energy dissipater at

the pipe outlet, and to restore and to monitor 0.94 acre of native habitat area. The proposed project is a follow-up to an emergency permit and proposes new development.

The major coastal resource issues involved with the proposal are impacts to wetlands and native habitat. The applicant previously obtained an emergency permit from the Commission to repair the erosion damage which resulted from a large storm event along the bank adjacent to Coast Highway 101. The applicant subsequently constructed an unpermitted access road to reach the highway repair areas which resulted in impacts to wetlands and other native habitat within and adjacent to the San Elijo Lagoon Ecological Reserve. The applicant now proposes to complete the repairs to the highway and to mitigate for the previous habitat impacts and for habitat impacts that are expected to occur as a result of the proposed highway repairs.

A special condition of the CDP will ensure that all vehicular use is from the road edge of the highway in order to assure that additional habitat impacts are minimized. A second special condition will ensure that the fencing proposed by the applicant will not adversely impact visual resources of the project site and will not impact public access. Additional special conditions prevent construction work during the breeding season of the California Least Tern and the Western Snowy Plover without prior consent from the resource agencies, require the applicant to complete highway repairs and restoration consistent with the mitigation plan reviewed by the Commission and require that all restoration begin within a reasonable time period.

Commission staff recommends **approval** of coastal development permit application 6-12-070 as conditioned.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-12-070 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit 6-12-070 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

This permit is granted subject to the following special conditions:

1. **Construction Methods.** During the habitat restoration work and throughout implementation of the proposed highway bank repairs, the following shall be required:
 - a. All vehicular use shall be from the Highway 101 road edge. No vehicles shall be allowed beyond the road edge/top of slope.
 - b. All grading work shall occur from the top of the road slope. In all revegetation areas beyond the toe of slope, only hand grading shall be conducted.
 - c. Work shall be performed only during daylight hours.
 - d. A copy of this CDP shall be kept on-site at all times during project implementation.

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

2. **Fence Design.** The applicant shall conform to the submitted fence design described in the Habitat and Mitigation Monitoring Plan dated July 2013, consisting of galvanized iron pipe posts and three strand smooth wires with restrictive signage along the fence at locations where potential human access could be a problem. The fence shall have a maximum height of 51 inches above grade. The fence shall only be installed around the perimeter of the Ocutt's pincushion restoration area, bordering the lagoon (approximately 320 linear feet). No construction involving the use of heavy equipment shall be utilized for the installation of the proposed fence and attached signage. Fence poles shall be installed using hand construction methods.

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 additional amendment is legally required.

3. **Timing of Construction.** To avoid potential impacts during the California Least Tern and Western Snowy Plover breeding period, construction will not be permitted between the dates of February 15th and September 15th of any year, unless written approval is received from the United States Fish and Wildlife Service and/or the California Department of Fish and Game and provided to the Executive Director for review.
4. **Final Highway Repair Plan and Final Restoration and Monitoring Plan.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP, the applicant shall submit for review and written approval of the Executive Director, Final Plans for the highway repair that are in substantial conformance with the plans received May 24, 2012 by the City of Encinitas Engineering Department and a Final Habitat Mitigation and Monitoring Plan that is in substantial conformance with the plan dated July 2013 by DUDEK.

The permittees 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.

5. **Condition Compliance.** WITHIN 295 DAYS OF COMMISSION ACTION ON THIS CDP the applicant shall have completed weed eradication and completed the initial planting in conformance to the approved final Restoration and Monitoring Plan. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY

The proposed project is in response to significant road damage and slope erosion from rain events that occurred in late 2009. The project includes reinstallation of slope backfill on the bank of the Coast Highway 101 in 5 locations, replacement of portions of a 24" storm drain pipe and installation of an approximately 23 cu. yd. rip rap energy dissipater at the pipe outlet, and restoration and monitoring of 0.94 acre of native habitat area with a minimal amount of fencing to delineate a portion of the restoration area and to protect the rare plant species, Orcutt's pincushion. Four of the repair areas are on the eastern bank of the highway and 1 of the repair areas is on the western bank of the highway. The highway bank repair on the western bank would involve repairing the slope and restacking of existing rip rap and would not include the addition of any new stones.

