

CALIFORNIA COASTAL COMMISSION

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



Click here to go to
original staff report

Th16c

Addendum

February 10, 2014

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th16c**, Coastal Commission Permit Application
No. **6-12-067 (22nd District Agricultural Association)**, for the
Commission Meeting of Thursday, February 13, 2014.

Staff recommends the following changes be made to the above-referenced staff report. Deleted language is shown in ~~**bold strike through**~~ and new language to be added is shown in **bold double underline**, as shown below:

1. On Pages 11 & 12 of the staff report, Special Condition No. 9(h) shall be revised as follows:
 9. **Transportation Demand Management (TDM) Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final Transportation Demand Management Program to the Executive Director for review and written approval. Said program shall include, at a minimum, the following provisions:

[...]

- h. Within 10 years of Commission approval of this Coastal Development Permit, the applicant shall prepare and submit to the Executive Director two parking studies which (1) identifies the operational effects of losing approximately 1,250 parking spaces due to the restoration of the South Overflow Lot to functioning wetlands, and (2) analyzes the feasibility of ceasing all usage of the lower third of the East Overflow Lot ("Area 3"), resulting in the loss of approximately 1,400 additional parking spaces. **The first parking study shall be submitted to the Commission 5 years after approval of this permit, and the second parking study shall be submitted to the Commission 9 years after approval of this permit.**

The applicant shall undertake the development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive

Director. No changes to the plan shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. On Page 21 of the staff report, the first full paragraph shall be revised as follows:

In addition to additional off-site shuttle lots, the Parking Assessment identified additional on-site parking resources that the Applicant can utilize to compensate for any parking losses in the unpaved lots. The training track, currently used for storage by fair vendors, could be converted to 400 parking spaces by relocating the vendor storage to the stable area. Additionally, the paved parking spaces within the main fairgrounds complex can be restriped and angled so as to produce parking gains of approximately 390 spaces. However, unlike the shuttle measure, this latter option would not alleviate the traffic congestion that plagues the surrounding communities during the fair and race season and impedes public access to nearby coastal resources. **In addition, the Applicant has indicated to the Commission that restriping can cause other issues, such as decreased internal traffic efficiency.**

3. On Page 21 of the staff report, the second full paragraph shall be revised as follows:

Thus, the loss of any parking spaces —~~which, with the cessation of parking in the SOL and Area 3 of the EOL totals 2,650 spaces~~— is mitigated by the potential gain of 2,170 off-site parking spaces through expanded shuttle service, subject to the approval of the schools whose lots will be used for the shuttle service (with the added benefit of decreased traffic volumes in the coastal zone), and ~~790~~ 390 on-site parking spaces through reconfiguring and restriping existing paved on-site parking (**although, as noted previously, the Applicant has indicated that restriping could create other issues, such as decreased internal traffic efficiency**), for a total of 2,960 potential parking spaces. It should be noted that, being schools, the availability of the off-site shuttle lots is severely limited during the school year, which runs from September to early June, and that even outside of that time, there is no guarantee that the lots would be available in perpetuity, as the schools are free to decide whether or not to renew contracts based on various factors. For example, the Applicant has recently had rental contracts with nearby school districts to use their school buses as shuttles not renewed because the school districts desired to reduce wear on the buses to control maintenance costs. Nevertheless, the period of lowest use of the school lots coincides fairly closely to the period of greatest parking demand for the Fairgrounds – the summer – and the Applicant’s long history of successful utilization of off-site shuttle lots is clear evidence of their viability as alternative parking resources. While greater use of shuttles may lead to the need for space in the Fairgrounds to accommodate dropping off and picking up of attendees, shuttles are preferable given the reduction in vehicle trips to the Fairgrounds and the need to encourage both the Applicant and the public to consider and use alternate transportation options.

4. On Page 23 of the staff report, the first full paragraph shall be revised as follows:

However, both the Del Mar Fairgrounds and the surrounding communities have recognized the, at-times, substantial impact that traffic – induced by Fairground events or not – can have on public access and general quality of life. As such, the transportation situation is not static, but is instead primed for future changes. As mentioned above, environmental review for the seasonal rail platform is well underway, and it is possible that in the not-too-distant future that such a transportation resource will come into operation and have a transformative impact on the manner in which people attend events at the Fairgrounds. Furthermore, the California Department of Transportation is currently conducting environmental review for the upcoming expansion of the adjacent I-5 freeway, including the addition of express lanes and bike trails. Finally, the Applicant itself, recognizing the benefits in easing the hardships its patrons must endure in utilizing the Fairgrounds, is frequently adjusting and experimenting with new or improved methods of traffic management and alternative transportation utilization. Recognizing that the transportation environment in and around the project area has the high potential to become markedly different in the not-too-distant future, this permit places a 10-year time limit on its duration while mandating the submission of two **periodic** parking studies **at 5 years and 9 years from approval of this permit**, analyzing the parking needs of the Applicant, especially with relation to the EOL, so as to analyze the potential of relinquishing use of the lower third of the EOL at the end of the 10-year period in the hopes of eventual restoration to wetlands.

5. On page 25 of the staff report, the third full paragraph shall be revised as follows:

Regarding the proposed temporary events to be held in the EOL, they are foreseen to be held during the non-summer “off-season” because the EOL and GDR are needed for parking during the busy fair and races. Linscott, Law, & Greenspan conducted a non-summer off-season peak-hour traffic analysis in April of 2011 for the Applicant in order to establish a baseline Level of Service (LOS) for surrounding roads and intersections. The study found that all but one of the surrounding 19 intersections operated at acceptable LOS D or better on both weekdays and weekends. Many of the temporary events that occurred at the time of the study still occur, the vast majority being held within the much larger main Fairgrounds complex. The authorization of additional events in the **smaller** EOL during the offseason will not generate substantial traffic approaching the problematic levels seen during the summer. This is because the vast majority of temporary events hosted by the Applicant are already held within the main Fairgrounds complex and authorization to conduct additional temporary events within the ~~northern two thirds of the~~ EOL will allow only **one or two more a relatively small number of** additional events to be held on the Fairgrounds property (existing parking and traffic capacity permitting). Because traffic volumes are substantially lower during the non-summer off-season, the conducting of temporary events on the EOL during that time will not create the types of traffic situations experienced during the summer county fair and races. Instead, a coastal visitor serving resource – the Fairgrounds - will be able to be better utilized by the public through the provision of a greater number of visitor serving events and activities in the coastal zone.

6. On Pages 25 & 26 of the staff report, the first paragraph shall be revised as follows:

To ensure that the development is implemented in an approved manner and that potential impacts are mitigated, ~~Special Condition No. 1 requires the Applicant to submit an approved plan for eventual cessation of all use of the lower third of the EOL and implementation of alternative traffic demand measures.~~ **Special Condition No. 2** 1 will ensure that the Applicant constructs any approved development pursuant to approved final plans. ~~Special Condition No. 10 9~~ will require the Applicant to implement an approved TDM so as to control and mitigate the traffic impacts from Fairgrounds events, focusing first on off-site parking resources before implementing on-site parking measures, as well as submit two parking studies, one at 5 years and one at 9 years after approval of this permit, focused on the Applicant's need for its parking inventory over the years. **Special Condition No. 13** places a 10-year time limit on this permit, requiring the Applicant to reapply at the end of that time, when the parking studies can be reviewed and the impacts from the proposed development on coastal resources can be reassessed and any necessary changes may be made, including potentially setting aside the lower third of the EOL for open space and restoration. **The Applicant should submit any application to retain or continue the development approved in this permit sufficiently in advance of expiration of the permit so that the Commission will have time to act on the application prior to the permit expiration. To avoid unanticipated delays, the Applicant should confer with Commission staff regarding timing and information requirements prior to submitting the application.**

7. On Page 51 of the staff report, the first full paragraph shall be revised as follows:

Regarding the EOL, the tallest temporary events, those with the potential to utilize temporary structures up to 100 feet or 50 feet in height, are concentrated in the northern two-thirds of the EOL. The 100-foot height limit in the northern third is designed to emulate, but not exceed, the height of the existing Grandstand facility that already blocks views east of the proposed development on the northern portions of the EOL. The Applicant has provided visual renderings of how such temporary structures may appear when viewed from the hilltop vista point located at High Bluff Drive, on the southern rim of the river valley to the east of the I-5 (Exhibit 9). Currently, the northern two-thirds of the EOL are already blocked by existing development. Thus, events located on the northern two-thirds will be largely shielded from public view. This will meet the goal of concentrating the development footprint in the coastal zone and limit the visual encroachment of development into the San Dieguito River view shed. The southern third of the EOL, being located closest to the river and the view shed, will have the most restrictive limits on use in the form of a 25-foot height limit—only parking during the summer county fair and races or when all other onsite parking has been exhausted during the planned second thoroughbred horse race meet in the fall. Furthermore, the conservation easement over the majority of lower third of the EOL required by this permit will mandate cessation of all usage of the easement area ~~within 10 years of Commission approval of this permit. Thus, the lower third will~~

~~eventually be free of man-made obstructions and, through either natural or artificial restoration, eventually become functioning wetlands integrated with the surrounding river valley, adding to its visual quality.~~

CALIFORNIA COASTAL COMMISSION

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



Th16c

Staff: A. Llerandi-SD
Staff Report: 1/21/14
Hearing Date: 2/13/14

REVISED CONDITIONS AND FINDINGS

Application No.: 6-12-067

Applicant: 22nd District Agricultural Association

Agent: Dustin Fuller

Location: Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar, San Diego, San Diego County (APN No. 299-042-01, 299-042-02, 299-003-04)

Project Description: Relinquish all use of the remainder of the South Overflow Lot in order to restore it to functioning wetlands while consolidating year-round parking in the East Overflow Lot and Golf Driving Range, as well as use the East Overflow Lot for intermittent trailer storage during the summer fair and race season, for annual pumpkin patch and Christmas tree sales events, future temporary events, and fairground logistics; 6,000 cubic yards of grading in the EOL and GDR; maintain an existing banner sign on the adjacent Surf and Turf lot; create a paved bus lane with public trail parking and five interpretive signs north of the SOL restoration area; and transfer title of an approximately 4.5-acre parcel on the southern bank of the San Dieguito River south of the Horse Park to a Commission-approved entity.

Staff Recommendation: Approval with Conditions

STAFF NOTES

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on November 13, 2013. In its action, the Commission approved the permit, but deleted Special Conditions Nos. 1 & 11, which required the lower third of the East Overflow Lot be set aside for open space and future restoration and added new conditions limiting the permit to a 10-year term and requiring the submittal of two parking impact studies during the 10-year duration of the permit. The amended motion begins on Page 6. The amended Special Conditions begin on Page 7. Findings to support these modifications can be found starting on Page 17.

Commissioners on Prevailing Side: Bochco, Brennan, Cox, Kinsey, McClure, Mitchell, and Vargas

STAFF NOTE

~~This application was first brought before the California Coastal Commission at the October, 2013, hearing. At that hearing, the Commission, after public testimony, voted to continue the application to the November hearing to allow for further discussions between Commission staff, the Applicant, and third parties, with regards to mitigation. Since that hearing, meetings among various parties involved in the application have occurred, and the staff report for this permit has been updated accordingly. Additionally, the Applicant has amended their project proposal to reflect this current form, the most notable change being the inclusion of an offer to transfer title to a 4.5-acre riverfront parcel south of the Applicant's Horse Park facility. Since distribution of the staff report for CDP Application No. 6-12-067, Commission staff has received a response from the Applicant and multiple public comments both in support of and opposition to the application. In order to more directly address the questions and comments contained in the responses since distribution, Commission staff drafted an addendum to modify the original staff report accordingly.~~

SUMMARY OF COMMISSION ACTION **SUMMARY OF STAFF RECOMMENDATION**

~~Staff is recommending approval of this project, with conditions. The proposed project is to relinquish all use of the South Overflow Lot ("SOL") and restore it to functioning wetlands while consolidating year-round parking on the East Overflow Lot ("EOL") and Golf Driving Range ("GDR"), as well as to use the EOL for intermittent trailer storage during the summer fair and race season, to hold annual pumpkin patch and Christmas tree sales events, other future temporary events, and fairground logistics; 6,000 cubic yards of grading in the EOL and GDR; maintain an existing unpermitted banner sign on the adjacent Surf and Turf lot; create a paved bus lane with public trail parking and five interpretive signs north of the SOL restoration area; and transfer title of an approximately 4.5-acre parcel south of the Horse Park facility to a Commission-approved entity. The project site is the Del Mar Fairgrounds, namely the unpaved SOL, EOL, and GDR across Jimmy Durante Boulevard to the south and east of the main Fairgrounds complex.~~

The 9.55 acre section of the SOL (“Phase II”) to be relinquished and restored by the 22nd District Agricultural Association (“Applicant”) will comprise three marsh habitats (low marsh, mid-marsh, and high marsh) and an upland transitional habitat, as well as the restoration of intertidal mudflats. The proposed restoration project is a part of the Consent Orders approved by the Commission on March 8, 2012, in Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (“Consent Orders”). The Commission issued the Consent Orders to address unpermitted activities at the Del Mar Fairgrounds, including landform alteration within a wetland, as well as lay the groundwork for the Applicant to come forward with the proposed restoration and currently requested development. The Phase II restoration has been designed to be compatible with a restoration project for an adjacent, smaller section of the SOL (“Phase I”) that was proposed by the Applicant pursuant to a past Army Corps of Engineers (ACOE”) enforcement action and was approved by the Commission on November 15, 2012, in CDP No. 6-12-040. The Phase I and Phase II design elevations will be aligned to produce a unified and interconnected southern coastal salt marsh habitat. Natural Resource Defense Council (“NRDC”) submitted a letter, dated November 8, 2013, arguing that the Applicant does not have a vested right to use the SOL at the current use levels, citing page 12 of the Consent Order for support. The Consent Order acknowledges that the Applicant’s current use of the SOL exceeded pre-Coastal Act use on the site, which, in part, triggered the enforcement action because the current uses constituted a substantial change of the pre-Coastal uses, thereby requiring CDP approval for those additional uses of the SOL. NRDC does not contend that the Applicant did not have an allowable pre-Coastal Act use of the SOL, and thus effectively agrees with the Commission’s enforcement order to address the unpermitted post-Coastal Act uses that occurred on the site.

The proposed project raises issues of public access, hydrology/flooding, wetland impacts, water quality, and visual resources. Public access issues arise because the Del Mar Fairgrounds is a popular destination for low-cost visitor serving recreation in the coastal zone, but can also cause severe traffic impacts that interfere with public access to the surrounding beaches and river valley. Hydrology and flooding issues arise due to the project site’s location within the San Dieguito River floodplain. Water quality issues arise because runoff from the SOL, EOL, and GDR flows south towards the San Dieguito River. Issues of wetland impacts arise because the project site is adjacent to and contains delineated wetlands, and restoration and use of the site will cause direct impacts. Visual resource issues arise due to the project site’s location within the scenic San Dieguito River Valley and the potential for temporary events to block views down the river valley.

~~While the Applicant is proposing to restore the SOL to functioning wetlands and transfer title to a 4.5 acre riverfront parcel south of the Horse Park, concerns still exist regarding the adequacy of mitigation. To address concerns raised over the lack of mitigation, the lower third of the EOL is being required to be placed under a conservation easement. This conservation easement shall be executed immediately, but recognize a phased vacation of the lower third of the EOL within a 10 year period. No temporary events would be allowed in the lower third of the EOL and only parking during the summer fair and races and the anticipated fall horse race meet—when all other on site parking has been exhausted—may be allowed to continue over the 10 year period to allow the Applicant to offset the loss of parking in the SOL and Area 3 and the discretion to determine the best manner to do so. This will result in the 4.48 acres of wetlands delineated in that lower third of the EOL becoming~~

~~open to future restoration. To implement the phased vacation, a parking cessation plan must be developed by the Applicant and submitted to the Coastal Commission for Executive Director approval. This parking cessation plan must contain various criteria and benchmark detailing the timing and manner in which vacation will occur over the 10 years. This is intended to substantially aid mitigation by gradually setting aside the largest concentration of wetlands delineated within the EOL and GDR.~~

The proposed development, namely the use of and placement of fill in the EOL and GDR, conflicts with the Coastal Act policy of protecting wetlands contained in section 30233. However, denial of the permit will create conflicts with multiple Coastal Act policies: 30230 (protection and restoration of marine resources), 30231 (water quality), 30210 (public access and recreational opportunities), 30213 (lower cost visitor and recreational facilities), and 30250 (concentrating development). This is because the legal requirement that the Applicant restore the SOL would not be triggered, use of a popular visitor serving recreational facility would be greatly curtailed, and the development footprint would not be concentrated within the coastal zone. As there are no less impactful feasible alternatives, the Commission, utilizing conflict resolution, finds that on balance, approval of the permit as conditioned represents the greatest protection of coastal resources.