Partial repair at 3 of the 5 bank locations was completed in February/March 2010 pursuant to Emergency CDP #6-10-013-G. During the emergency highway repair work in 2010, the work extended beyond the approved emergency work limits with the construction of an unpermitted access road adjacent to the eastern side of the highway. The proposed repairs of the other 2 bank locations were previously approved pursuant to separate emergency permits, but no work was ever undertaken (Ref. CDP #6-10-022-G and 6-10-030-G).

Habitat impacts are presented in this staff report as three separate categories. The first category consists of impacts resulting from construction of the unpermitted access road. The second category consists of impacts resulting from emergency repair work already completed by the applicant. The third category consists of impacts that will result from additional proposed work that has not yet been undertaken.

The grading, clearing and vehicle use connected with the approximately 450 ft. long, 8 ft. wide unpermitted access road resulted in habitat impacts to 0.009 acre impacts to tidal wetlands (middle coastal salt marsh habitat), 0.123 acre of coastal strand (including 0.05 acre of the rare plant species Orcutt's pincushion), and 0.002 acre of Diegan coastal sage scrub. In addition, emergency repairs have also already resulted in habitat impacts to 0.008 acre of coastal strand and 0.007 acre of Diegan coastal sage scrub. Expected habitat impacts from the new proposed highway bank repairs are 0.01 acre of coastal strand, 0.002 acre of middle coastal salt marsh, 0.013 acre of Diegan coastal sage scrub, and 0.013 acre open channel (Exhibit Nos. 2-4).

The applicant proposes to mitigate the impacts to coastal strand, middle coastal salt marsh, Diegan coastal sage scrub, and open channel at ratios ranging from 3:1 to 8:1. Total habitat impacts are 0.187 acres and total proposed habitat mitigation is 0.94 acres, resulting in an average mitigation ratio of approximately 5:1 (Exhibit Nos. 5 & 6).

The subject site is primarily located within the City of Encinitas and has a small portion located within the City of Solana Beach (San Diego County) and is located along the western and eastern bank of Coast Highway 101 and within and adjacent to the San Elijo Lagoon near the South Cardiff State Beach parking lot (Exhibit 1). The proposed development is located within the Commission's area of original jurisdiction and as such, the standard of review is the Chapter 3 policies of the Coastal Act, with the City of Encinitas' LCP and the City of Solana Beach's LUP used as guidance.

B. BIOLOGICAL RESOURCES/VISUAL RESOURCES

Biological Resources

The proposed restoration area is located within and adjacent to the San Elijo Lagoon Ecological Reserve. The reserve is a native habitat area and regional park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. The reserve contains diverse habitat including six plant communities: coastal strand, salt marsh, brackish/freshwater marsh, riparian

scrub, coastal sage scrub and mixed chaparral. At least five State or Federally-listed threatened or endangered birds make use of reserve's habitat including the California least tern, the California gnatcatcher, the light-footed clapper rail, the Belding's savannah sparrow and the western snowy plover. As such, any development in close proximity to these resources must be sensitively designed to avoid adverse impacts.

Wetland Habitat Impacts:

Section 30233 describes the circumstances where filling of wetlands can be permitted.

Section 30233

(a) 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 wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) 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.

(5) 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.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

[...]

As described previously, the unpermitted construction of an access road resulted in impacts to 0.009 acre of tidal wetlands (middle coastal salt marsh habitat). The construction of the access road cannot be found consistent with the habitat and wetland protection policies of the Coastal Act. The applicant is therefore proposing to restore the wetland habitat area impacted by the construction of the unpermitted access road and no post-construction permanent impacts will result. The proposed restoration of the unpermitted access road includes a mitigation ratio of 4:1 for middle coastal salt marsh habitat.

Post-construction permanent impacts to tidal wetland habitat will however result from repairs to an existing culvert outfall adjacent to the highway and will total 0.015 acre (0.002 acre middle coastal salt marsh habitat and 0.013 acre open channel habitat). Under the Coastal Act, disturbance and/or filling of wetlands are severely constrained. Coastal Act Section 30233 prohibits the filling of coastal waters and wetlands except under the eight limited circumstances cited above. In light of the dramatic loss of wetlands (over 90% loss of historic wetlands in California), and their critical function in the ecosystem, the Coastal Act's mandate to preserve coastal waters and wetlands is well founded.