Special conditions mandating submission of revised final plans, waivers of future flood protection, assumption of liability, revised monitoring plans, disposal plans for graded spoils, and limits on the conducting of future temporary events, ~~and phasing out use of the lower third of the EOL over time,~~ will mitigate the foreseeable impacts from the proposed development and ensure the development occurs in a manner consistent with Chapter 3 policies in the Coastal Act.

~~Commission staff recommends approval of Coastal Development Permit application 6-12-067, as conditioned.~~

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	6
II. STANDARD CONDITIONS.....	7
III. SPECIAL CONDITIONS.....	7
IV. FINDINGS AND DECLARATIONS.....	15
A. PROJECT DESCRIPTION/HISTORY.....	15
B. PUBLIC ACCESS.....	17
C. WETLANDS.....	26
D. CONFLICT RESOLUTION.....	32
E. HYDROLOGY/FLOOD HAZARDS	44
F. WATER QUALITY/MARING RESOURCES.....	46
G. VISUAL RESOURCES.....	49
H. LOCAL COASTAL PLANNING.....	52
I. CEQA.....	52

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Aerial View

Exhibit 3 – Site Plan

Exhibit 4 – Wetland Delineation

Exhibit 5 – Map of Possible Shuttle Lots

Exhibit 6 – Drainage Basins

Exhibit 7 – SOL Phase II Restoration Map

Exhibit 8 – Current Public View

Exhibit 9 – Visual Rendering

Exhibit 10 – Commission Wetland Memo

Exhibit 11 – Conservation Easement Site

Exhibit 12 – Title Transfer Parcel

Exhibit 13 – Grading Plan

Exhibit 14 – Area 3 Delineation

I. MOTION AND RESOLUTION

Motion:

I move that the Commission adopt the revised findings in support of the Commission's action on November 13, 2013, concerning approval of Coastal Development Permit No. 6-12-067.

Staff recommends a **YES** vote. Passage of this motion will result in adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members of the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Bochco, Brennan, Cox, Kinsey, McClure, Mitchell, and Vargas

Resolution:

*The Commission hereby adopts the revised findings set forth below for **Coastal Development Permit No. 6-12-067** on the ground that the findings support the Commission's decision made on November 13, 2013, and accurately reflect the reasons for it.*

Motion:

I move that the Commission ~~approve~~ Coastal Development Permit No. 6-12-067 pursuant to staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director of 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 applicant 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. ~~**Parking Cessation Plan for Area 3 of EOL.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval a parking cessation plan detailing the manner in which all usage of the lower third of the EOL, identified as "Area 3" in Exhibit 11, will occur. Said plans shall incorporate the following:~~
 - ~~b. A time table specifying the applicant acknowledges and will cease all usage of Area 3 within 10 years of Commission approval of this permit;~~
 - ~~c. Allow Area 3 to be used for parking during the summer fair and race season and during the planned second thoroughbred horse race meet in the fall when all other available on-site parking has been exhausted;~~
 - ~~d. A time table detailing when and how the applicant will identify and implement alternative parking reduction measures or alternate transit programs, either on or off-site, to address the loss of parking capacity within Area 3;~~

- ~~e. Periodic benchmarks to indicate that progress is being made in identifying alternative parking or traffic reduction measures in a timely manner;~~
- ~~f. Acknowledgement that implementing alternative parking, traffic reduction measures, or alternate transit programs may require either an amendment to this permit or a separate coastal development permit;~~
- ~~g. Acknowledgement that a conservation easement as required by Special Condition No. 11 of this permit will be executed within 30 days of approval of this permit.~~

~~The applicant 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.~~

- 1. Revised Final/BMP Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final project and BMP plans. Said plans shall be in substantial conformance with the plans submitted on August 19, 2013, but shall be revised to incorporate the following:

- a. The existing banner sign on the Surf & Turf lot shall be deleted from all plans.
- b. A 100-foot height limit shall be observed by all permitted development on the northern third of the EOL (“Area 1”), as generally depicted on Exhibit 3.
- c. A 50-foot height limit shall be observed by all permitted development on the middle third of the EOL (“Area 2”) as generally depicted on Exhibit 3, while allowing an extension to 85 feet for
 - i. tents and canopies in place for no longer than three weeks in duration or;
 - ii. other structures that are taller than the 50-foot height limit that consist of material that is transparent over at least 50 percent of the structure that is above the 50-foot height limit.
- d. A 25-foot height limit shall be observed by all permitted development on the southern third of the EOL (“Area 3”) as generally depicted in Exhibit 3.

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

2. Assumption of Risk, Waiver of Liability, and Indemnity Agreement

- i. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from 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.
 - ii. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also include that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.
 - iii. **Liability for Costs and Attorneys Fees:** The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorney 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.
- 3. No Future Flood Protection.** No berms, walls, or any other form of protection against flooding shall ever be constructed for the purpose of protecting the development approved by this permit from flooding. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such channelization or substantial alteration of a river or stream for the purpose of protecting the permitted development.

- 4. Revised Final Restoration/Monitoring Plan.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, a final Salt Marsh Restoration, Maintenance, and Monitoring Plan for the South Overflow Lot. Said Plan shall be in substantial conformance with the plan identified as Habitat Restoration, Maintenance, and Monitoring Plan of August 2012.

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.

- 5. Disposal of Graded Spoils.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the disposal site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest. Placement of graded soil is prohibited on the South Overflow Lot, the East Overflow Lot, or the Golf Driving Range.

- 6. Grading Elevation Confirmation.** PRIOR TO PLANTING OR SEEDING, the applicant shall consult with an independent (one who has not participated in any manner with the planning of the proposed project) licensed engineer, or other competent independent licensed professional who can comply with this condition, to determine that the restoration area of Phase II has been graded in a manner consistent with the approved final plans. This determination shall be in writing and shall demonstrate that the site was graded and contoured in conformance with the approved plan. This written determination must be submitted to the Executive Director of the Coastal Commission for review and written approval.

- 7. Lighting.** Temporary lighting proposed to be used for activities in the East Overflow Lot and Golf Driving Range shall be consistent with the following:

- a. Temporary lighting is permitted adjacent to the wetland restoration areas for only safety and security reasons during the San Diego County Fair, summer Del Mar Horse Racing Season, or during other temporary events.
- b. Light spillover levels into the restored wetlands and the wetland buffers shall be minimized to the greatest extent practicable through the use of the lighting shields which direct light away from the restored wetland buffers.
- c. A maximum of 5 lighting standards (defined as portable lighting units with 4 bulbs per unit) shall be allowed to be placed within 200 feet of restored or existing wetland habitat in the EOL (southern edge) and GDR (southern edge) or SOL (bus lane).

- d. There shall be a minimum distance of 250 feet between each light standard.
- e. All lighting equipment and lighting standards shall be located outside of the 100 foot wetland buffers and lighting shall be directed away from the wetlands.

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

- 8. Wetland Buffers.** A buffer of a minimum of 100 ft. in width shall be provided upland of the proposed created wetlands on the SOL (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;
 - i. Visually compatible fencing to prevent intrusion;
 - ii. Interpretive signage

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").

<http://documents.coastal.ca.gov/reports/2012/3/Th8-s-3-2012.pdf>

- 9. Transportation Demand Management (TDM) Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final Transportation Demand Management Program to the Executive Director for review and written approval. Said program shall include, at a minimum, the following provisions:

- a. The applicant will utilize the available parking at Cathedral Catholic and Canyon Crest schools for off-site shuttle lots during the annual county fair, subject to those schools' approval.
- b. When calculating the maximum number of temporary events to be supported within the Fairgrounds property on any given day, the applicant may only rely on off-site parking facilities when clear, binding authorization to use such off-site parking has been obtained from the off-site property owner prior to the commencement of the temporary event.

- c. If the aforementioned off-site shuttle lots are not sufficient to offset the loss of parking in the South Overflow Lot ~~and the southern third of the East Overflow Lot~~, the applicant will maximize on-site parking within the main Fairgrounds complex through opening up additional parking areas or restriping existing parking spaces within the main Fairgrounds complex.
- d. The permittee shall provide incentives for employees of the applicant or on-site lessees to use public transportation, including the provision of subsidized public transit passes to employees, and/or walk or bike to the subject site, and shall also include secured bike racks in multiple locations and shower and locker facilities;
- e. The permittee shall draft and implement a carpool plan for employees of the applicant or on-site lessees and will reasonably coordinate with lessees in scheduling work schedules and posting notices of the carpool program in employee work areas;
- f. Information regarding the carpool program, subsidized public transportation, and support facilities shall be part of any employment paperwork for employees of either the applicant or lessees and shall be a condition of leases that the applicant require lessees to implement the TDM.
- g. The permittee shall undertake annual surveys of employees to document the frequency with which they are using alternate transportation to get to work and the success of the Transportation Demand Management Program. The survey's information and an assessment of the TDM program shall be submitted annually to the Executive Director for as long as this permit is in effect.
- h. Within 10 years of Commission approval of this Coastal Development Permit, the applicant shall prepare and submit to the Executive Director two parking studies which (1) identifies the operational effects of losing approximately 1,250 parking spaces due to the restoration of the South Overflow Lot to functioning wetlands, and (2) analyzes the feasibility of ceasing all usage of the lower third of the East Overflow Lot ("Area 3"), resulting in the loss of approximately 1,400 additional parking spaces.

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

10 Offer to Dedicate Conservation Easement

- A. ~~Except for parking and its related preparation during the summer fair and race season and parking during the planned second thoroughbred horse race meet in the fall (when all other on-site parking has been exhausted), no development, as defined in section 30106 of the Coastal Act, shall occur on the lower third portion of the EOL, defined as “Easement Area” on Exhibit 11, except for the following development, if approved by the Coastal Commission in a coastal development permit: (1) creation of wetlands that are compatible with the nearby San Dieguito Wetland Restoration Project, (2) creation of habitat area, as defined by the Coastal Act, if compatible with the nearby San Dieguito Wetland Restoration Project, or (3) installation of visually compatible fencing to prevent intrusion.~~
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, ~~the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a third party approved by the Executive Director, an open space and conservation easement for the purpose of preserving open space and future wetland and/or habitat creation. Such easement shall be located over the lower third of the EOL, excepting therefrom the westernmost strip along Jimmy Durante Boulevard containing a circulation road to be connected to the proposed paved bus lane, as identified in Exhibit 11. The recorded document shall permit parking in the easement area during the summer county fair and race season and during the planned second thoroughbred horse race meet in the fall—but only when all other on-site parking has been exhausted—for up to 10 years from the date of Commission approval of this permit, at the end of which time, all usage within the easement area must cease. The recorded document shall include legal descriptions of both the applicant’s entire parcel and the Easement Area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.~~
- C. ~~The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recordation.~~

10. Offer to Transfer Title

- A. No development, as defined in section 30106 of the Coastal Act, shall occur on the approximately 4.5-acre parcel south of the Horse Park property on the south bank of the San Dieguito River, as identified in Exhibit 12, except for the following development, if approved by the

Coastal Commission in a coastal development permit: (1) creation of wetlands that are compatible with the nearby San Dieguito Wetland Restoration Project and (2) creation of habitat area, as defined by the Coastal Act, if compatible with the nearby San Dieguito Wetland Restoration Project.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate in fee to a third party approved by the Executive Director. Such dedication shall be for the approximately 4.5-acre parcel south of the Horse Park property on the south bank of the San Dieguito River, as identified in Exhibit 12. The recorded document shall include legal descriptions of both the applicant's entire parcel and the dedication area. The recorded document shall also reflect that development in the dedication area is restricted as set forth in this permit condition.
- C. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recordation.

- 11. Future Development.** This coastal development permit only authorizes the development proposed within it. Any other development not included in this permit, whether or not listed in the Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 ("Consent Orders"), shall require an amendment to this permit or a separate coastal development permit.
- 12. Other Permits.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE SOL RESTORATION, 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 (ACOE), 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.
- 13. Time Limit.** This coastal development permit is valid for 10 years from the date of Commission approval. Should the applicant wish to retain the development approved in this permit, the applicant must either submit to the Coastal Commission an application for an amendment to this permit or for a separate coastal development permit prior to the 10-year expiration date.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY.

The Applicant is proposing to relinquish all legally allowable use of the South Overflow Lot (“SOL”) for parking purposes during the summer months for its summer county fair and thoroughbred horse races and restore it to functioning wetlands. Thus, the development constitutes a change of intensity of use of land. The applicant is proposing to consolidate the parking uses of the SOL on the East Overflow Lot (“EOL”). In addition to consolidating the currently allowable parking uses on the SOL onto the EOL site, the applicant is proposing to use the EOL beyond the currently allowable 3-month use during the summer, including a plan to use the EOL and Golf Driving Range (“GDR”) for year-round parking, as well as to use the EOL for intermittent trailer storage during the summer fair and race season, to hold annual pumpkin patch and Christmas tree sales events, other future temporary events, and fairground logistics; 6,000 cubic yards of grading in the EOL and GDR; maintain an existing unpermitted banner sign on the adjacent Surf and Turf lot; create a paved bus lane with public trail parking and five interpretive signs north of the SOL restoration area; and transfer title to an approximately 4.5 acre parcel south of the Horse Park to a Commission-approved entity. The 9.55 acre section of the SOL (“Phase II”) to be relinquished and restored will comprise three marsh habitats (low marsh, mid-marsh, and high marsh) and an upland transitional habitat, as well as the restoration of intertidal mudflats. The proposed restoration project is a part of the Consent Orders approved by the Commission on March 8, 2012, in Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (“Consent Orders”). This restoration has been designed to be compatible with a restoration project for an adjacent, smaller section of the SOL (“Phase I”) that was approved by the Commission on November 15, 2012, in CDP No. 6-12-040, so as to result in one large salt marsh complex. The Phase I and Phase II design elevations will be aligned to produce a unified and interconnected southern coastal salt marsh habitat. The project site is within the Del Mar Fairgrounds, namely the unpaved SOL, EOL, and GDR across Jimmy Durante Boulevard to the south and east of the main fairgrounds.

The Del Mar Fairgrounds (“Fairgrounds”) is a state-owned and operated facility run by the 22nd District Agricultural Association (“Applicant”) and originally built to support agricultural activities and horse racing. Every summer, it hosts an annual county fair and thoroughbred horse racing meet, along with a variety of smaller events in the main Fairgrounds complex during the non-summer off season. The facility includes exhibit buildings, a grandstand, barns, stables, a show arena, a satellite wagering building, maintenance areas, parking lots, and the horse racing track. On the southern and eastern sides of the fairgrounds property, across Jimmy Durante Boulevard and adjacent to the San Dieguito River and the I-5 freeway, the Del Mar Fairgrounds contains three unpaved lots – the SOL, EOL, and GDR. The GDR operates as an approved golf driving range for members of the public to use, and is part of a larger, approved “Surf & Turf” sports and recreation facility. The Surf & Turf facility was permitted by the City of San Diego in a Conditional Use Permit in March 26, 1975. The San Diego Regional Commission subsequently approved an administrative permit for work related to the construction of the Surf & Turf on May 3, 1975 (CDP No. F2379).

The Surf & Turf facility is a recreational sports complex located between Jimmy Durante Boulevard and I-5. In addition to the GDR on its southern end, Surf & Turf contains pool facilities, a volleyball facility, miniature golf, tennis courts, and equipment retail. To the north of the site, beyond a fence and a row of shrubbery, is the adjacent Del Mar Hilton hotel. The eastern border of the site consists of a vegetated concrete drainage channel within the fenced I-5 right-of-way, and the freeway itself.

The SOL, EOL, and GDR are adjacent to the 150-acre San Dieguito Wetland Restoration Project, for which the Commission granted a Coastal Development Permit (“CDP”) as mitigation for the San Onofre Nuclear Generating Station’s cooling system’s effects on fish populations (CDP No. 6-04-088). Also adjacent is the Coast to Crest Trail, a multi-use trail system for hikers, bicyclists, and horseback riders that will eventually extend from the ocean at Del Mar to the San Dieguito River’s source on Volcan Mountain, just north of Julian, a distance of approximately 55 miles. Although the entirety of the Coast to Crest trail has not been completed, numerous segments of trail are open to the public. The portions of the trail that cross through and are adjacent to the SOL, EOL, and GDR are completed and open to the public. Part of the proposed development is the enhancement of public access to the trail by creating at least twenty public parking spaces north of the SOL restoration site. The San Dieguito River Park Joint Powers Authority (“JPA”) is responsible for implementing and maintaining the Coast to Crest Trail.