In this particular case, permanent impacts to tidal wetland habitat is proposed to facilitate the repair of the damaged highway banks and an existing culvert outfall. The culvert outfall repair consists of reconstruction of the bank adjacent the highway, replacement of the outflow pipe, and placement of approximately 23 cu. yds. of ¼ ton rip rap at the base of the new outflow pipe. The Commission finds that the repair work is a permitted use within Section 30233 of the Coastal Act. The Coast Highway 101 is an essential transportation route in north county San Diego and ensuring proper drainage from the highway and ensuring the stability of its banks is imperative to effective operation. Disruption of service on Coast Highway 101 would have a significant impact on coastal access. The repair of the highway's banks and drainage outflow will not increase the traffic capacity of Coast Highway 101. Therefore, the proposed repairs constitute an incidental public service. Thus, the proposed development is a permitted use under Section 30233(a)(5) of the Coastal Act.

Once it has been determined that the proposed project is an allowable use under Section 30233 of the Coastal Act, it must also be determined that no other feasible alternative is available that would avoid or lessen the environmental impacts of the development and that mitigation is provided for all unavoidable impacts. Alternatives to the project, in this particular case, are limited. The no project alternative is not feasible because it would result in continued failure of the banks adjacent to the highway, inadequate drainage, and the need for additional work in the future resulting from

increased erosion. Because the area at the base of the drainage outflow is wetlands, impacts to sensitive habitat cannot be entirely avoided; however, they must be minimized to the extent feasible.

The applicant has coordinated with the California Department of Fish and Game (CDFG) and the San Elijo Lagoon Conservancy on the design of the proposed project. Based on the fact that the CDFG and the San Elijo Lagoon Conservancy provided direction and confirmation on the type and scope of work to be performed by the applicant, the Commission finds that this proposal represents the feasible alternative that lessens the adverse impacts to wetlands because impacts will be minimized to the maximum extent practicable, based on the circumstances.

Once it is determined that all adverse impacts have been minimized, mitigation for impacts must be addressed. Historically, the Commission has required mitigation measures to assure there is no net loss in either acreage or habitat value for any displaced wetlands. The Commission's practice has been to require a 3:1 mitigation ratio for disturbance of riparian habitats and 4:1 mitigation ratio for other wetland impacts, such as saltwater marsh. In other words, a mitigation area for the creation of new wetlands must be established that is three/four times the size of the existing riparian/wetland area to be removed as a result of the project. The Commission typically applies mitigation ratios to habitat impacts based on the type of habitat being impacted, the relative permanence of impacts, and the quality of the habitat affected. The Commission is also concerned with the level of protection afforded the mitigation habitat following mitigation.

A mitigation plan is proposed to mitigate the permanent impacts associated with the repairs. Approximately 0.015 acre of permanent impacts will occur to wetland habitat. Permanent impacts to wetland habitat would be mitigated onsite at a 4:1 ratio. Therefore, the project proposes an adequate amount of mitigation for the permanent wetland impacts.

Upland Habitat Impacts

Sections 30251 and 30240 of the Coastal Act requires the minimization of the alteration of natural landforms to protect the scenic and visual qualities of coastal areas and protect environmentally sensitive habitats, respectively.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependent on those resources shall be allowed within those areas.