The approved Phase I restoration project was intended to resolve a long-standing Army Corps of Engineers (“ACOE”) enforcement action, and was proposed in accordance with a restoration order from the ACOE. The ACOE enforcement action was a result of unpermitted grading and stockpiling of soil on the SOL in June of 1990. Specifically, the ACOE enforcement action required the Applicant to restore 2.14 acres of salt marsh habitat in the SOL in addition to restoring other areas of the Fairgrounds. Because the majority of the restoration was required by another agency to address a past violation, that portion of the restored area cannot count as mitigation for any future Fairgrounds activity requiring a coastal development permit.

In a separate enforcement action, the Commission issued Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 (“Consent Orders”) on March 8, 2012 to address unpermitted activities at the Del Mar Fairgrounds, including landform alteration within a wetland. The Consent Orders approved by the Commission laid the ground work for the proposed Phase II restoration, as well as for the Applicant to come forward to apply for the additional requested development.

The Del Mar Fairgrounds is located within both the cities of Del Mar and San Diego, both of which have effectively certified LCPs and issue their own coastal development permits. However, the Fairgrounds represent an area of deferred certification. Moreover, it was principally built on filled tidelands. Thus, the vast majority, if not the entirety, of the site is within the Coastal Commission’s area of original jurisdiction, with Chapter 3 of the Coastal Act being the legal standard of review for permits.

B. PARKING DEMAND/TRAFFIC/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 30252 of the Coastal Act states:

- (a) *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 (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

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, west of the I-5 and east of Camino del Mar (Old Highway 101). It is between the river to the south and Via de la Valle, which is the first public east-west road north of the river. El Camino Real (east of the I-5) is currently the first continuous north-south public road east of the site. Thus, the entire Fairgrounds complex, including the project site, 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 applicant is another state agency, the property is in public ownership; 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.

Most Fairgrounds events provide a comparatively inexpensive recreational experience, for the public to enjoy within the Coastal Zone and is thereby a lower cost visitor serving recreational facility deserving of protection under Section 30213. The agricultural nature of many of the events further differentiates the property and its activities from many other recreational opportunities in the greater-San Diego coastal region. Thus, in addition to accommodating public access to nearby parks and beaches, the Fairgrounds is itself a public recreational destination.

The Fairgrounds was completed in 1936, and soon after began to host the county fair and thoroughbred racing, both of which continue to this day in what is referred to as the “summer fair and race season.” Currently, the annual San Diego County Fair (formerly known as the Del Mar Fair) attracts approximately 1.5 million visitors during its summer run of early June until the Fourth of July. The annual thoroughbred horse racing season subsequently begins two weeks later and runs until early September. The number of race attendees varies from day to day, with only a handful of special races drawing huge crowds. Racing attendance, even on peak days, never approaches the number of people attending the annual county fair on a daily basis, and thus, the entire race season attracts approximately 650,000 attendees. However, less parking is available during the racing season, as the practice track and backstretch areas, which are used for parking during the county fair, are not available for parking during race season.

With the summer county fair and race season come substantially heavy traffic loads on the surrounding roads and communities. The off-ramps from the I-5 freeway onto Via de la Valle consistently back up and impact traffic flow on the remainder of the freeway. Surface streets, especially Via de la Valle, Camino del Mar, and Jimmy Durante Boulevard, experience high traffic volumes that bring traffic flow to a near standstill as parking attendants and local police resources attempt to channel the public into the few vehicle entrances located on the Fairgrounds. These traffic loads negatively impact the surrounding communities of Del Mar, Solana Beach, and parts of San Diego, and interfere with public access to surrounding coastal resources, such as the beach, visitor serving retail facilities, and hiking trails in the river valley.

1. Parking Demand

The identified parking facilities for the Fairgrounds during the summer fair and race season include use of the SOL, EOL, and GDR. Historically, the SOL, EOL, and GDR have been used by the Applicant as a public parking reservoir during the annual fair and thoroughbred horse race meets. Because use of the lots for parking during these two large annual events predates 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 areas have been delineated as wetlands. The extent of parking that occurs within the lots has not been curtailed by the Commission during the summer fair and race season. However, at no point in the past has the Commission ever made a determination as to the existence or extent of any vested rights on the Applicant’s part that may or may not exist concerning parking in the SOL, EOL, and GDR, and any claim of such rights would need to be filed pursuant to the appropriate Commission regulations. In addition, the extent of area utilized during the summer county fair and race season on the SOL, EOL, and GDR for parking has not been restricted. However, any increase in the use of these areas or other development of the area during the summer county fair and race season, or any use for other times of the year, would require a coastal development permit.

For the summer county fair and race season, the Applicant charges the public for parking on-site (this includes the paved lots and the unpaved SOL, EOL, and GDR). An August,

2012, Parking Assessment prepared by Linscott, Law & Greenspan identified the following parking numbers:

- Phase II portion of the SOL accommodates 600 parking spaces (the other half of the SOL, including the Phase I portion, is currently fenced off from use and in the past could accommodate 650 parking spaces),
- the northern two-thirds of the EOL (Areas 1 & 2 in Exhibit 3) accommodates 1,600 parking spaces,
- the southern third of the EOL accommodates 1,400 parking spaces (Area 3 in Exhibit 3),
- and the GDR accommodates 1,500 parking spaces.

Thus, the full implementation of the Consent Orders and the ensuing restoration of the SOL into fully functioning wetland will result in the loss of all 600 parking spaces in addition to the loss of the 650-space parking potential in the western, Phase I portion of the SOL, a total of 1,250 parking spaces. ~~Furthermore, the conservation easement over Area 3—the lower third of the EOL—will eventually lead to the loss of 1,400 parking spaces within 10 years of Commission approval of this permit.~~ However, according to the Parking Assessment, these losses can be offset through implementation of recommended transportation demand measures (“TDM”), though their ability to offset further parking losses is limited, especially during the long non-summer off-season, when some of the measures, such as school parking, are unavailable. Additionally, some of the recommended measures, such as restriping, can create problems of their own, such as decreased traffic efficiency due to narrower lanes handling a greater number of vehicles. Finally, at its peak, the main Fairgrounds complex can see up to 16,000 vehicles per day. As this number outstrips the total parking inventory on-site, turnover of parking spaces between patrons over the day is vital to ensure sufficient traffic flow through and around the Fairgrounds. ~~The gradual withdrawal of parking from Area 3 of the EOL is a recognition that substantial parking capacity is being lost and therefore balances coastal resource protection with the recognized need of the Applicant for time to identify and implement appropriate alternative parking measures.~~

In addition to the aforementioned on-site fee parking lots, the Applicant also operates three free off-site shuttle lots during the annual county fair. Analysis by the Parking Assessment reveals that, while county fair attendance has been growing annually for many years, public use of the off-site shuttle lots has been growing at an even faster rate, demonstrating a growing desire by the public to avoid the traffic congestion engendered by the county fair and to a lesser extent avoid the on-site parking fee. Currently, the three off-site shuttle lots that the Applicant utilizes are: Mira Costa College (four miles to the north in Cardiff-by-the-Sea), Horse Park (east of the I-5 along Via de la Valle), and Torrey Pines High School (four miles to the southeast). It is this third shuttle lot that the study identifies as perpetually filling to capacity during the county fair. The Parking Assessment identified two additional potential shuttle lots in close proximity: Cathedral Catholic High School (970 parking spaces) and Canyon Crest High School (1,200 parking spaces). The Parking Assessment identifies these two sites as good candidates due to their close proximity to the Fairgrounds, their location on the same street as Torrey Pines High School – Del Mar Heights Road (and thus their ability to be tied into the same

shuttle route), and the fact that the lots are all empty during the weekends, the periods of highest county fair attendance (Exhibit 5). Indeed, the Applicant informed Commission staff that the Canyon Crest site was utilized during the most recent county fair.

In addition to additional off-site shuttle lots, the Parking Assessment identified additional on-site parking resources that the Applicant can utilize to compensate for any parking losses in the unpaved lots. The training track, currently used for storage by fair vendors, could be converted to 400 parking spaces by relocating the vendor storage to the stable area. Additionally, the paved parking spaces within the main fairgrounds complex can be restriped and angled so as to produce parking gains of approximately 390 spaces. However, unlike the shuttle measure, this latter option would not alleviate the traffic congestion that plagues the surrounding communities during the fair and race season and impedes public access to nearby coastal resources.

Thus, the loss of any parking spaces ~~—which, with the cessation of parking in the SOL and Area 3 of the EOL totals 2,650 spaces—~~ is mitigated by the potential gain of 2,170 off-site parking spaces through expanded shuttle service, subject to the approval of the schools whose lots will be used for the shuttle service (with the added benefit of decreased traffic volumes in the coastal zone), and 790 on-site parking spaces through reconfiguring and restriping existing paved on-site parking, for a total of 2,960 potential parking spaces. It should be noted that, being schools, the availability of the off-site shuttle lots is severely limited during the school year, which runs from September to early June, and that even outside of that time, there is no guarantee that the lots would be available in perpetuity, as the schools are free to decide whether or not to renew contracts based on various factors. For example, the Applicant has recently had rental contracts with nearby school districts to use their school buses as shuttles not renewed because the school districts desired to reduce wear on the buses to control maintenance costs. Nevertheless, the period of lowest use of the school lots coincides fairly closely to the period of greatest parking demand for the Fairgrounds – the summer – and the Applicant’s long history of successful utilization of off-site shuttle lots is clear evidence of their viability as alternative parking resources. While greater use of shuttles may lead to the need for space in the Fairgrounds to accommodate dropping off and picking up of attendees, shuttles are preferable given the reduction in vehicle trips to the Fairgrounds and the need to encourage both the Applicant and the public to consider and use alternate transportation options.

~~Additionally, the Applicant will be required by this permit to place the lower third of the EOL, Area 3, under a conservation easement granting up to 10 years of parking during the summer county fair and races and parking during the planned second thoroughbred horse race meet in the fall—though only when all other on-site parking has been exhausted—from the date of Commission approval of this permit before all usage must cease and the parcel will be left as open space and eventual restoration as a later date. This cessation of usage will represent a loss of 1,400 parking spaces, though the long-delayed implementation of the cessation recognizes the Applicant’s need for time in which to identify and implement alternative transportation and parking resources. While approval of this permit would most likely require immediate cessation of parking in Area 3 by the Applicant, the allowance for parking during the periods of heaviest parking~~

~~demand—the summer fair and races and the proposed second thoroughbred horse race meet in the fall—is a recognition on the Commission’s part that parking alternatives will take time to implement. The transportation studies submitted by the Applicant demonstrate that the traffic and parking demand of off-season events is markedly lower than the peak summer period, and that no single event comes close to the traffic and parking demands of the summer fair and races. Thus, the off-season is the prime period in which to begin to ease reliance on Area 3 for parking demand and transition to the time when it will be maintained as open space and restored to a functioning wetland. The Applicant will still retain use of thousands of parking spaces within the remaining main Fairgrounds complex, northern two-thirds of the EOL and the GDR in which to meet the parking demand of the temporary events to be held in the off-season.~~

A third measure identified by the Parking Assessment – a seasonal rail platform on the west side of the Fairgrounds – is currently undergoing environmental review but at this time it too temporally distant to be considered as a viable parking offset for the currently proposed development.

In addition to the above public parking measures, the Parking Assessment cites that since 2012, the Applicant has been utilizing an employee parking program designed to reduce employee traffic and parking loads. Under the program, certain employees can trade their parking pass for a transit pass, carpool with three or more employees so as to be allowed to park in a special lot in Surf & Turf and use a tram to reach the Fairgrounds, or park at the Horse Park and use a shuttle to reach the Fairgrounds. Finally, the Applicant also incentivizes public use of transit by offering special discount rates for the combined purchase of county fair tickets and transit passes. Thus, the alternative parking resources available to the Applicant and the conditions governing scheduling and handling of events ensure that the parking and traffic impacts are minimized and the project can be found consistent with Chapter 3 of the Coastal Act.

Nevertheless, the above parking alternatives do not change the fact that the Del Mar Fairgrounds represents an extremely popular, versatile, and widely used public recreational resource in the coastal zone. In addition to the often record-setting attendance of the summer county fair and races, the off-season sees the operation of a wide variety of events within the Del Mar Fairgrounds, ranging from smaller events such as weddings and bar mitzvahs to regionally recognized events such as garden, gun, and classic auto shows that bring participants from across the state and country. When an event is projected to have a parking demand greater than 3,000 parking spaces, usage of the EOL is required due to its size and proximity to the main parking lot, as well as being tied into the existing, approved tram system that shuttles patrons between their cars and the main Fairgrounds complex. As stated above, off-site shuttle lots are not available due to the operation of schools at this time. In addition, public safety officials have stated to the Commission that the large open space and copious livestock facilities at the Del Mar Fairgrounds have made the site a valuable resource as an evacuation center during the not-uncommon wildfires in the more rural parts of San Diego County. The Applicant has further stated that while the Linscott, Law & Greenspan parking study identified the above alternatives to the loss of 1,250 parking spaces in the SOL, loss of parking ability in the EOL or GDR would substantially impair the ability of the Del Mar Fairgrounds to

continue to offer the level and quality of service that it has to date. The Applicant has stated that while off-site parking may shift some of the traffic impact from the immediate area, off-site spaces do not turnover – meaning change users – as frequently as on-site spaces do, due to the hardship patrons must endure getting to and from their car. Because substantial loss of parking capability in the EOL would cause a domino effect in the operations of the Fairgrounds and the enjoyment of patrons to the events held at such a popular coastal resource, the further reduction of parking space is not required at this time.

However, both the Del Mar Fairgrounds and the surrounding communities have recognized the, at-times, substantial impact that traffic – induced by Fairground events or not – can have on public access and general quality of life. As such, the transportation situation is not static, but is instead primed for future changes. As mentioned above, environmental review for the seasonal rail platform is well underway, and it is possible that in the not-too-distant future that such a transportation resource will come into operation and have a transformative impact on the manner in which people attend events at the Fairgrounds. Furthermore, the California Department of Transportation is currently conducting environmental review for the upcoming expansion of the adjacent I-5 freeway, including the addition of express lanes and bike trails. Finally, the Applicant itself, recognizing the benefits in easing the hardships its patrons must endure in utilizing the Fairgrounds, is frequently adjusting and experimenting with new or improved methods of traffic management and alternative transportation utilization. Recognizing that the transportation environment in and around the project area has the high potential to become markedly different in the not-too-distant future, this permit places a 10-year time limit on its duration while mandating the submission of two periodic parking studies analyzing the parking needs of the Applicant, especially with relation to the EOL, so as to analyze the potential of relinquishing use of the lower third of the EOL at the end of the 10-year period in the hopes of eventual restoration to wetlands.

2. Public Access and Recreation

In addition to the above Fairgrounds events, a portion of the Coast to Crest Trail is sited on Fairgrounds property, which further enhances public access in this area. 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 running along the north bank of the San Dieguito River, it allows good views of the river and the existing and restored wetlands. The trail begins at the westernmost 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 will cross the Horse Park property and connect the trail to El Camino Real (CDP No. 6-04-029-A1). The public trail system is a significant component of the San Dieguito Wetlands Restoration Plan and significantly enhances low-cost public access and recreation in this area. This trail also formalizes and enhances public access through the Fairgrounds property. However, there is currently not a direct connection between the Fairgrounds and the beach other than on busy urban streets.

The portion of the trail crossing the SOL was conditioned for pedestrians only as part of the Commission's approval of the San Dieguito Wetlands Restoration (CDP No. 6-04-088), an \$86 million project conducted by Southern California Edison and approved by the Commission as mitigation for the San Onofre Nuclear Generating Station's impacts on fish populations. The raised boardwalk minimizes impacts to the delineated, but non-vegetated, wetlands currently existing on the project site by channeling traffic across the site and minimizing the potential for people to wander through the wetland vegetation itself. The elevated boardwalk provides views of the river without the necessity to walk through habitat to get close enough to see the water, and, in combination with the presence of informational kiosks, plays an important role in public education of the local ecology.

The majority of the SOL Phase II restoration area is located north of the existing JPA Coast to Crest Trail, while a new tidal inlet for the restoration area will cross beneath the trail. The new inlet will allow tidal water to enter and exit the SOL Phase II restoration area from the San Dieguito River and will be created south of the trail. The existing boardwalk will be modified with a new pedestrian bridge to cross the inlet channel. The new bridge will act as a viewing area for the restoration site, which will allow for additional educational opportunities for the public.

However, in previously approving the boardwalk in its current location, it was noted on the approved plans that "...[t]he 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 restoration sites. Public access paths are typically placed at the perimeter of restoration projects in order to facilitate maximum wetland habitat restoration and tidal circulation. In addition, a public access path traversing the restored habitat area also has the potential to disturb sensitive wetland species and may increase the amount of refuse that enters the restoration area. Special Condition No. 9 of CDP No. 6-12-040 approving SOL Phase I restoration required that the Applicant submit a written agreement to the Executive Director of the Commission acknowledging that the existing JPA trail within the entire SOL may need to be relocated in coordination with the SOL Phase II restoration.

The Applicant has included within this Phase II restoration plan a potential alternative alignment for the trail along the northern edge of the proposed Phase II restoration area. The Applicant has stated that this alternate alignment could also serve as an additional public trail in the SOL which may be available for equestrian use, bicyclists, and pedestrians. A special condition of CDP No. 6-04-088, the San Dieguito Wetlands Restoration permit, states that "...[a]t 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 No. 6-04-088 must be amended before an alternative trail or equestrian use west of I-5 on the SOL can be permitted.

Independent of the earlier issues of traffic volume, members of the public who do not live in the immediate area and wish to visit the portions of the Coast to Crest Trail west of the I-5 have difficulty accessing the site due to an acute lack of public parking. While the Fairgrounds is a public facility, the SOL, EOL, and GDR are gated off from parking when not in use for scheduled events for security reasons, and the surrounding streets do not contain public parking. Thus, members of the public must park their vehicles some distance away or drive east of I-5 in order to find parking closer to the trail sections by El Camino Real.

Among the development proposed by the Applicant is the installation of at least twenty public parking spaces along the proposed paved bus lane north of the SOL Phase II restoration area and erecting five interpretive signs along the trail between the SOL and the I-5 in cooperation with the JPA. These parking spaces will be constructed in conjunction with a proposed 20-foot wide paved bus lane along Jimmy Durante Boulevard north of the SOL restoration area. These parking spaces will give the public a conveniently located parking pool so as to make access to the Coast to Crest Trail much easier than it currently is and potentially increase its utilization, while the signage will improve the educational elements of the trail.

3. Traffic Generation

Regarding the proposed temporary events to be held in the EOL, they are foreseen to be held during the non-summer “off-season” because the EOL and GDR are needed for parking during the busy fair and races. Linscott, Law, & Greenspan conducted a non-summer off-season peak-hour traffic analysis in April of 2011 for the Applicant in order to establish a baseline Level of Service (LOS) for surrounding roads and intersections. The study found that all but one of the surrounding 19 intersections operated at acceptable LOS D or better on both weekdays and weekends. Many of the temporary events that occurred at the time of the study still occur, the vast majority being held within the much larger main Fairgrounds complex. The authorization of additional events in the smaller EOL during the offseason will not generate substantial traffic approaching the problematic levels seen during the summer. This is because the vast majority of temporary events hosted by the Applicant are already held within the main Fairgrounds complex and authorization to conduct additional temporary events within the ~~northern two-thirds of the~~ EOL will allow only one or two more additional events to be held on the Fairgrounds property (existing parking and traffic capacity permitting). Because traffic volumes are substantially lower during the non-summer off-season, the conducting of temporary events on the EOL during that time will not create the types of traffic situations experienced during the summer county fair and races. Instead, a coastal visitor serving resource – the Fairgrounds - will be able to be better utilized by the public through the provision of a greater number of visitor serving events and activities in the coastal zone.

To ensure that the development is implemented in an approved manner and that potential impacts are mitigated, ~~Special Condition No. 1 requires the Applicant to submit an approved plan for eventual cessation of all use of the lower third of the EOL and implementation of alternative traffic demand measures. Special Condition No. 2~~ **1** will

ensure that the Applicant constructs any approved development pursuant to approved final plans. **Special Condition No. 10 9** will require the Applicant to implement an approved TDM so as to control and mitigate the traffic impacts from Fairgrounds events, focusing first on off-site parking resources before implementing on-site parking measures, as well as submit two parking studies focused on the Applicant's need for its parking inventory over the years. **Special Condition No. 13** places a 10-year time limit on this permit, requiring the Applicant to reapply at the end of that time, when the parking studies can be reviewed and the impacts from the proposed development on coastal resources can be reassessed and any necessary changes may be made, including potentially setting aside the lower third of the EOL for open space and restoration.

In summary, the Commission finds the proposed restoration and expanded use of the EOL and GDR will not result in adverse impacts to coastal access. Parking will remain adequate for approved uses, and the number of low-cost visitor serving activities in the coastal zone will increase. Public access to the Coast to Crest Trail will be greatly enhanced. Therefore, the Commission finds that all access and resource concerns associated solely with proposed development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the cited policies of the Coastal Act.

C. WETLANDS

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states in relevant part:

(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 basin, vessel berthing and mooring areas, ad 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 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.*

[...]

Virtually the entire Fairgrounds property was created by filling tidelands back in the 1930's. Although most of the site is now developed, there are several areas which still contain seasonal wetland resources, including the SOL, EOL, and GDR. In addition, all of these areas are within the 100-year floodplain of the adjacent San Dieguito River and experience periodic inundation during average winter rainy seasons.

Historically, the EOL, SOL and GDR have been used by the Applicant as public parking during the annual summer county fair and races. The SOL (both Phase I and Phase II portions) is approximately 12 acres, the EOL is approximately 22 acres, and the GDR is approximately 10 acres. Because use of the areas for parking for these two annual events predated the Coastal Act, the Commission has not challenged the continued use of these areas for overflow parking during these events, even though major portions of these three areas are wetlands. In addition, in past permit actions, the Commission authorized use of these areas for parking during the years the Del Mar Grand Prix was held at the Fairgrounds (CDP No. 6-88-077), and approved the installation of an at-grade paved tram track in the EOL outside ACOE delineated wetlands (CDP No. 6-94-013). The tram is used during the annual fair and races to transport 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, approved golfing purposes.

According to historical photographs of the sites, when the SOL, EOL, and GDR are not used for parking, sparse wetland vegetation returns, and the areas are used for resting and feeding by shorebirds and migratory species. Depending on the specific species, some nesting may also occur, although most species' nesting seasons continue into the summer months when the lots have historically been used for parking. Past delineations by the ACOE have found that EOL and the GDR are, in substantial part, defined as wetlands. In compliance with the Consent Orders approved by the Commission in March 2012, the Applicant commissioned AECOM to conduct a wetlands delineation study for the EOL and the GDR (the Applicant did not conduct a new delineation for the SOL, as it is planned to be fully restored to salt marsh habitat pursuant to the ACOE enforcement action and Commission Consent Orders). The resulting September 2012 report identified 5.81 acres of disturbed alkali marsh in the EOL and 2.92 acres of disturbed alkali playa in the GDR (Exhibit 4). Both the alkali marsh and the alkali playa meet the Commission's criteria for "wetland," and thus the AECOM delineation found a total of 8.73 acres of wetlands in the EOL and GDR.

In view of the current situation and the historic patterns of use of the areas for seasonal parking, there has been loss of wetlands and significant deterioration. Restoration of the degraded areas within the SOL as proposed herein can thus be supported by the Commission. The size and location of the SOL Phase I restoration was a result of discussions between the Applicant and the ACOE, and were found acceptable by ACOE to satisfy its enforcement action. The Commission, in approving the CDP for the Phase I restoration, concurred with its siting. The location of the Phase II restoration was designed to restore whatever remainder of the SOL was left.

The majority of the Phase I restoration project was intended to resolve a long-standing ACOE enforcement action, and was proposed in accordance with a restoration order from the ACOE (the currently proposed SOL Phase II restoration is not a part of the ACOE enforcement action). The ACOE enforcement action was a result of unpermitted grading and stockpiling of soil on the SOL in June of 1990. The ACOE enforcement action requires the Applicant to restore 2.14 acres of salt marsh habitat in the SOL in addition to restoring wetlands in other parts of the Fairgrounds. Because the majority of the Phase I restoration is required by another agency to address a past violation, that portion of the restored SOL area cannot count as mitigation for any other Fairgrounds activity requiring a CDP. The proposed restoration project does not mitigate any activity permitted by the Coastal Commission.

The proposed SOL Phase II restoration plan (Exhibit 7) has been thoroughly reviewed by the Commission's staff ecologist, who has found that the proposed restoration will greatly enhance the habitat value of the subject site. In this particular case, with the special conditions attached, the proposed SOL Phase II restoration meets the requirement of the Coastal Act. 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 wetlands, because the proposed grading is necessary to lower existing elevations in that area to historic levels so that the tidal influences, which are necessary for the re-establishment of salt marsh habitat in the restoration area, can be successfully implemented. The proposed wetland impacts are associated solely with actions necessary to remove sediments and re-contour the area for restoration of coastal salt marsh. Impacts have been minimized to the maximum extent feasible, and only that grading necessary to restore habitat is proposed.

The portion of the SOL proposed to be restored currently functions as a wetland during parts of the year. However, the proposed project will allow for the functionality of the wetland habitat year round. Existing vegetation on the SOL restoration area consists of incidental nonnative species such as ice plant and grasses, although the majority of the site is bare compacted dirt. The proposed project will result in the restoration of 9.55 acres of sub tidal, salt marsh, and upland transitional habitat. These 9.55 acres will be composed of 0.42 acres of frequently flooded mudflat, 0.83 acres of frequently exposed mudflat, 1.46 acres of low salt marsh, 2.73 acres of mid salt-marsh, 2.19 acres of high salt marsh, and 1.92 acres of upland transitional habitat. The upland transitional habitat does not meet the criteria of “wetland,” and thus the SOL Phase II restoration will result in 7.63 acres of wetland habitat.

The Commission’s staff ecologist has reviewed the proposed restoration plan and concurs that the proposed restoration project will not adversely impact any existing wetland habitat. Further, the proposed restoration project will result in major habitat enhancement through the creation of additional native habitat and through increased wetland connectivity between the restoration area and the San Dieguito River. The Commission’s staff ecologist has also reviewed the Applicant’s Maintenance and Monitoring program and found that it will appropriately maintain the proposed restoration and that it will provide timely and pertinent monitoring data about the project’s success.

Although there is existing functioning wetland habitat immediately adjacent to both restoration areas, none of the existing sensitive habitat will be impacted or removed. In most cases, the first 100 feet upland from a wetland is reserved as a buffer to provide transitional habitat between the actual wetland and permitted development. Although the size of an individual buffer can vary depending on site-specific circumstances, 100 feet is generally accepted as a minimum. A buffer provides a distance barrier and a percolating medium, and reduces the chance that any adverse impact associated with development will find its way into the wetlands. In addition, buffers provide upland habitat that acts as a refuge area for birds and other species that use the various wetlands throughout the river valley.

Yet while the proposed SOL Phase II restoration will be an enhancement to the wetland habitat within and around the SOL, the proposed development on the EOL and GDR will directly impact the wetlands delineated therein. The proposed year-round use of the two lots for parking and temporary events will require periodic blading and maintenance of the soil, in addition to the compaction arising from use. While the Consent orders did list paving of the EOL as a development that the Applicant could apply for in this application, the Applicant decided to forego applying for such development. As such,

any future paving and related BMPs in the EOL will require a separate CDP application and be analyzed on its own merits for consistency with the Coastal Act. The Applicant also proposes to install a bioretention basin within the wetlands surrounding the existing storm drain mouth in the central GDR, as well as grade 6,000 cubic yards of the EOL and GDR to better contour them so as to promote better drainage into the central GDR and the drain therein (Exhibit 13). The grading will not require the import or export of any fill. Nevertheless, the above activity and work will all but eliminate any natural recovery that may currently occur on site during the non-summer off season. The proposed grading will involve elevation increases and decreases of up to one foot in many parts of the EOL and GDR, including Area 3 of the EOL. However, given that many restoration efforts occur within uplands and severely disturbed areas, the grading and intermittent parking is not expected to have a substantial impact on the efficacy of future restoration projects ~~subsequent to cessation of all development within Area 3~~. While the Coastal Act does permit direct impacts to wetlands for certain uses that meet listed criteria, the proposed development does not meet those criteria, nor is it one of the permitted uses. As such, on its face the proposed uses cannot be permitted within the wetland areas of the EOL and GDR. Based on the AECOM wetlands delineation, as the wetlands are currently concentrated in the central sections of both the EOL and GDR, they do not leave much space around the perimeter of the lots to feasibly use for the proposed development. The non-wetland perimeter space within the EOL and GDR would not provide sufficient space for temporary events or meaningful amounts of parking, as they would consist of narrow strips of land around the central wetlands. Thus, there are no feasible alternative developments that could occur on the EOL and GDR without impacting the wetlands in some way.

To partially mitigate for the anticipated impacts to the wetlands within the EOL and GDR, the Applicant is proposing to record an irrevocable offer to dedicate fee title to an approximately 4.5-acre parcel of riparian wetland located on the southern bank of the San Dieguito River south of the Applicant's Horse Park property to a Commission-approved entity (Exhibit 12). This parcel sits on the southern property line of the Horse Park, extending along the river between the eastern and western property boundaries. This 4.5-acre parcel was already the subject of a past Commission action – CDP No. 6-04-029 – a permit for development within the Horse Park that required, in part, establishing the 4.5-acre parcel as a buffer area between the Horse Park and nearby habitat. The permit required that the 4.5-acre parcel be set aside as a buffer area, and Special Condition No. 3 required the Applicant to draft an enhancement plan for the 4.5-acre parcel, though Special Condition No. 4 explicitly stated that the Applicant was not required to implement that plan. The enhancement plan was created with the understanding that it would be available for a third party to utilize in the future, and thus to date, the 4.5-acre parcel remains undeveloped and unrestored. It is anticipated that an entity, acceptable to the Executive Director, that intends to restore the wetlands in the parcel in a manner compatible with the surrounding river valley will accept the offer within the irrevocable period of the offer.

~~Furthermore, the Applicant, under this permit, to further mitigate the impacts to wetlands, will be required to record an irrevocable offer to dedicate a conservation easement over the majority of the lower third of the EOL, Area 3, which would restrict this area for~~

~~parking during the summer county fair and races and during the planned second thoroughbred horse race meet in the fall—though only when all other on-site parking has been exhausted—for up to 10 years from the date of Commission approval of this permit, at the end of which all usage within the easement area must cease (Exhibit 11). The easement area will not include a western strip adjacent to Jimmy Durante Boulevard allowing the proposed paved bus lane in the northern SOL to connect to the existing internal circulation routes in the remainder of the EOL. Per the AECOM delineation, the 10.37-acre Area 3 is the largest portion of the EOL and contains the largest concentration of the delineated wetlands—4.48 acres (Exhibit 14). Thus, over half of the total wetland acreage found in the EOL and GDR is located within Area 3, and the conservation easement will restrict all forms of development (with the exceptions allowed under Special Condition No. 11) and the easement area will be restored either through natural or artificial means within a reasonable time from the date of approval of this permit to mitigate for impacts of the approved development.~~

To ensure that the Applicant carries out the proposed restoration and development in conformance with approved methods, **Special Condition No. 2** ~~1~~ requires the Applicant to submit and follow approved final plans for all development approved in this permit. **Special Condition No. 5** ~~4~~ requires the Applicant to submit and follow an approved monitoring plan for the SOL Phase II restoration so that Commission staff will be kept apprised of periodic benchmarks indicating whether the restoration is proceeding consistent with approved plans. **Special Condition No. 7** ~~6~~ requires the Applicant to verify the elevation of the finished SOL Phase II restoration, ensuring that the created wetlands are properly placed to take advantage of the hydrological cycle and minimize the risk of recovery failure due to receiving too much or too little water. **Special Condition No. 8** ~~7~~ places limits on the siting and manner of lighting that may be used adjacent to the wetland areas so as to minimize impacts on the wildlife utilizing the habitat while still allowing reasonable use goals to be achieved. **Special Condition No. 9** ~~8~~ requires the Applicant to incorporate satisfactory buffers around designated habitat areas to allow sufficient space between existing and restored habitat areas and the proposed development and its impacts. ~~**Special Condition No. 11** requires the applicant to place the lower third of the EOL (Area 3) under a conservation easement and mandates that all uses of the lower third of the EOL cease within 10 years of Commission approval of this permit.~~ **Special Condition No. 12** ~~10~~ requires the applicant to transfer title to an approximately 4.5-acre riparian wetland parcel to a Commission-approved entity. **Special Condition No. 13** ~~11~~ makes it clear that this permit only authorizes the development contained herein, and that any future development within the SOL, EOL, or GDR will require an amendment to this permit or a separate permit. **Special Condition No. 14** ~~12~~ requires the Applicant to obtain all other permits required by the proposed development so as to ensure that all applicable environmental and land use laws have been properly followed.

However, despite the above special conditions, the proposed development will still directly impact delineated wetlands in the EOL and the GDR. This is inconsistent with the above Coastal Act policies governing habitat impacts, as none of the proposed uses meet the criteria of permitted development within wetlands. Therefore, as proposed, the development within the EOL and GDR must be denied and conflict resolution utilized.