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

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

As stated previously, the construction of the unpermitted access road, previously completed emergency bank repairs and the new proposed bank repairs and drainage outflow pipe repair also have impacts to non-wetland native upland habitat, adjacent to environmentally sensitive habitat area. The unpermitted access road resulted in impacts to 0.123 acre of coastal strand (including 0.05 acre of the rare plant species Orcutt's pincushion) and 0.002 acre of Diegan coastal sage scrub. The emergency repairs resulted in habitat impacts to 0.008 acre of coastal strand and 0.007 acre of Diegan coastal sage scrub. Expected habitat impacts from the new proposed highway bank repairs are 0.01 acre of coastal strand and 0.013 acre of Diegan coastal sage scrub (Exhibit Nos. 2-4). The applicant proposes to mitigate for the habitat impacts onsite at a ratio of 3:1 for coastal strand and 8:1 for Diegan coastal sage scrub. Coastal Act Section 30240 calls for the preservation of environmentally sensitive habitat areas and protection against significant disruption of habitat values. The project, as proposed, is the least environmentally damaging alternative and provides feasible mitigation measures to minimize remaining unavoidable adverse environmental effects to native habitat. The mitigation plan has been reviewed and found acceptable by the Commission's staff biologist. Special Condition 4 requires the applicant to submit final plans within 90 days of Commission action and for the applicant to comply with the provisions of the mitigation plan.

The proposed restoration plan indicates that the restoration will be achieved by removing invasive exotic species and by revegetating the area with native species which are consistent with the desired native habitat. Monitoring for restoration success is proposed to occur over a five year period and will include qualitative monitoring, based upon visual quadrat sampling analysis, photographic monitoring and mortality counts. If during monitoring, dead native plants or the spread of invasive plants within the restoration area is detected, any dead native plants will be replaced and any invasive plants will be removed. Written annual reports throughout the five-year maintenance and monitoring period will be submitted to the Commission. If the mitigation site has not met the performance criteria outlined in the Habitat Mitigation and Monitoring Plan at the termination of the five-year maintenance and monitoring period, the City maintenance and monitoring obligations will continue until the performance criteria is met. Early release (prior to the five-year maintenance and monitoring period) may occur at the discretion of the Executive Director of the Commission and other applicable regulatory

agencies. Following the five year monitoring period, the San Elijo Lagoon Conservancy has agreed to take over maintenance of the restoration area and will incorporate the area into the surrounding open space preserve and manage it as permanent open space in perpetuity. Due to the fact that the restoration area is already publicly owned and conserved as open space, typical special conditions requiring conservation of open space are not required.

The proposed post and cable style fence design would not provide perching opportunities for raptors that might affect potential nesting success for California Least Terns and Western Snowy Plovers. Construction for the proposed project is restricted to occur outside of the nesting season for the California Least Tern and Western Snowy Plover (Special Condition 3), and construction activities are limited to only hand construction methods, below the highway edge, in order to protect the surrounding habitats and to limit impacts to the adjacent coastal waters (Special Condition 1). As noted, the Commission's biologist has reviewed the proposal and concurs that the mitigation plan, including maintenance and monitoring components, is acceptable such that impacts associated with the highway repairs will be adequately mitigated.

In summary, the proposed project minimizes adverse impacts to wetlands and has been found to be an allowable use within a wetland and the mitigation of impacts to native habitat has been found acceptable under the Coastal Act. In addition, based on the above considerations, all impacts to native habitats have been minimized and mitigated to the maximum extent feasible. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Section 30233, 30240, and 30251 of the Coastal Act.

Visual Resources

The proposed development involves the reconstruction of the highway bank in 4 locations adjacent to the San Elijo Lagoon Ecological Reserve and 1 location adjacent to the beach and proposes restoration of 0.94 acre of native habitat area. The 4 bank repair areas adjacent to the San Elijo Lagoon are partially visible from the Coast Highway 101 and the adjacent railroad tracks. The bank repair area adjacent to the beach is visible from Coast Highway 101 and from the public beach. The 5 areas along the bank of the highway that are proposed to be repaired are currently eroded and the proposed repair will fix the eroded portions consistent with the rest of the highway in this area. The restoration area adjacent to the San Elijo Lagoon is also partially visible from the Coast Highway 101 and the adjacent railroad tracks. Commission staff has reviewed the proposed restoration plan, which was developed in consultation with the San Elijo Lagoon Conservancy, and concurs that it will enhance the visual resources of the area by restoring the native habitat area adjacent to the highway. Replacing invasive vegetation with native vegetation is consistent with Section 30251 of the Coastal Act. The applicant also proposes to install an approximately 320 lineal foot post and cable style fence with a maximum height of 51 inches above grade. The fence is designed as a 3-wire fence with galvanized iron pipe posts in order to reduce any visual disruption. The bank repairs and the restoration project will, therefore, enhance the visual quality of the visually degraded area by ensuring that the project site is fully restored with mature native plant species.