D. CONFLICT RESOLUTION

INTRODUCTION

Occasionally, applicants propose development projects that generate conflicts between policies of the Coastal Act when evaluating a project's impacts on coastal resources. When the Commission identifies a project that generates a conflict between policies of the Coastal Act, the Commission must resolve such conflicts "in a manner which on the balance is most protective of significant coastal resources (Coastal Act Section 30007.5 and 30200(b)). Conflict resolution allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step is to identify a conflict between one or more policies of the Coastal Act. The fact that a proposal is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily indicate a conflict. Rather, the Commission must find that to deny the proposal based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy. The second step requires the Commission to apply the policy which, on balance, is most protective of significant coastal resources.

The SOL (both Phase I and Phase II portions) is an approximately 12-acre dirt lot located south of the main Fairgrounds across Jimmy Durante Boulevard. The EOL is an approximately 22-acre dirt lot located east of the main Fairgrounds across Jimmy Durante Boulevard. The adjacent GDR to the east of the EOL is a permitted (CDP No. F2379) golf facility partly consisting of tee boxes and an approximately 10-acre dirt lot into which golf balls are hit. All three lots are north of the San Dieguito River.

The Applicant is proposing to relinquish all legally allowable use of the South Overflow Lot ("SOL") for parking purposes during the summer months for its fair and horse races and restore it to functioning wetlands. Thus, the development constitutes a change of intensity of use of land. It is proposing to consolidate the parking uses of the SOL on the East Overflow Lot ("EOL"). In addition to consolidating ~~the~~ any currently allowable parking uses on the SOL onto the EOL site, the applicant is proposing to use the EOL beyond the current 3-month use during the summer country fair and races, including a plan to use the EOL and Golf Driving Range ("GDR") for year-round parking, as well as to use the EOL for intermittent trailer storage during the summer fair and race season, to hold annual pumpkin patch and Christmas tree sales events, other future temporary events, and fairground logistics; 6,000 cubic yards of grading in the EOL and GDR; maintain an existing unpermitted banner sign on the adjacent Surf and Turf lot; create a paved bus lane with public trail parking and five interpretive signs north of the SOL restoration area; and transfer title of an approximately 4.50-acre parcel south of the Horse Park property to a Commission-approved entity.

IDENTIFYING A CONFLICT BETWEEN CHAPTER 3 POLICIES

For the Commission to use the balancing approach to conflict resolution, it must establish that a project presents a substantial conflict between two statutory directives contained in

the Coastal Act. The fact that a proposed project is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Virtually every project will be consistent with some Chapter 3 policy. This is clear from the fact that many of the Chapter 3 policies prohibit specific types of development. For example, Section 30211 states that development “*shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization...*,” and subdivision (2) of section 30253 states that new development “*shall...neither create nor contribute significantly to erosion...or in any way require the construction of protective devices...*” Almost no project would violate every such prohibition. A project does not present a conflict between two statutory directives simply because it violates some prohibitions and not others.

In order to identify a conflict, the Commission must find that, although approval of a project would be inconsistent with a Chapter 3 policy, the denial of the project based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal zone effects at all. Instead, it will simply maintain the *status quo*. The reason that a denial of a project can result in coastal zone effects that are inconsistent with a Chapter 3 policy is that some of the Chapter 3 policies, rather than prohibiting a certain type of development, affirmatively mandate the protection and enhancement of coastal resources, such as sections 30210 (“*maximum access...and recreational opportunities shall be provided...*”), or 30213 (“*[l]ower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided*”). If there is ongoing degradation of one of these resources, and a proposed project would cause the cessation of that degradation, or if the denial would otherwise result in adverse effects inconsistent with the affirmative mandate, then denial would result in coastal zone effects inconsistent with the applicable policy. Thus, the only way that denial of a project can have impacts inconsistent with a Chapter 3 policy, and therefore the only way that a true conflict can exist, is if: (1) the denial of the project will result in adverse effects on coastal resources that would be stopped by approval of the project and (2) there is a Chapter 3 policy requiring the Commission to protect and or provide the resource being degraded. Only then is the denial option rendered problematic because of its failure to fulfill the Commission’s mandate.

With respect to the second of those two requirements though, there are relatively few policies within Chapter 3 that include such an affirmative mandate to enhance a coastal resource. Moreover, because the Commission’s role is generally a reactive one, responding to proposed development, rather than affirmatively seeking out ways to protect resources, even policies that are phrased as affirmative mandates to protect resources more often function as prohibitions. For example, Section 30240’s requirement that environmentally sensitive habitat areas “*shall be protected against any significant disruption of habitat values*” generally functions as a prohibition against allowing such disruptive development, and its statement that “*only uses dependent on those resources shall be allowed in those areas*” is a prohibition against allowing non-resource-dependent uses within these areas. Denial of a project cannot result on a coastal zone effect that is inconsistent with a prohibition on a certain type of development. As a result, there are few policies that can serve as a basis for a conflict.

Similarly, denial of a project is not inconsistent with Chapter 3, and thus does not present a conflict, simply because the project would be less consistent with a Chapter 3 policy than some alternative project would be, even if approval of the proposed project would be the only way in which the Commission could prevent the more inconsistent alternative from occurring. For denial of a project to be inconsistent with a Chapter 3 policy, the project must produce tangible, necessary enhancements in resource values over existing conditions, not over the conditions that would be created by a hypothetical alternative. In addition, the project must be fully consistent with the Chapter 3 policy requiring resource enhancement, not simply less inconsistent with that policy than the hypothetical alternative project would be. If the Commission were to interpret the conflict resolution provisions otherwise, then any proposal, no matter how inconsistent with Chapter 3, which offered even the smallest, incremental improvement over a hypothetical alternative project, would necessarily result in a conflict that would justify a balancing approach. The Commission concludes that the conflict resolution provisions were not intended to apply based on an analysis of different potential levels of compliance with individual policies or to balance a proposed project against a hypothetical alternative.

In addition, if a project is inconsistent with at least one Chapter 3 policy, and the essence of that project does not result in the cessation of ongoing degradation of the resource the Commission is charged with enhancing, the project cannot “create a conflict” by adding on an essentially independent component that does not remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, project proponents could regularly “create conflicts” and then demand balancing of harms and benefits simply by offering unrelated “carrots” in association with otherwise-unapprovable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and manipulative process. The balancing provisions were not designed as an invitation to enter into a bartering game in which project proponents offer amenities in exchange for approval of their projects.

Finally, a project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the project without violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all the relevant Chapter 3 policies, then the proposed project does not create a true conflict among Chapter 3 policies.

In sum, in order to invoke the balancing approach of conflict resolution, the Commission must conclude all of the following with respect to the proposed development: (1) approval of the project would be inconsistent with at least one of the policies listed in Chapter 3 of the Coastal Act; (2) denial of the project would result in coastal zone effects that are inconsistent with at least one policy listed in Chapter 3 of the Coastal Act; (3) the project results in tangible, necessary resource enhancement over the current state, rather than an improvement over some hypothetical alternative project; (4) the project is fully consistent with the resource enhancement mandate that requires the sort of benefits that the project provides; (5) the benefits of the project are a function of the very essence of

the project, rather than an ancillary component appended to the project description in order to create a conflict; and (6) there are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

An example of a project that presented such a conflict is a project approved by the Commission in 1999 involving the placement of fill in a wetland in order to construct a barn atop the fill, and installation of water pollution control facilities, on a dairy farm in Humboldt County (CDP No. 1-98-109, O'Neil). In that case, one of the main objectives of the project was to create a more protective refuge for cows during the rainy season. However, another primary objective was to improve water quality by enabling the better management of cow waste. The existing, ongoing use of the site was degrading water quality, and the barn enabled consolidation and containment of manure, thus providing the first of the four necessary components of an effective waste management system. Although the project was inconsistent with Section 30233, which limits allowable fill in wetlands to seven enumerated purposes, the project also enabled the cessation of ongoing resource degradation. The project was fully consistent with Section 30231's mandate to maintain and restore coastal water quality and offered to tangibly enhance water quality over existing conditions, not just some hypothetical alternative. Thus, denial would have resulted in impacts that would have been inconsistent with Section 30231's mandate for improved water quality. Moreover, it was the very essence of the project, not an ancillary amenity offered as a trade-off, that was both inconsistent with certain Chapter 3 policies and yet also provided the benefits. Finally, there were not alternatives identified that were both feasible and less environmentally damaging.

THE PROPOSED PROJECT PRESENTS A CONFLICT

The development proposed by the Applicant meets the above criteria for applying conflict resolution. First, approval of the proposed development would be inconsistent with Coastal Act policies that protect wetlands (Section 30233) because the proposed year-round development would result in an unallowable fill of wetlands in the EOL and GDR. However, denial would also result in coastal zone effects that are inconsistent with multiple sections of the Coastal Act: Sections 30230 (protection and restoration of marine resources), 30231 (water quality), 30210 (public access and recreational opportunities), 30213 (lower cost visitor and recreational facilities), and 30250 (consolidating development).

Denial of the proposed development would result in impacts to the biological productivity of marine resources and water quality of coastal waters inconsistent with sections 30230 and 30231. A denial would allow continuing use of the SOL for fair and race parking during the peak summer months which would allow continuing impacts to adjacent marine resources along the San Dieguito River delta, including the functioning lagoon area. The continuing impacts include substantial driving on the dirt-covered SOL, which causes significant sediment discharge into the air and into the adjacent marine resources, affecting the biological productivity of marine systems. Additionally, given the significant number of parking spaces in the SOL, the number of cars in these areas are likely to discharge automotive pollutants (engine oil, transmission fluid, coolant, heavy metals, etc.); thus, denial of the proposed development would result in continuing

discharge of pollutants into adjacent coastal waters and would fail to maintain the biological productivity and quality of those coastal waters. Denial of the proposed project would also result in inconsistency with the mandate in section 30230 to enhance and, where feasible, restore marine resources because denial would prevent triggering the March, 2012, Cease and Desist Order's and Restoration Order's (CCC-12-CD-02 and CCC-12-RO-02) requirement that the Applicant implement Phase II of the SOL restoration (the Applicant's current proposal), which calls for the restoration of approximately 9.55 acres of wetland and riparian habitat within 30 months of the approval of a CDP for use of the proposed development site – the EOL and GDR. Clearly, this restoration project would only be feasible if the Commission approves the proposed use of the EOL and GDR. ~~Additionally, denial of the permit would prevent the 10.37-acre lower third of the EOL, with its 4.48 acres of wetlands as delineated by the AECOM study, from being placed under a conservation easement and eventual restoration into a wetland habitat.~~ Denial, then, would result in coastal zone effects that are inconsistent with section 30230. Therefore, denial of the proposed project would result in impacts to marine resources and biological productivity and water quality that would be inconsistent with sections 30230 and 30231.

Further, denial of the proposed development would result in impacts to public access and lower cost visitor and recreational facilities, inconsistent with sections 30210 and 30213. Among the development proposed by the Applicant is the installation of at least twenty public parking spaces along the proposed paved bus lane north of the SOL Phase II restoration area and erecting five interpretive signs along the restoration area in cooperation with the JPA. These parking spaces will be constructed in conjunction with a proposed 20-foot wide paved bus lane along Jimmy Durante Boulevard north of the SOL restoration area. These parking spaces will give the public a conveniently located parking pool so as to make access to the Coast to Crest Trail much easier than it currently is and potentially increase its utilization, while the signage will improve the educational quality of the trail. Therefore, denial of the proposed development will result in coastal zone effects that are inconsistent with the Coastal Act mandate to provide maximum access and recreational opportunities to and along the coast and lower cost visitor and recreational facilities.

Finally, denial of the proposed development would result in a failure to consolidate commercial development in a manner that will not have significant adverse effects, either individually or cumulatively, on coastal resources, inconsistent with section 30250. As encompassed in the preceding paragraphs, the proposed development will consolidate existing uses of the SOL, EOL, and GDR in a manner that will result in protection of significant coastal resources, including the resources in the adjacent upland and marine habitats. Failure to approve such a project will enable the applicant to continue its current use of the EOL and SOL much closer to these resources, which would be inconsistent with section 30250. Therefore, denial of the proposed project would result in effects on coastal resources inconsistent with section 30250.

Given the foregoing, approval of the proposed project would be inconsistent with section 30233 of the Coastal Act while denial of the proposed project would result in adverse effects on coastal resources, which would be inconsistent with section 30230, 30231,

30210, 30213, and 30250 of the Coastal Act. Therefore, the proposed project represents a true conflict between one or more policies of the Coastal Act, thereby requiring application of section 30007.5 to resolve the conflict.

ANALYSIS OF RESOURCE ENHANCEMENT

With the conflict between several Coastal Act policies established, the Commission must resolve the conflict in a manner which on balance is the most protective of significant coastal resources. In reaching this decision, the Commission evaluates the project's tangible, necessary resource enhancements over the current state and whether they are consistent with resource enhancements mandates in the Coastal Act. In the end, the Commission must determine whether its decision to either deny or approve a project is the decision that is most protective of significant coastal resource.

Section 30233 of the Coastal Act states:

(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;
- 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 facilities;
- 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.

Despite the often-times sparse and dusty appearance of the EOL and GDR, their location within the San Dieguito River Valley, proximity to the San Dieguito River, and - in the case of the GDR - past role as part of the San Dieguito River channel itself, has resulted in various wetland delineation surveys over the years identifying substantial acreages of wetlands in the two sites. AECOM's 2012 wetland delineation identified 5.81 acres of disturbed alkali marsh in the EOL and 2.92 acres of disturbed alkali playa in the GDR. ACOE's 1993 survey delineated even more wetlands - approximately 20 acres - though the majority was concentrated in the GDR at the time. Despite the temporary and seasonal nature of much of the development proposed by the Applicant, the frequency and cumulative impact of all of the contemplated activities - grading, vegetation removal, compaction, etc. - will result in permanent impacts to the identified wetlands, and preclude any chance for their natural recovery. Section 30233 only allows seven uses in wetlands, and the proposed development does not meet the criteria for any of the identified permitted uses. The proposed development - year-round parking, trailer storage, temporary events, etc. - will directly impact the delineated wetlands within the EOL and GDR by compacting and removing the soil and any vegetation that may happen to grow in between uses, as well as substantially hinder any natural recovery that may currently occur during the non-summer off season. This result would be inconsistent with Section 30233.

While wetlands have been delineated on the proposed project site, due to a lengthy history of chronic disturbance, the habitat value of the wetlands is fairly low, which past Commission action, in addition the current report by the staff ecologist Dr. John Dixon, has noted. Dr. Dixon believes that even if this permit were to be denied and the EOL and GDR were to be left alone for the nine-month off season and allowed to recover, the annual grading and parking that occurs every summer drastically diminishes any long term habitat value that the wetlands might represent. In April of 1994, the Commission approved CDP 6-94-013, which authorized the construction of a 4,135 foot long, 15-foot wide paved roadway for pedestrian trams along portions of the perimeter of the EOL (though not the GDR) and placement of excavated materials on the non-wetland areas of the dirt parking lot. In the related staff report, the Commission makes note of the above-referenced 1993 ACOE wetland delineation and had the Applicant revise their proposal to delete all portions of the proposed tramway that would have directly impacted the delineated wetlands. Nevertheless, the Commission required no wetland buffers "due to the disturbed condition of most of the adjacent wetlands and the historic use of the area...Although this lot adjacent to the proposed development has been mapped as wetlands by the ACOE, based primarily on soils and hydrology, this area adjacent to the proposed tramway does not now function as a viable wetland." The staff report continues that "the Commission is not concerned about the indirect impacts of the proposed tramway on the adjacent wetlands and the lack of buffer because the parking lot fails to function as a viable habitat due to ongoing human and vehicular disturbances...If the paved tramway were not permitted, the parking function will continue to disturb the area and not allow wetland habitat values to establish."

Furthermore, in the past, the Commission has approved temporary or seasonal uses in the EOL and GDR. One of the more substantial approvals was allowing parking on the EOL and GDR during the Del Mar Grand Prix (CDP Nos. 6-86-164, 6-88-77, 6-89-033, 6-90-

043, 6-91-073, et al.), an annual race car event that was held for several years on the main parking lot within the Fairgrounds and requiring parking in the EOL and GDR. In the related staff reports, the Commission made note of the long history of parking by the Applicant during the fair and race season in the EOL and GDR, and for preparation of the EOL and GDR for the Grand Prix parking, the Commission permitted public parking in those areas as well.

Thus, while wetlands are present in the EOL and GDR, their substantially disturbed nature results in little habitat value and thus, do not necessarily represent a significant coastal resource in the same way as a fully functioning healthy wetland. Nevertheless, Section 30233 does not provide for such distinctions in calling for wetlands protection, and permitting the proposed development will result in a conflict with that policy of the Coastal Act.