The proposed development, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

C. PUBLIC ACCESS/PARKING

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

Section 30212

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

(b) For purposes of this section, "new development" does not include:

[...]

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure...

Section 30604(c)

[...]

(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 project area is adjacent to the Coast Highway 101 and the only formal access through the area is via the 4 lane highway and the bike paths on either side, which are delineated with paint. Public access exists on the beach to the west of the project area and will not be impacted. An informal access path, primarily used by San Elijo Lagoon personnel for restoration and monitoring purposes is located adjacent to the highway on the east side. This informal path will not be impacted by the proposed bank repairs or the proposed restoration project. The applicant estimates that the highway repairs will take approximately 40 days. During construction, all staging will be located on the paved portion of the highway on the far right northbound/southbound lanes and the northbound/southbound bike lanes (depending whether work is occurring to the bank on the east or west side of the highway). Vehicular and bicycle traffic will be directed into

the remaining lanes and pedestrians will be directed to cross at the nearest crosswalk to the project site or to pass along the beach.

The proposed fence would be located around the perimeter of the restored and enhanced Orcutt's pincushion rare plant species area, bordering the lagoon, and will serve to delineate the sensitive habitat area and restrict access through the area. All remaining access would remain available to the public after the proposed fence is installed. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

D. WATER QUALITY

The Coastal Act has several policies to protect the quality of coastal waters and marine resource, which state:

Section 30230

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

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

Section 30232

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and clean up facilities and procedures shall be provided for accidental spills that do occur.

The applicant proposes that all vehicular use needed for the highway bank repairs be from the Highway 101 road edge and no vehicles will be allowed beyond the road edge/top of slope in the sensitive habitat area. In addition, all grading needed for the highway repairs shall be undertaken from the top of the slope or the roadway. The applicant also proposes only minor grading of the project site with hand tools in conjunction with the proposed restoration project (Special Condition 1). The proposed project will result in improvements to water quality through the native habitat restoration. In addition, the highway bank repairs/drainage outflow pipe repair will decrease ongoing slope erosion and will not adversely impact water quality. As proposed, the project is consistent with policies 30230, 30231, and 30232 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without required coastal development permits including, but not limited to, removal and impacts to 0.134 acre of habitat area through the unpermitted use of heavy machinery used to create an approximately 450 ft. long, 8 ft. wide access road. As conditioned, approval of the subject application will authorize the restoration of a 0.94 acre area adjacent to and within the San Elijo Lagoon Ecological Reserve. To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition 5 requires that the applicant complete weed eradication and the initial planting within 295 days of Commission action on this CDP application. Due to construction restrictions put in place by the Commission to avoid potential impacts to sensitive bird breeding periods between February 15th and September 15th, the requirement to complete initial restoration work within 295 days will allow the permittee adequate time following the breeding season. 295 days from Commission action on this item is approximately November 1, 2014 (~1.5 months after the end of the California Least Tern and Western Snowy Plover breeding period).

In addition, Special Condition 4 of Emergency CDP #6-10-013 required that the applicant apply for a follow-up regular coastal development permit to authorize the development by April 23, 2010. The application for the follow-up regular coastal development permit was not received until May 24, 2012.

Although development occurred prior to the submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit.

F. LOCAL COASTAL PLANNING

While the City of Encinitas has a fully certified local coastal program, the subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. The City of Solana Beach has a certified Land Use Plan, but does not yet have a fully

certified local coastal program. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP and will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 environmentally sensitive resource, public access and visual resource policies of the Coastal Act. As conditioned, no impacts to sensitive environmental resources will result as part of the proposed project. 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

- Site Plans titled “South Coast Highway 101 Emergency Street Repairs” received 5/24/2012 by City of Encinitas Engineering Department
- “Habitat Mitigation and Monitoring Plan for the City of Encinitas Highway 101 Repair and Restoration Project dated July 2013
- City of Solana Beach Certified LUP
- City of Encinitas Certified LCP
- CDP Nos.:
 - 6-10-013-G/City of Encinitas
 - 6-10-022-G/City of Encinitas
 - 6-10-030-G/City of Encinitas