The San Dieguito River Valley has a long history of being impacted by human activity. Original development within the river valley consisted of agriculture, which led to substantial placement of fill so as to increase arable acreage. Subsequent development included golf courses, surface roads and highways, an airport, and the current Del Mar Fairgrounds facility, all of which precipitated even more placement of fill within the river valley. As a result, a substantial percentage of wetlands and riparian habitat were lost; even the course of the San Dieguito River was substantially altered over the years, and until the previous decade, the river did not even reach the Pacific Ocean.

Only relatively recently in the history of the river valley has the value of the river and its associated wetlands been recognized by public and private organizations alike. Through past permits and actions, the Coastal Commission has attempted to restore the natural value of the river valley either through the conditioning of development projects within the river valley or approving restorative projects as they are proposed. A prime example of this is the San Dieguito Wetlands Restoration Project, an \$86 million project conducted by Southern California Edison and approved by the Commission as mitigation for the San Onofre Nuclear Generating Station's impacts on fish populations. The project has entailed the reopening of the San Dieguito River mouth to the Pacific Ocean, removing derelict development such as abandoned bridges and roads, and restoring approximately 150 acres of wetland and riparian habitat.

South of the Del Mar Fairgrounds across Jimmy Durante Boulevard is the SOL. The SOL is an approximately 12-acre dirt lot that represents a substantial portion of open riparian land along the San Dieguito River west of the I-5 freeway. Currently, the SOL is used for parking during the summer fair and race season and is bordered along the south by a public trail that follows the San Dieguito River.

In November 2011, the Commission approved CDP No. 6-12-040, authorizing the Applicant to conduct Phase I of the SOL restoration. Phase I will restore 2.41 acres of salt marsh, .55 acres of high marsh, and .22 acres of upland transition area within the SOL. While beneficial for its restorative values, Phase I represents only a small portion of the entire SOL. Phase II, restoration plans for which have already been submitted to Commission staff for review and approval, is the main part of the restoration project.

Phase II is designed to restore 9.55 acres of wetland and riparian habitat, ranging from subtidal and frequently flooded mudflats to salt marshes and upland riparian transitional habitat. The restoration area will contain a direct opening to the San Dieguito River, permitting tidal and storm-related flows during the year. Phase II will link and integrate with Phase I, resulting in approximately 12 acres of restored wetlands and upland transitional habitat.

However, while Phase I is already approved, under the language of the March, 2012, Cease and Desist Order and Restoration Order – namely Section 3.2.H – the Applicant is not required to move forward on SOL Phase II until a permit for use of the EOL is approved by the Commission. The Cease and Desist Order 3.2.H states in relevant part:

Within (six) 6 months of the effective date of these Consent Orders, DAA shall submit, for the review and approval of the Commission's Executive Director, a Removal, Restoration, Revegetation, and Monitoring Plan ("SOL Restoration Plan") for the restoration of the SOL to a fully tidal saltmarsh within thirty (30) months of Commission approval of a CDP for development or use on the EOL...

As stated above, staff ecologist Dr. John Dixon's report on the habitat value of the EOL and GDR found extremely low values. When the Applicant submitted the Phase II plan to the Commission for review, it was Dr. Dixon who analyzed the plan and found the proposed restoration satisfactory. Dr. Dixon believes that the 9.55 acres of restored functioning habitat will represent a substantial increase in the habitat values present in the project site, especially in comparison to any value that would be retained by denying the proposed development and permitting the annual summer fair and race season parking to continue. In comparing the habitat value present on the EOL and GDR with what will be achieved once Phase II is implemented, it is evident that approval of the proposed project will result in the SOL restoration and would be most protective of coastal resources, like the coastal habitat resources in the San Dieguito River Valley.

Furthermore, past Commission action has recognized that the Fairgrounds have long presented a popular, low cost visitor serving recreational facility in the coastal zone. The agricultural nature of the Fairgrounds further sets it apart from other nearby coastal recreational resources. Approval of this permit will allow this sizeable public facility to be better utilized by expanding the number of public events it will be able to host, whereas denial would curtail public recreation in a popular public facility.

Finally, as stated above, past Commission action has recognized that some parking on portions of the EOL and GDR occurred prior to passage of the Coastal Act, and has allowed such parking to occur to date. Should this permit be denied, the Applicant will continue summer county fair and race season parking in portions of the SOL, EOL, and GDR that were used prior to the Coastal Act. As Dr. Dixon notes in his report, the substantial impacts from this annual activity effectively destroys the habitat value of the EOL and GDR. Thus, staff recommends that the Commission resolve this policy conflict by approving the proposed development, as conditioned, because approval will result in a resolution that, on balance, is most protective of significant coastal resources.

However, this is not the end of the conflict analysis. An application does not present a conflict among Chapter 3 policies if there are feasible alternatives that would achieve the proposal's essential goals without violating any Chapter 3 policy. Thus, an alternatives analysis is a critical condition precedent to conflict identification, and to invocation of the balancing. Due to the manner in which the delineated wetlands are arranged on the EOL and GDR – taking up the central sections of both areas – there is no alternative development proposal that would offer feasible use of the remaining narrow strips of land around the perimeter of the EOL and GDR without impacting the wetlands therein, regardless of whether or not wetland buffers were also included in the development. An alternative that places the lower third of the EOL under an open space conservation easement would remove the largest portion of parking area of the EOL, approximately 1,400 spaces, from use and impact the ability of the Applicant to satisfy parking demand for popular long-running off-season events such as garden shows, classic car shows, and gun shows, when parking demand exceeds what is located in the main parking lot and vehicles are redirected onto the EOL. The range of reasonable alternative includes those that would feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project. (CAL. Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th957, 980.) Alternatives include no project, off-site locations for the proposed development, ~~and~~ on-site development with implementation of a TDM program, and placing the lower third of the EOL under an open space conservation easement prohibiting parking. The no-project alternative is not a feasible alternative because it would result in continued summer disturbance of the SOL which would continue to adversely impact water quality and biological resources of the adjacent coastal waters and it wouldn't achieve most of the central objectives of the proposed development, including hosting temporary events on the site during the off-season and building a much needed public parking area on the site along the river trail. Using off-site locations for the proposed development is also not a feasible alternative because the parking demand for the anticipated off-season temporary events on the main fairgrounds area is such that off-site lots cannot fully accommodate all the parking capacity that would be provided by the consolidated EOL and GDR areas while also providing for the anticipated loss of parking area from the SOL ~~and the southern third of the EOL~~ that would result from approval of this project. As mentioned before, the most adequate off-site parking resources for the Applicant's needs are nearby school campuses. However, as the non-summer off-season coincides with the school year, these parking resources are not available for use when large events such as the classic car show are held. Furthermore, the reduced turnover of parking spaces that can occur when shuttle lot parking is utilized can reduce the ability of the Applicant to properly handle large inflows of patron vehicles. Without adequate parking for off-season temporary events, there would be significant adverse impacts on traffic and nearby coastal access during each event throughout the year. Moreover, one of the central objectives of providing 20 public parking spaces for the coastal accessway along the river on site cannot be achieved off site because the access and recreation resource is on the subject site. Thus, the proposed development, as conditioned, is a feasible alternative that achieves the basic objective of the project – hosting temporary events on the consolidated EOL/GDR area, providing parking for temporary events, that occur on the main fairgrounds area, and providing a much-needed public parking area along the river trail at this location of the trail – while substantially lessening the environmental impact of the

project. The project lessens the environmental impact by moving the current allowable use of the SOL away from coastal waters which reduces impacts on marine resources, providing mitigation for fill of the EOL and GDR degraded wetlands through the offer to dedicate the Horse Park property in fee ~~and an offer to dedicate an open space easement on the southern third of the EOL~~, requiring a transportation demand management program to mitigate for the loss of parking on the SOL ~~and southern third of the EOL~~ and implementing water quality controls on the consolidated EOL and SOL areas during all events. Therefore, the proposed project and conditions of approval represent the reasonable alternative that feasibly attains most of the basic objectives of the project while avoiding or substantially lessening any of the significant effect of the project.

Nevertheless, the above parking alternatives do not change the fact that the Del Mar Fairgrounds represents an extremely popular, versatile, and widely used public recreational resource in the coastal zone. In addition to the often record-setting attendance of the summer county fair and races, the off-season sees the operation of a wide variety of events within the Del Mar Fairgrounds, ranging from smaller events such as weddings and bar mitzvahs to regionally recognized events such as garden, gun, and classic auto shows that bring participants from across the state and country. When an event is projected to have a parking demand greater than 3,000 parking spaces, usage of the EOL is required due to its size and proximity to the main parking lot, as well as being tied into the existing, approved tram system that shuttles patrons between their cars and the main Fairgrounds complex. As stated above, off-site shuttle lots are not available due to schools being in operation at this time. In addition, public safety officials have stated to the Commission that the large open space and copious livestock facilities at the Del Mar Fairgrounds have made the site a valuable resource as an evacuation center during the not-uncommon wildfires in the more rural parts of San Diego County. The Applicant has further stated that while the Linscott, Law & Greenspan parking study identified the above alternatives to the loss of 1,250 parking spaces in the SOL, loss of parking ability in the EOL or GDR would substantially impair the ability of the Del Mar Fairgrounds to continue to offer the level and quality of service that it has to date. The Applicant has stated that while off-site parking may shift some of the traffic impact from the immediate area, off-site spaces do not turnover – meaning change users – as frequently as on-site spaces do, due to the hardship patrons must endure getting to and from their car. Because substantial loss of parking capability in the EOL would cause a domino effect in the operations of the Fairgrounds and the enjoyment of patrons to the events held at such a popular coastal resource, the further reduction of parking space is not required at this time.

However, both the Del Mar Fairgrounds and the surrounding communities have recognized the, at-times, substantial impact that traffic – induced by Fairground events or not – can have on public access and general quality of life. As such, the transportation situation is not static, but is instead primed for future changes. As mentioned above, environmental review for the seasonal rail platform is well underway, and it is possible that in the not-too-distant future that such a transportation resource will come into operation and have a transformative impact on the manner in which people attend events at the Fairgrounds. Furthermore, the California Department of Transportation is currently conducting environmental review for the upcoming expansion of the adjacent I-

5 freeway, including the addition of express lanes and bike trails. Finally, the Applicant itself, recognizing the benefits in easing the hardships its patrons must endure in utilizing the Fairgrounds, is frequently adjusting and experimenting with new or improved methods of traffic management and alternative transportation utilization. Recognizing that the transportation environment in and around the project area has the high potential to become markedly different in the not-too-distant future, this permit places a 10-year time limit on its duration while mandating the submission of two periodic parking studies analyzing the parking needs of the Applicant, especially with relation to the EOL, so as to analyze the potential of relinquishing use of the lower third of the EOL at the end of the 10-year period in the hopes of eventual restoration to wetlands.

Thus, at this time there is no viable alternative that would satisfy all Chapter 3 policies, as the delineated arrangement of the existing wetlands in the central portions of the EOL and GDR preclude feasible uses that would not have some impact on the wetlands. As a result, there is a true conflict, and the Commission must proceed to resolve the conflict in a manner that is, on balance, “the most protective of significant coastal resource.” PRC 30007.5

CONCLUSION

While none of the policy conflicts arising from denial would, in and of themselves, be sufficient to give rise to a conflict resolution finding, the cumulative impacts of so many policy conflicts in this case can support the use of the balancing test to resolve the conflict. Given all the factors, the Commission finds it is, on balance, most protective of the significant coastal resources to approve the proposed development as conditioned. This will achieve the underlying goals in the proposed project and the Consent Order by finally bringing many of the Applicant’s current and future activities under an approved, conditioned CDP while still protecting and restoring marine habitat (Sections 30230 and 30231), promoting public recreation (Sections 30210 and 30213), and concentrating development in the coastal zone (Section 30250).

The proposed development, as conditioned herein, provides for the restoration of 9.55 acres of the SOL into fully functional tidal salt marsh and riparian habitat and the transfer of title for an approximately 4.5-acre riparian parcel south of the Horse Park property and the placement of 10.37 acres of the river adjacent EOL, with its 4.48 acres of wetlands, under a conservation easement for eventual restoration. This will increase the viable habitat for multiple protected species, including the Gnatcatcher and California Least Tern, as well as improve the visual resource quality of the watershed. The consolidating of development on the EOL and GDR, coupled with the existing 100-foot buffer, will limit impacts to habitat, providing a larger, more contiguous natural open space than would exist with denial of the proposed development. The areas where development would be permitted are adjacent to currently developed areas containing uses ranging from parking lots to recreational facilities. The Commission therefore finds that approval of the proposed development, as conditioned, would result in clustering of development, expansion of restored wetlands and sensitive habitat, and reduction of encroachment into sensitive habitat areas.

This finding of approval that the proposed development, as conditioned, is the most protective option for coastal resources is also based on the understanding that the restoration of the SOL will be successfully completed within 30 months following approval of this permit ~~and that EOL Area 3 will be free of use within 10 years of approval~~. Therefore, the Commission finds that, considering the foregoing, approval of the proposed development will resolve the policy conflict in a manner which, on balance, is the most protective of significant coastal resources.

E. HYDROLOGY/FLOOD HAZARDS

Section 30236 of the Act addresses natural hazards, and states, in part:

Channelization, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development.

[...]

Section 30253 of the Act states, in part:

New development shall do all of the following:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

[...]

The Del Mar Fairgrounds is located within the 100-year floodplain of the San Dieguito River, and is thus subject to flooding during storm events. However, a large number of permanent and temporary structures already exist in the main complex west of Jimmy Durante Boulevard, many of them pre-dating the Coastal Act. In contrast, the SOL, EOL, and GDR are unpaved lots with no permanent structures located within them. In past actions, the Commission has found that the placement of fill or permanent structures in a floodplain may substantially alter natural water flows and therefore be inconsistent with Coastal Act sections 30236 and 30253. On the other hand, structures that can accommodate periodic inundation without being damaged do not cause natural water flows to be redirected and therefore can be found consistent with Section 30236.

The Coastal Act requires new development to minimize risks to life and property of both the project site and the surrounding area. Any additional fill or creation of building footprints could result in changes in the hydrology of the adjacent San Dieguito River. Modifications to the current flooding patterns, in which a large portion of the 100-year flood waters are contained on the Fairgrounds property, could result in increased flood hazards to existing upriver and downstream developments. This could, in turn, lead to proposals for further channelization of the river. In this particular case, the proposed improvements are not adding new permanent structures to the floodplain, but instead are proposing the use of temporary structures such as trailers and tents. These should not substantially alter flood flows, as they can be relocated relatively quickly or, if not, would not be able to hold back substantial amounts of water.

The SOL Phase II restoration plan will not erect any permanent structures, but instead increase the acreage of available tidal marsh habitat. This would only affect hydrology insofar as a new inlet would be created to allow inflows and outflows for the restored wetlands. As this would not impede the natural flow of the river valley hydrology, but actually improve upon it by expanding the tidal habitat within the rest of the river valley and increase the acreage that can accommodate rising water levels by piercing the existing berm with an inlet, the restoration will not have an adverse impact on hydrology.

Regarding the EOL and GDR, these areas are already partially flooded during the rainy season and can sometimes be substantially flooded during extreme storm events. During such events, the river level rises and crests the berms that separate the EOL and GDR from the river, flooding the areas for extended periods of time. While the Applicant is proposing to hold future events on the EOL, no permanent structures are proposed, and thus the risk of changes to hydrology and water flows is minimal. Furthermore, the absence of permanent structures reduces the need to erect flood protection devices. The only impervious surface being constructed would be a twenty-foot wide bus lane and public trail parking along the northern boundary of the SOL towards the EOL, with ingress/egress off Jimmy Durante Boulevard. The proposed bus lane would be twenty feet wide and approximately 1,350 feet long. This represents a small fraction of the multi-acre SOL, EOL, and GDR lots and will not substantially alter the unpaved nature of them, and will not adversely impact their ability to absorb water or direct run off to existing inlets and storm water conveyance systems. Therefore, the proposed development does not constitute a substantial alteration of a river and is thus consistent with section 30236.

Nevertheless, **Special Condition No. 4 3** requires the Applicant to waive any future flood protection to protect the development proposed in this permit, while **Special Condition No. 3 2** required the Applicant to assume all risks liabilities arising from approval of this permit. In summary, the Commission finds that the proposed development will not result in a significant change to current flood flows across the site. The amount of impermeable surfaces will not substantially increase, and storm drain, as always, will continue to allow the passage of flood waters. Therefore, the Commission finds the proposed development, as conditioned, consistent with Chapter 3 of the Coastal Act.

F. WATER QUALITY/MARINE RESOURCES

The following Coastal Act Policies are most pertinent and state:

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The SOL is part of identified as “Basin 15” in the Erosion Control Water Quality BMP Plan, Del Mar Fairgrounds, April 2012 ([Exhibit 6](#)). As part of Basin 15, flows in the SOL generally sheet flow westerly towards the San Dieguito River. Inflow to Basin 15 occurs at two locations – a pipe inflow from the Fairgrounds (Basins 11 and 12) and a pipe inflow from curb inlets within Jimmy Durante Boulevard (Basin 14). The pipe from the fairgrounds has existing BMPs in place including a low flow pipe to prevent erosion during small storm events, a gravel apron around the high flow outlet, and a fiber roll around the low flow outlet.

Currently, the SOL restoration area has elevations ranging approximately +3 to +5.5 feet National Geodetic Vertical Datum (NGVD). In order to achieve appropriate wetland elevations, the SOL restoration area will be graded to elevations ranging from approximately -1.5 to approximately +4.5 feet NGVD. Thus, the proposed development includes a large amount of grading to attain the desired elevation for salt water marsh.

The Phase II restoration will not involve creating any new impervious surfaces or the introduction of any pollutants. Rather, by restoring historic wetlands (removing fill and revegetating mostly bare areas), the proposed development increases the runoff filtration potential along the north bank of the San Dieguito River. Therefore, the surface water entering the San Dieguito River from the project site will carry a lower level of sediments and pollutants.

The creation of multiple acres of functioning tidal wetlands will improve the water quality of the greater river habitat by allowing the tidal flushing of water. Wetlands serve multiple roles in maintaining ecosystem health, filtering water moving in and out under tidal influences as well as filtering runoff flowing from higher riparian habitat. The wetland vegetation helps retain pollutants, whether particulate sized or greater, so as to decrease the pollutant load entering the body of water. Furthermore, the current use of the SOL as overflow parking increases the risk of vehicular fluids or public-created litter entering the river, while the cessation of this activity will substantially reduce such risks.

The main fairgrounds' 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. Meanwhile, the combined EOL and GDR are designated as "Basin 16" in the Erosion Control Water Quality BMP Plan, Del Mar Fairgrounds, April 2012 (Exhibit 6). Basin 16 is described as consisting of both the unpaved and paved parking in the EOL, the GDR, recreational vehicle lot, and tennis courts. There is a berm located along the southern boundary of the EOL and GDR, separating them from the San Dieguito River to the south. During storm events, runoff sheet flows southeast across the EOL and onto the GDR, which has a storm drain inlet in the central, depressed portion of the lot that then directs water to the river. Not all water reaches this storm drain, and significant ponding across the EOL and GDR can occur during and after a storm event. The Applicant is proposing to grade 6,000 cubic yards of the soil within EOL and GDR in order to minimize ponding enhance run off flows towards the existing drain in the center of the GDR. No import or export of material is proposed, and instead the Applicant will grade the existing soil onsite so as to create uniform contours towards the proposed BMPs and the existing drain (Exhibit 13).

Part of the development proposed is the construction of a paved bus ingress/egress point on Jimmy Durante Boulevard on the northern edge of the SOL so as to access a proposed twenty-foot wide bus lane with at least twenty public parking spaces for trail users. The bus lane and parking spaces are not included in the acreage area being used for the SOL Phase II restoration, though they would be adjacent to the riparian upland on the northern side. The bus lane will proceed parallel Jimmy Durante Boulevard northeast to the EOL to access circulations roads there.

With the creation of any paved surface area designed for vehicular use, the risks of impacts from pollutants from both vehicles and the public are a concern. The paved nature of the road and its use by vehicles means that litter and fluids would not be absorbed by the ground, but instead could flow into the surrounding area. To mitigate this risk, the Applicant is proposing BMPs in the form of bioretention basins on the southern boundary of the proposed lane and parking spaces, in between them and the SOL Phase II restoration area. These basins will capture, retain, and filter runoff that may originate in the proposed lane, aiding to reduce the impact on surrounding habitat. Furthermore, the proposed Phase II restoration plan, reviewed and approved by the Commission's staff ecologist, took into account the proposed bus lane and parking

spaces, and planned the arrangement and siting of the restored habitat accordingly. The proposed restoration includes upland transition areas to buffer the tidal salt marsh portions from impacts from the paved road.

Another beneficial aspect of the Applicant's proposal is the transfer of title to an approximately 4.5-acre riparian parcel on the southern bank of the San Dieguito River south of the Applicant's Horse Park property. This parcel sits on the southern property line of the Horse Park, extending along the river between the eastern and western property boundaries. This 4.5-acre parcel was already the subject of a past Commission action – CDP No. 6-04-029 – a permit for development within the Horse Park that required, in part, establishing the 4.5-acre parcel as a buffer area between the Horse Park and nearby habitat. The permit required that the 4.5-acre parcel be set aside as a buffer area, and Special Condition No. 3 required the Applicant to draft an enhancement plan for the 4.5-acre parcel, though Special Condition No. 4 explicitly stated that the Applicant was not required to implement that plan. The enhancement plan was created with the understanding that it would be available for a third party to utilize in the future and, thus to date, the 4.5-acre parcel remains undeveloped and unrestored. It is anticipated that the Applicant will transfer the parcel to an entity that intends to restore the wetlands in the parcel in a manner compatible with the surrounding river valley environment. The anticipated creation of up to 4.5 acres of additional wetlands will further enhance the overall river valley environs by adding more natural water treatment capacity adjacent to the river.

Because the Applicant is proposing temporary events in the EOL as well as year-round parking in the EOL and GDR, there is the potential to introduce pollutants into those lots during the rainy season, where there is the risk of runoff carrying it into the nearby San Dieguito River. Because the EOL and GDR are unpaved dirt lots, they are permeable surfaces that can absorb some amount of rainfall without runoff into the nearby river. However, the Applicant is proposing to grade 6,000 cubic yards of the EOL and GDR to enhance runoff flows and reduce ponding (Exhibit 13). Because runoff on the EOL sheet flows to the southeast towards the storm drain inlet in the center of the GDR, the Applicant will construct a bioretention basin in the southeast corner of the EOL and around the southern third of the EOL required by this permit to be set aside as open space so as to intercept runoff before it enters the GDR, as well as install a bioretention basin in the aforementioned central part of the GDR to capture additional runoff. Additionally, the Applicant's parking management plans as reviewed by Commission staff indicate that during storm events substantial enough to impact use of the EOL and GDR, the Applicant will exhaust parking in the paved, main Fairgrounds complex, then proceed to utilize any dry or low impacted portions of the EOL and then, if more parking is needed, utilize the Horse Park property. This will limit intrusion into substantially flooded, unpaved areas, limiting "churning" of soils and sedimentation and turbidity impacts in the nearby river.

~~Finally, the Applicant will be placing the lower third of the EOL (EOL Area 3 in Exhibit 11) under a conservation easement that will require cessation of all uses of the lower third of the EOL within 10 years of Commission approval of the permit. Thus, the section of the EOL closest to the river will be free of all uses after 10 years, creating even greater distance between the river and the temporary events and parking located within the~~

~~northern two-thirds of the EOL. This cessation will also allow the delineated wetlands within the lower third to be restored, either gradually over time or through a separate, permitted restoration project undertaken at a future date. Either way, once usage ceases, the Applicant will be required to construct permanent BMPs around the perimeter of the lower third of the EOL to further protect it and the adjacent river area from impacts flowing from usage of the remainder of the EOL and GDR.~~

To ensure that the Applicant constructs the proposed development in conformance with approved methods, **Special Condition No. 2 1** requires the Applicant to submit and adhere to revised final construction/BMP and site plans that are in substantial conformance with Commission-approved plans. ~~**Special Condition No. 11** requires the Applicant to place the lower third of the EOL (EOL Area 3) under a conservation easement and cease all use of the southern third of the EOL within 10 years of Commission approval of this permit.~~ **Special Condition No. 12 10** requires the applicant to transfer title to the 4.5-acre riparian parcel south of the Horse Park to a Commission-approved entity.

The Phase II restoration will enhance the quality of the surface water that collects on the areas east and south of Jimmy Durante, that are not part of the existing storm drain system that operates on the developed portions of the Fairgrounds property. Therefore, the Commission finds the development, as conditioned, consistent with the cited policies of the Coastal Act with respect to water quality concerns.

G. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in relevant 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 landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The Del Mar Fairgrounds is located in the San Dieguito River Valley near the mouth of the San Dieguito River, west of the I-5 and east of Camino del Mar (Old Highway 101). It is between the river to the south and Via de la Valle, which is the first public east-west road north of the river. The entire fairgrounds complex, including the project site, is located between the sea and first public roadway.

The San Dieguito River Valley is a scenic view shed running westward to the Pacific Ocean and contains various trails, including the Coast to Crest Trail, a portion of which runs through the Fairgrounds, adjacent to and south of the SOL, EOL, and GDR. In addition, the valley is bordered to the north and south by hills offering multiple scenic overlooks of the valley and the ocean, and drivers on the north-south I-5 can look west across the river valley as they are crossing it.

Included in the development that the Applicant is proposing is the right to hold future temporary events on the EOL, with various height limits applying depending on which section of the EOL the event is being held. The Applicant is proposing a 100 foot height limit for events on the northern third of the EOL, ~~and~~ a 50-foot height limit that extends to 85 feet for tents and copies up to 3 weeks duration or at least 50% transparent above 50 feet for the middle third of the EOL, and a 25-foot height limit for events in the lower third of the EOL (Exhibit 3).

While the main Fairgrounds complex contains multiple large structures, including exhibit halls, show arenas, and the main Grandstand facility, the SOL, EOL, and GDR are flat, unpaved lots located across Jimmy Durante Boulevard south and east of the main fairgrounds, adjacent to the San Dieguito River and east of I-5. The northern and middle thirds of the EOL are bordered on the west, north, and east by existing development consisting of the main fairgrounds complex to the west, the RV lot and the Hilton to the north, and the main portion of the Surf & Turf sports complex to the east. These existing developments all currently obstruct or substantially interfere with ground level public views across the northern and middle thirds of the EOL, especially from Via de la Valle and the I-5. In other words, while the areas are open, existing development (Grandstand, exhibit halls, etc.) is located west of the development. However, the SOL, the southern third of the EOL, and the GDR, are flat, unpaved lots adjacent to the San Dieguito River, are not blocked as substantially by the surrounding development, and contribute to the open space character of the river area. Drivers on the I-5 are able to look out over these lots across the river valley as it flows towards the ocean, though the view of the ocean itself is obstructed by existing development.

In addition to public views from the roads around the SOL, EOL, and GDR, the surrounding hills are home to multiple public vista points both west and east of the I-5. The height of these vista points, coupled with the fairly open nature of the river valley, permit expansive views of the area westward, to where the river meets the ocean (Exhibit 8). The currently unpaved state of the SOL, EOL, and GDR contribute to the open space nature of the river vista, and form a visual buffer between the development on the main Fairgrounds and the nearby river and lagoon area.

The proposed SOL Phase II restoration will not erect any development that will substantially rise above grade to block views. Instead, the restoration of the SOL into a fully functioning tidal wetland will enhance the visual quality afforded to members of the public looking across the area from either surface streets or the hilltop vistas by replacing an unpaved parking area with an increasing amount of functioning habitat and water area to view, in addition to the related wildlife usage.

Regarding the GDR, the Applicant is only proposing to use it for overflow parking when needed; the remainder of the time, it will continue its function as a permitted golf driving range facility, and thus no height limit is being proposed for that lot at this time. Should the Applicant desire to use the GDR for anything other than parking or the permitted golf operations, it will require an amendment to the permit.

Regarding the EOL, the tallest temporary events, those with the potential to utilize temporary structures up to 100 feet or 50 feet in height, are concentrated in the northern two-thirds of the EOL. The 100-foot height limit in the northern third is designed to emulate, but not exceed, the height of the existing Grandstand facility that already blocks views east of the proposed development on the northern portions of the EOL. The Applicant has provided visual renderings of how such temporary structures may appear when viewed from the hilltop vista point located at High Bluff Drive, on the southern rim of the river valley to the east of the I-5 (Exhibit 9). Currently, the northern two-thirds of the EOL are already blocked by existing development. Thus, events located on the northern two-thirds will be largely shielded from public view. This will meet the goal of concentrating the development footprint in the coastal zone and limit the visual encroachment of development into the San Dieguito River view shed. The southern third of the EOL, being located closest to the river and the view shed, will have the most restrictive limits on use in the form of a 25-foot height limit ~~only parking during the summer county fair and races or when all other onsite parking has been exhausted during the planned second thoroughbred horse race meet in the fall. Furthermore, the conservation easement over the majority of lower third of the EOL required by this permit will mandate cessation of all usage of the easement area within 10 years of Commission approval of this permit. Thus, the lower third will eventually be free of man-made obstructions and, through either natural or artificial restoration, eventually become functioning wetlands integrated with the surrounding river valley, adding to its visual quality.~~

Finally, the Applicant is proposing to retain an unpermitted banner sign measuring approximately 10 feet by 30 feet and mounted between two approximately 35-foot high poles west of and adjacent to the I-5, within the Surf & Turf facility. While some of the development within the Surf & Turf facility blocks views west over the northern two-thirds of the EOL, the banner sign is much taller than the surrounding development and protrudes prominently above this development (as it was most likely designed to do so as to attract drivers' attention). Because the banner sign is much more prominent than the surrounding development, it blocks additional views that are not blocked by the surrounding, lower-lying development, such as views southwest over the southern portions of the EOL towards the river. The sign is visually incompatible with the backdrop of the river valley and the surrounding vegetated hills. Finally, development on the Surf & Turf site is governed by CDP No. 6-11-059; Special Condition No. 2 explicitly states, in part, that "[n]o tall, free-standing pole or roof signs shall be allowed (this includes banners strung between poles or buildings)..." Thus, the above development, and the visual impact concerns it engenders, was already considered by the Commission in a past permit action. To remove this impact and adhere to the previous approved permit, this permit is conditioned to require the Applicant to remove the banner sign.

To ensure that these development limits are formalized so as to protect visual resources, **Special Condition No. 2 1** requires the Applicant to implement development according to approved plans. ~~**Special Condition No. 11** requires the Applicant to place the lower third of the EOL (EOL Area 3 in Exhibit 11) under a conservation easement mandating cessation of all usage within 10 years of Commission approval of this permit.~~ Thus, by

keeping the SOL and the GDR free of temporary structures, their open space nature will be retained, and impacts to visual resources along the San Dieguito River will be minimized, and the Commission can find the proposed development, as conditioned, in conformance with the visual resource policies of the Coastal Act.

H. LOCAL COASTAL PLANNING

Although the project site is in an area of original jurisdiction and thus not subject to the policies and regulations of San Diego's and Del Mar's certified LCPs, it is nonetheless consistent with the Fairgrounds/Racetrack land use designation and zoning. 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 Cities of San Diego and Del Mar to continue to implement their certified LCPs.