APPENDIX B

EMERGENCY CDP #6-10-013-G

STATE OF CALIFORNIA—THE NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4421
(619) 767-2370



EMERGENCY PERMIT

FILE COPY

Applicants: City of Encinitas, Engineering Dept.
Agent: Greg Shields

Date: February 22, 2010
Emergency Permit No. 6-10-13-G

LOCATION OF EMERGENCY WORK: East side of South Coast Highway 101 adjacent to San Elijo Lagoon within the City of Encinitas, just north of the Solana Beach/Encinitas jurisdictional border.

WORK PROPOSED: Install sandbags at three locations along the east side of South Coast Highway 101, drill holes in the paving at those same three locations, pump concrete slurry beneath the pavement and replace 8-inch asphalt curb berm along east side of highway. All work is to be performed on top of the highway and no mechanical equipment or work shall occur on or below the roadway embankment. (Ref. Plans titled "South Coast Highway 101, Emergency Street Repairs" Drawing No. 81-SI, dated received 2/22/10)

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of erosion of the roadway embankment and beneath three (3) sections of Highway 101 north of Solana Beach due to heavy rains that requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows;
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

Sincerely,

PETER M. DOUGLAS
Executive Director

By: SHERILYN SARB
Deputy Director

COMMISSION ACTION ON _____

MAR 10 2010

- ☒ Approved as Recommended
- ☐ Denied as Recommended
- ☐ Approved with Changes
- ☐ Denied
- ☐ Other

Emergency Permit Number: 6-10-13-G
Date: 2/22/2010

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific locations listed above is authorized. No additional construction or grading is authorized by this permit. The placement and/or removal of any material or structures, including but not limited to, riprap, rock, granular backfill or other material not described herein, is not authorized by this permit. Any additional work requires separate authorization from the Executive Director. **If during construction, site conditions warrant changes to the approved plans, the San Diego District office of the Coastal Commission shall be contacted immediately prior to any changes to the project in the field.**
3. The work authorized by this permit must be completed within 30 days of the date of this permit (i.e., by March 24, 2010).
4. Within 60 days of the date of this permit (i.e., April 23, 2010), the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit (i.e., by July 22, 2010), unless this requirement is waived in writing by the Executive Director.
5. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g. Dept. of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, State Lands Commission, State Regional Water Quality Control Board.)
7. Prior to the commencement of the construction, the applicant shall submit to the Executive Director, evidence that the project has been reviewed and approved by the Director of Engineering Services for the City Encinitas.
8. Pre-construction site conditions shall be documented through photographs of the work sites at the time of construction and submitted to the San Diego District office **prior to commencement of construction.** Photographs of the construction sites shall also be taken following construction and submitted to the San Diego District office.

If you have any questions about the provisions of this emergency permit, please call the Commission's San Diego Coast Area Office at the address and telephone number listed on the first page.

(G:\San Diego\Emergency\6-10-013-G Hwy 101.doc)

CALIFORNIA COASTAL COMMISSION

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



EMERGENCY PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

RE: **Emergency Permit No. 6-10-13-G**

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the San Diego Coast Area Office within 15 working days from the permit's date.