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

The 22nd District Agricultural Association is the lead agency for purposes of CEQA review for this project, and the Coastal Commission is a responsible agency. 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 public access, flood hazards, water quality, wetland impact, and visual resources 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

- 1) AECOM August, 2012 Wetland Delineation Report
- 2) Linscott, Law, and Greenspan August, 2012 Parking Assessment
- 3) ECORP August, 2012 SOL Phase II Restoration Plan
- 4) Commission Ecologist Dr. John Dixon's September, 2013 Memo
- 5) Cease & Desist and Restoration Orders of March, 2012: CCC-12-CD-02 & CCC-12-RO-02 <http://documents.coastal.ca.gov/reports/2012/3/Th8-s-3-2012.pdf>

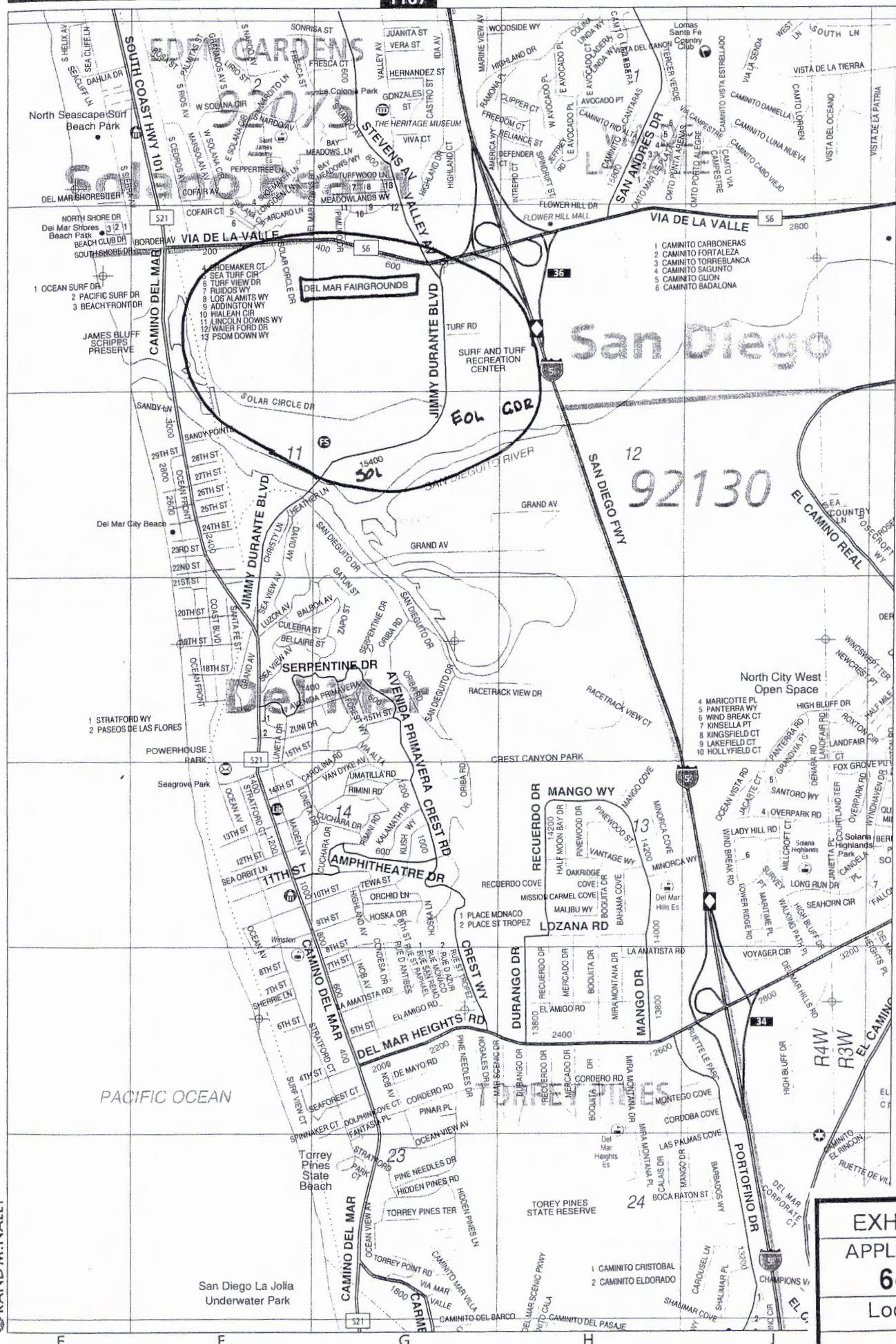


EXHIBIT NO. 1
APPLICATION NO.
6-12-067
Location Map

Google earth

feet
km



4000

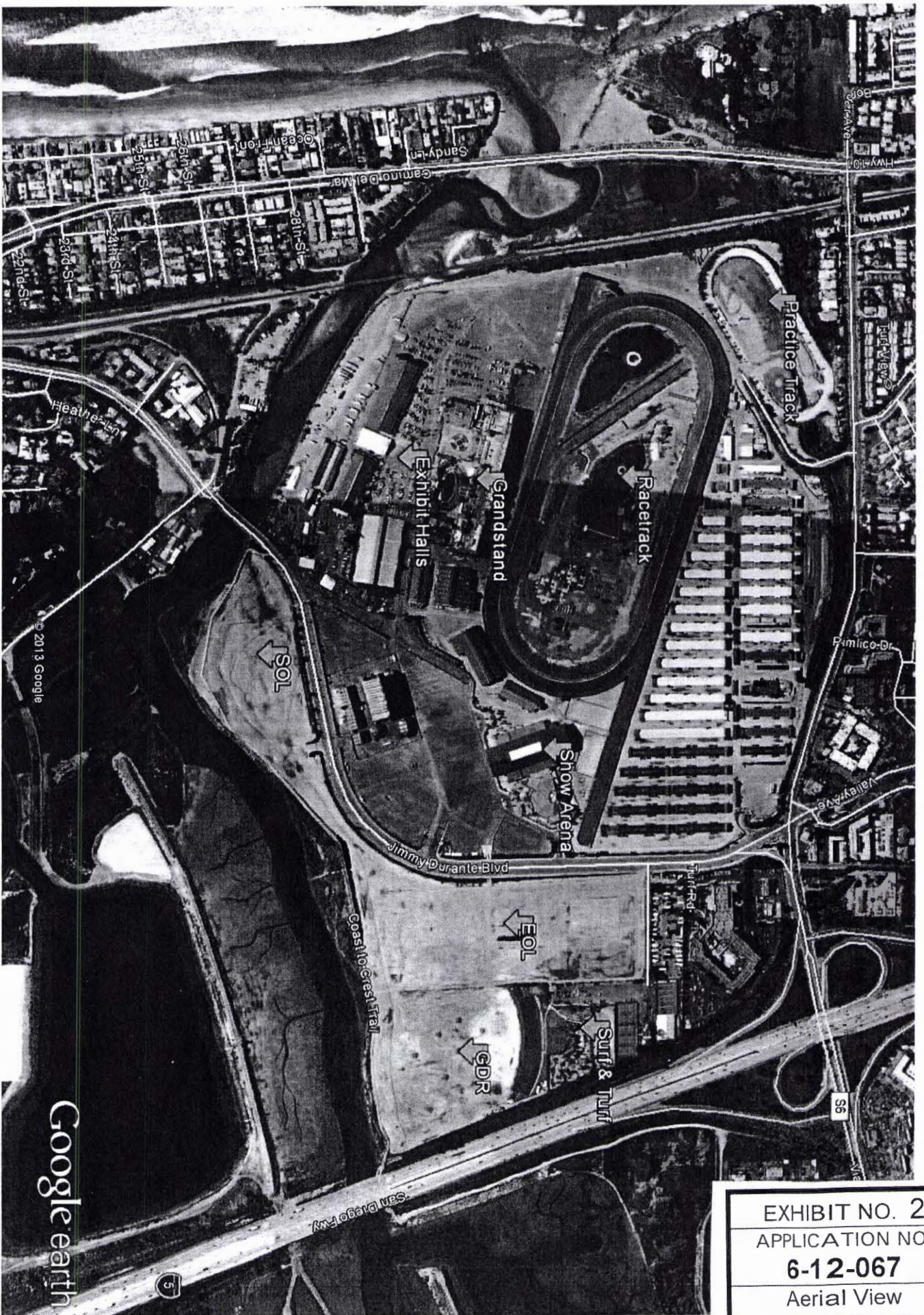


EXHIBIT NO. 2
APPLICATION NO.
6-12-067
Aerial View

USE AND HEIGHT

FOR ARIANA

USES PERMITTED: TEMPORARY EVENTS AND ASSOCIATED STRUCTURES, PARKING FOR TEMPORARY EVENTS, INTERMITTENT TRUCK AND TRAILER STORAGE, AND YEAR ROUND OVERFLOW PARKING FOR ALL FAIRGROUND EVENTS.

HEIGHT: A 100-FOOT HEIGHT LIMIT SHALL BE OBSERVED FOR ALL TEMPORARY STRUCTURES.

COLLAPSE

USES PERMITTED: TEMPORARY EVENTS, PARKING FOR TEMPORARY EVENTS, AND RAILED STRUCTURES, YEAR-ROUND OVERLEAF PARKING FOR ALL FAIRGROUND EVENTS.

HEIGHT: A 50-FOOT HEIGHT LIMIT SHALL BE OBSERVED FOR ALL TEMPORARY STRUCTURES. ADDITIONAL HEIGHT UP TO A MAXIMUM OF 85 FEET SHALL BE ALLOWED FOR: 1) TENTS AND CANOPIES IN PLACE FOR NO LONGER THAN 3 WEEKS DURATION, OR 2) OTHER STRUCTURES THAT HAVE A TRANSPARENCY FACTOR OF AT LEAST 50 PERCENT ABOVE THE 50-FOOT HEIGHT PLANE.

COL AREA

HEIGHT: A 25-FOOT HEIGHT LIMIT SHALL BE OBSERVED FOR ALL TEMPORARY STRUCTURES.

LIES PERMITS

WEIGHT, NO HEIGHT LIMIT
OVER 1000 LBS. PER TRUCK, TRAILER STORAGE.
INTERMITTENT TRUCK AND TRAILER STORAGE.

100-FOOT

PERMITTED USES WITHIN THE IDENTIFIED 100-FOOT BUFFER SHALL BE LIMITED TO:

PLAN FOR

2. PUBLIC ACCESS ON APPROVED TRIALS

ALL LIGHTING

AND AWAY FROM THE WETLANDS. LIGHT SPillover LEVELS INTO THE RESTORED WETLAND 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.

1. **QUALITY**

2. THE 2ND DAA SHALL BE RESPONSIBLE FOR MAINTAINING THE DRAINAGE AND DIRECTION FACILITIES IDENTIFIED IN THE GRADING, DRAINAGE, AND RUNOFF CONTROL PLANS PREPARED BY D-04 ENGINEERS (PARALLEL TO CONSENT GRANT AND DESIGN ORDER C-92-12-02) AND RESTORATION ORDER C-92-12-02 IN A FUNCTIONAL CONDITION OVER ITS LIFETIME. NECESSARY REPAIRS AND DURING EACH RAINY SEASON (INCLUDING CONDUCTING AN ANNUAL INSPECTION NO LATER THAN SEPTEMBER 30TH EACH YEAR AND (2) SHOULD ANY OF THE PROJECT'S SURFACE OR SUBSURFACE DRAINAGE/FILTRATION REQUIREMENTS OR OTHER BMPs FAIL RESULTING IN INCREASED EROSION, THE 2ND DAA SHALL BE RESPONSIBLE FOR ANY NECESSARY REPAIRS TO THE DRAINAGE/FILTRATION SYSTEM BMPs AND RESTORATION OF THE ERODED AREA.

TRANSDUCER

TELEPHONE NUMBERS AND LISTS SHOULD BE CONSISTENT WITH ALL APPLICABLE NOISE STANDARDS AND RESTRICTIONS SET FORTH IN THE DEL MAR FAIRGROUNDS SOUND CONTROL PLAN PREPARED BY LSA ASSOCIATES, INC. PURSUANT TO CONSISTENT CEASE AND DESIST ORDER CEC-12-CD-02 AND RESTORATION ORDER CEC-12-RO-02, TO THE EXTENT FEASIBLE. GIVEN AMBIENT NOISE GENERATED BY I-5 AND JIMMY DUNANE BLVD.

PAGE

ANY SIGNAGE FOR A TEMPORARY EVENT SHALL BE INTEGRATED WITHIN THE EVENT SITUATIONS AND SHALL NOT INTRUDE INTO THE VIEWSHED OF THE SAN DIEGO RIVER VALLEY. WHEN THE OPEN, NO BARRIERS, BILLBOARDS, OR OTHER SIGNS, WHETHER OR NOT TRUCKS OR OTHER EQUIPMENT SHALL BE PLACED SO AS TO BE OBSCURE TO ITS TRAFFIC. SIGNAGE DISPLAYING A BEING USED FOR PURPOSES OF ADVERTISING TO 4-5 TRAFFIC, ON SITE DIRECTIONAL, SIGNAGE INTENDED FOR PEDESTRIAN VIEWING MAY BE PLACED THROUGHOUT THE EVENT SITE.

ALL AREAS

ANY NEW VEGETATION PLANTED ON THE EOL OR DOR SHALL CONSIST OF NATIVE, DROUGHT-TOLERANT, AND NON-INVASIVE PLANTS WHICH WILL NOT HAVE AN ADVERSE EFFECT ON NEARBY WETLANDS. NO PLANT SPECIES LISTED AS PROHIBITABLE AND/OR INVASIVE BY THE CALIFORNIA NATIVE PLANT SOCIETY OR THE CALIFORNIA NATIVE PLANT COUNCIL, OR AS MAY BE IDENTIFIED FROM PLANT SPECIES LISTED AS MONITOR SPECIES BY THE STATE OF CALIFORNIA OR THE U.S. FEDERAL GOVERNMENT SHALL BE PLANTED.



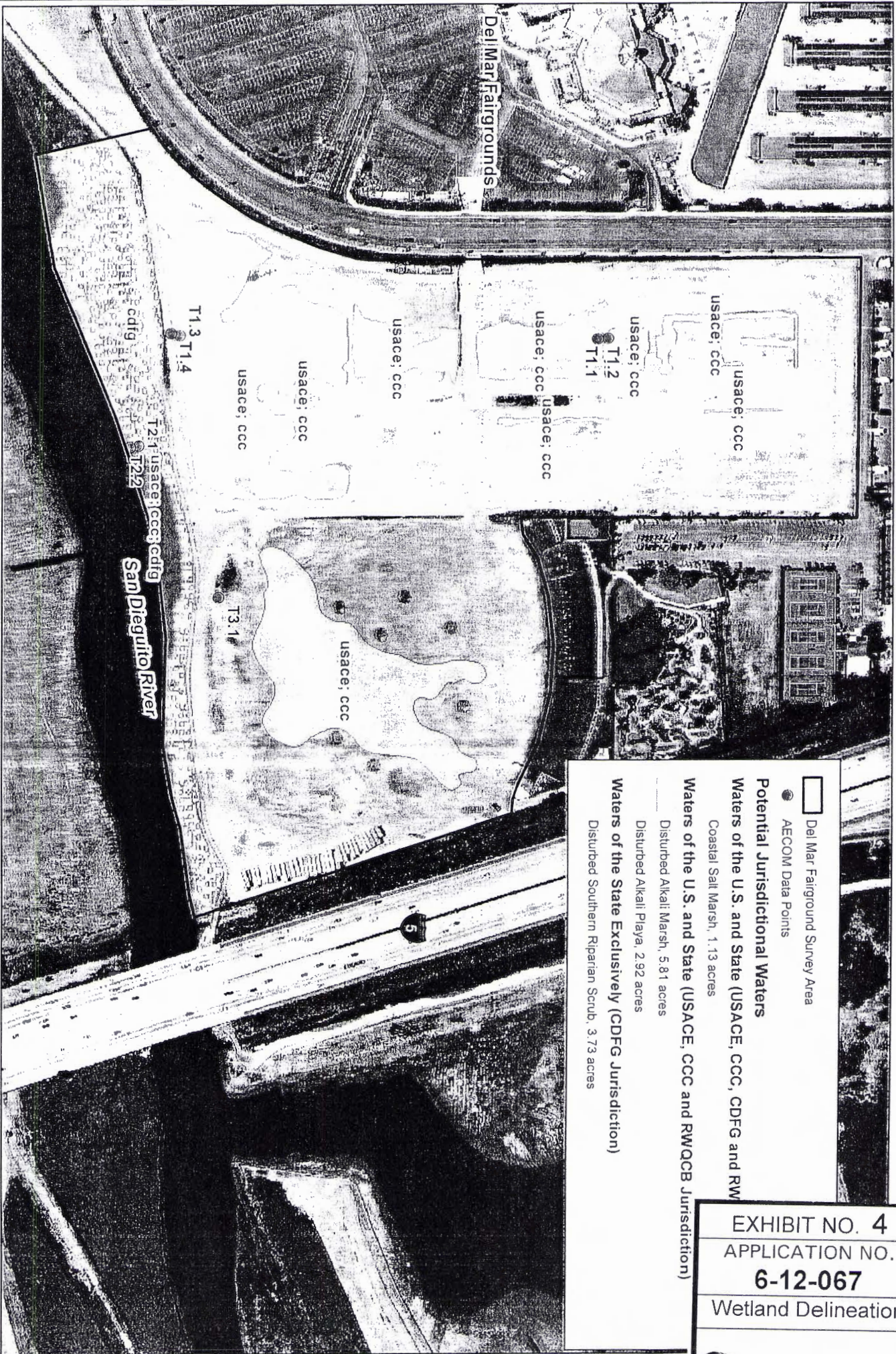
ATKINS

3570 Carmel Mountain Rd
Suite 300
San Diego, CA 92108
(619) 674-8100

DISPATCHER OF WORK:

DATE: _____
POST: _____

EXHIBIT NO. 3
APPLICATION NO.
6-12-067
Site Plan



- ☐ Del Mar Fairground Survey Area
- ☒ AECOM Data Points

Potential Jurisdictional Waters

Waters of the U.S. and State (USACE, CCC, CDFG and RW)

Coastal Salt Marsh, 1.13 acres

Waters of the U.S. and State (USACE, CCC and RWQCB Jurisdiction)

Disturbed Alkali Marsh, 5.81 acres

Disturbed Alkali Playa, 2.92 acres

Waters of the State Exclusively (CDFG Jurisdiction)

Disturbed Southern Riparian Scrub, 3.73 acres

EXHIBIT NO. 4
APPLICATION NO.
6-12-067
Wetland Delineator