Acknowledgement

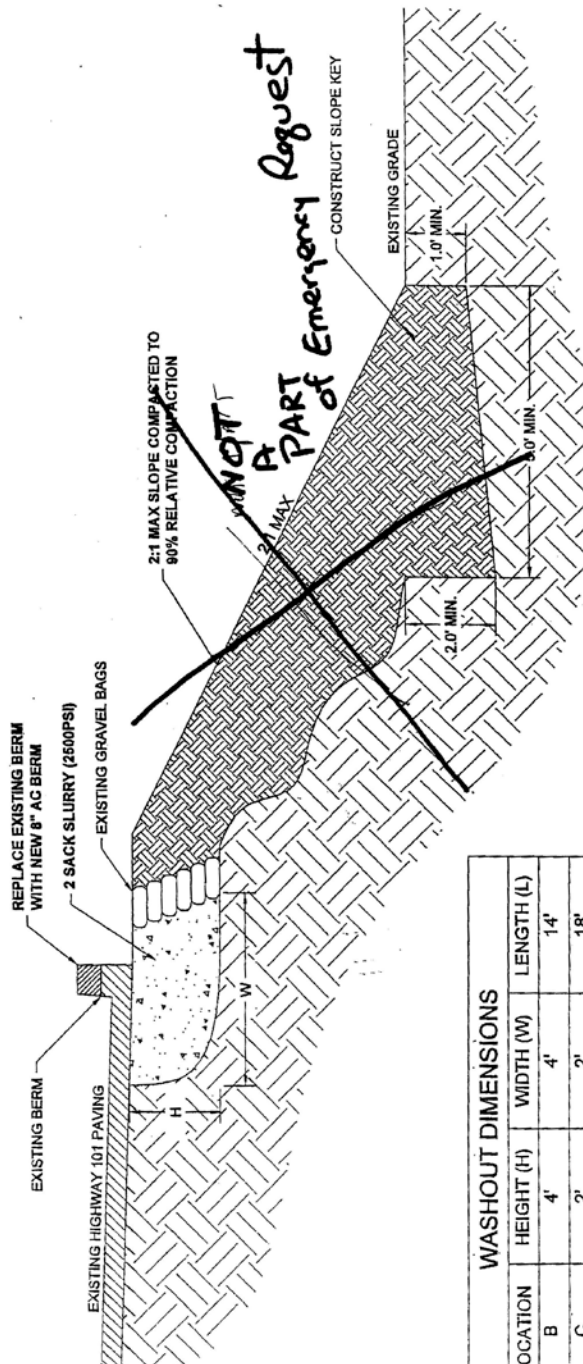
In acceptance of this emergency permit, I acknowledge that any work authorized under an emergency permit is temporary and subject to removal if a regular Coastal Permit is not obtained to permanently authorize the emergency work. I further acknowledge that some work has already occurred in the form of grading within San Elijo Lagoon, without required authorization, on property owned by the State Department of Fish and Game. I acknowledge that all of the unauthorized work also requires a follow-up regular coastal development permit. I also acknowledge and understand that a regular coastal development permit would be subject to all of the provisions of the Coastal Act and may be conditioned accordingly. These conditions may include, but not be limited to, provisions for restoration of graded areas within San Elijo Lagoon and mitigation for any adverse impacts to Environmentally Sensitive Habitat Areas (ESHA) resulting from the unauthorized grading, and an assumption of risk for all requested work. I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them. I also understand that a regular Coastal Permit is necessary to permanently authorize the emergency work. I agree to apply for a regular Coastal Permit for the work authorized by the subject emergency permit and the unauthorized work within San Elijo Lagoon within 60 days of the date of the emergency permit (i.e., by April 23, 2010).

Signature of Applicant

Name

Address

Date of Signing



WASHOUT DIMENSIONS			
LOCATION	HEIGHT (H)	WIDTH (W)	LENGTH (L)
B	4'	4'	14'
C	2'	2'	18'
D	1.5'	2'	17'

RECEIVED

FFR 2 2 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



OF 9	RECOMMENDED BY:  LEROY BOUDAS	APPROVALS APPROVER:  BY: PETER COTA-ROBLES	CITY OF ENCINITAS ENGINEERING DEPARTMENT	DRAWING NO. 81-SI
	DATE: 2/14/10	DATE: 1/18/10		

EXHIBIT NO. 1
APPLICATION NO.
6-10-13-G
Repair Plans

PROJECT LOCATION



EXHIBIT NO. 1

APPLICATION NO.

6-12-070

Project Location



California Coastal Commission

PROJECT IMPACTS 1



EXHIBIT NO. 2

APPLICATION NO.

6-12-070

Project Impacts 1



California Coastal Commission

PROJECT IMPACTS 2



EXHIBIT NO. 3

APPLICATION NO.

6-12-070

Project Impacts 2



California Coastal Commission

PROJECT IMPACTS 3



EXHIBIT NO. 4

APPLICATION NO.

6-12-070

Project Impacts 3



California Coastal Commission

RESTORATION MAP 1



EXHIBIT NO. 5

APPLICATION NO.

6-12-070

Restoration Map 1



California Coastal Commission

RESTORATION MAP 2

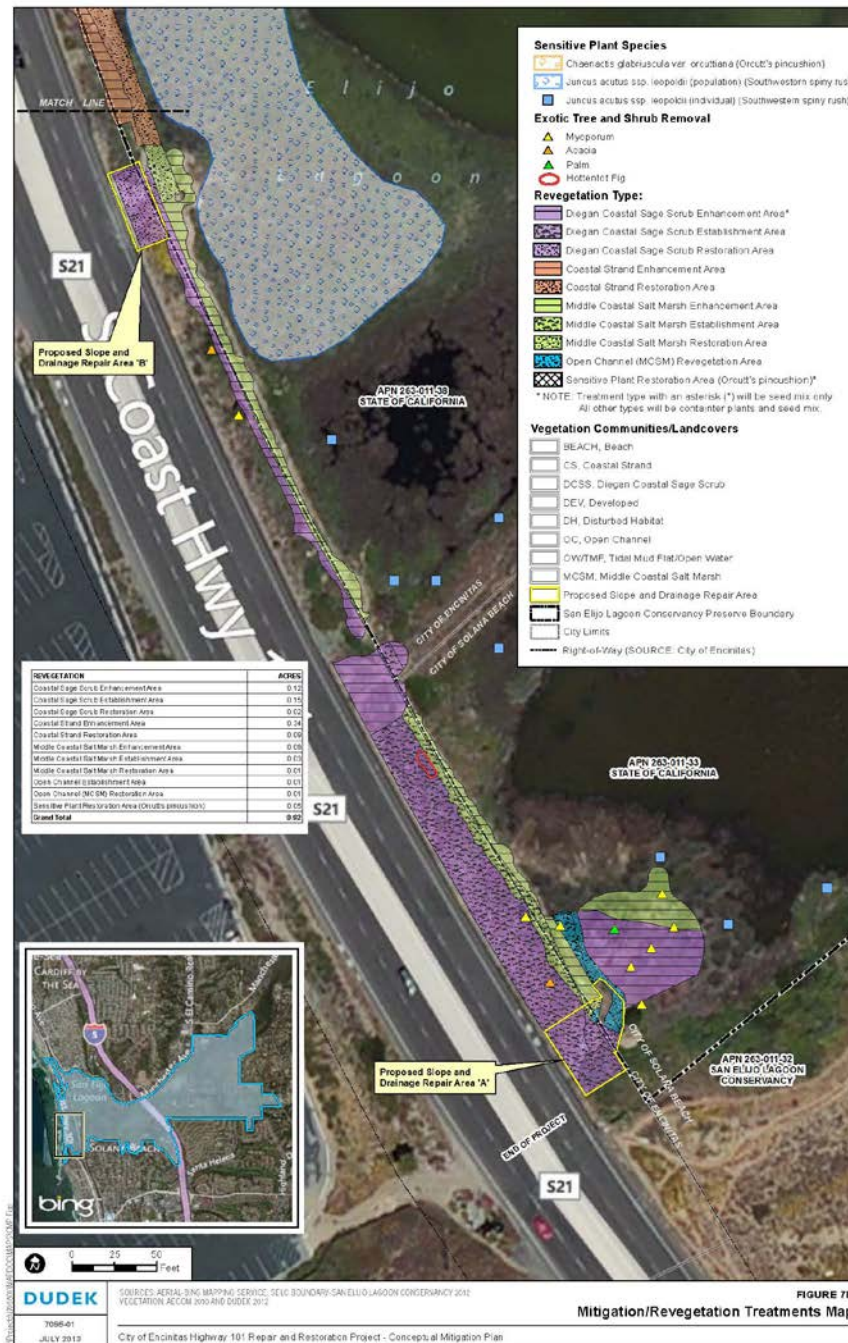


EXHIBIT NO. 6

APPLICATION NO.

6-12-070

Restoration Map 2



California Coastal Commission