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# W21b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-13-0713

**Applicant:** City of Carlsbad

**Agent:** Megan Enright

**Location:** Northern half of Buena Vista Creek channel between Jefferson Street Bridge east to Coastal Zone Boundary, Carlsbad and Oceanside, San Diego County

**Project Description:** Implement ongoing maintenance program within the Buena Vista Creek channel consisting of hand removal of vegetation to increase flood protection of the adjacent properties and improve water quality in the Buena Vista Creek and Lagoon

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The City of Carlsbad proposes to implement an ongoing maintenance program to consist of annual hand removal of vegetation within the northern half of the Buena Vista Creek channel between the upstream face of Jefferson Street Bridge east towards the downstream face of South Vista Way Bridge to provide flood protection of the adjacent Plaza Camino Real shopping center

and improve water quality within the channel and Buena Vista Lagoon. Vegetation removal would be minor in nature and conducted in phases such that only 10% of the vegetation within the project site would be removed each year over a period of five years. Vegetation removal would occur only in freshwater marsh and the understory of southern willow scrub; no trees would be removed as part of the project. Vegetation would be cut at ground level or the water's surface with non-mechanized equipment to ensure no ground disturbance.

The proposed project site spans three jurisdictions, including the Cities of Carlsbad and Oceanside, both of which have certified Local Coastal Programs (LCPs), as well as the Commission's original permit jurisdiction. Section 30601.3 of the Coastal Act provides that when a project requires a coastal development permit (CDP) from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, and with the agreement of the City of Oceanside, Commission staff has agreed to process the subject permit as a consolidated CDP. Therefore, the Chapter Three policies of the Coastal Act remain the legal standard of review, with both Cities' certified LCPs providing guidance.

While the proposed project is anticipated to have few coastal resource impacts, if carried out as proposed, due to the project site's location within the Buena Vista Creek channel and proximity to Buena Vista Lagoon, there is still the potential for the project to adversely impact sensitive coastal resources associated with the creek and lagoon. Therefore, Commission staff is recommending: **Special Condition #1** that requires the submission and approval of final plans; **Special Condition #2** that limits the permit term to five (5) years; **Special Condition #3** requiring a qualified biologist to be onsite should any work be necessary during the bird nesting season; **Special Condition #4** that requires the submission of other necessary agency permits and approvals, including from the California Department of Fish and Wildlife; **Special Condition #5** that requires the applicant to comply with mitigation measures associated with the Final Supplemental Environmental Impact Report; **Special Condition #6** requiring applicant's assumption of risk, waiver of liability and indemnity; and **Special Condition #7** requiring certain project operations and maintenance responsibilities to ensure that potential adverse impacts to biological resources and water quality are avoided. With the proposed conditions, potential impacts to sensitive coastal resources will be avoided.

Commission staff recommends **approval** of coastal development permit application 6-13-0713, as conditioned.

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### EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Aerial Map
- Exhibit 3 – Index Map
- Exhibit 4 – Site Plan

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit 6-13-0713 subject to the conditions set forth in the staff recommendation.*

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

### Resolution:

*The Commission hereby approves Coastal Development Permit 6-13-0713 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the development. Said plans shall be in substantial conformance with the preliminary plans submitted on September 5, 2013.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final 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. **Permit Term.**

A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of five (5) years, commencing upon the date of issuance of Coastal Development Permit No. 6-13-0713, after which time the authorization for continuation and/or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, any vegetation removal within the project area will require either the issuance of a new coastal development permit or an amendment to this coastal development permit.

B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue the creek channel maintenance program prior to the date that authorization for the development expires, the City shall cease all vegetation removal activities.

C. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

3. **Sensitive Species Surveys.**

To avoid potential impacts to breeding activities of least Bell's vireo, migratory songbirds, and other bird species associated with the adjacent sensitive open water, wetland, riparian, and coastal sage scrub habitat, work shall be avoided during the bird nesting season, between February 15<sup>th</sup> and September 15<sup>th</sup> of any year, unless authorized in writing by the California Department of Fish and Wildlife (CDFW) and/or the U.S. Fish & Wildlife Service. If work is allowed during the nesting season of such species, a bird monitor shall be onsite while work occurs, and any work will stop or move if the monitor finds that such species are being negatively affected by construction.

4. **Required Agency Permits and Approvals.** PRIOR TO COMMENCEMENT OF VEGETATION REMOVAL, the applicant shall submit to the Executive Director, all necessary local, state, and/or federal discretionary permits, including approval from the California Department of Fish and Wildlife. 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. The Executive Director shall determine if such modifications, if any, require an amendment to this permit or a separate coastal development permit.
5. **Mitigation Monitoring and Reporting Program.** To protect the riparian and wetland habitat within and adjacent to the proposed project site, the applicant shall comply with the mitigation measures identified in the Mitigation Monitoring and Reporting Program in the Final Supplemental Environmental Impact Report.
6. **Assumption of Risk, Waiver of Liability and Indemnity.** 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.

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

7. **Operations and Maintenance Responsibilities.** It shall be the applicant's responsibility to ensure that the following occurs during all project operations:
  - (1) Maintenance crews shall be trained in native habitat identification and the parameters of the maintenance program, with emphasis on trimming of vegetation to allow for flood control as opposed to complete root removal.
  - (2) No construction equipment shall be stored in the project area, except during active project operations.
  - (3) All vegetation trimming shall occur within City easements. If any maintenance activities must be conducted outside of City easement limits, then the City shall obtain permission from the land owner prior to beginning any such work.
  - (4) The proposed project shall not interfere with public access on adjacent trails in any manner.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION & BACKGROUND**

The proposed project is for the implementation of the “Buena Vista Creek Channel Maintenance Program” (hereinafter referred to as “program”), to consist of hand removal of vegetation within the northern half of the Buena Vista Creek channel between the upstream face of the Jefferson Street Bridge east towards the downstream face of the South Vista Way Bridge over a five-year period. Vegetation removal would occur only in freshwater marsh and the understory of southern willow scrub; no trees would be removed as part of the project. Maintenance personnel would access the vegetation via a pontoon and use non-mechanized equipment (machetes, knives, sickles, saws, hand shears, loppers) to the maximum extent feasible or, when necessary, mechanized equipment (weed whackers, chainsaws). Vegetation would be cut at ground level or the water’s surface, with the belowground/water portions of the plants remaining in place.

The proposed project site is 11.2 acres located in the Cities of Carlsbad and Oceanside in northern San Diego County, south of State Highway 78 (Hwy 78), north of Marron Road, and east of Jefferson Street (Exhibit 1). The project site is situated along the northern half of Buena Vista Creek channel south of Hwy 78 and immediately north of the Plaza Camino Real shopping center (Exhibit 2). The portion of the project that is within the coastal zone starts at the upstream face of the Jefferson Street Bridge, extends approximately 960 feet upstream towards the South Vista Way Bridge, and is approximately 3.4 acres.

The proposed project site spans three jurisdictions, including the Cities of Carlsbad and Oceanside, both of which have certified LCPs, as well as the Commission’s original permit jurisdiction. Section 30601.3 of the Coastal Act provides that when a project requires a CDP from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, and with the agreement of the City of Oceanside, Commission staff has agreed to process the subject permit as a consolidated CDP. Therefore, the Chapter Three policies of the Coastal Act remain the legal standard of review, with both Cities’ certified LCPs providing guidance.

The Buena Vista Creek channel was relocated to its current alignment to construct a parking lot for the Plaza Camino Real shopping center in 1979. The Buena Vista Channel Maintenance District (Maintenance District) was formed in 1989 and is administered by the City of Carlsbad. The Maintenance District boundaries include a portion of the Buena Vista Creek channel from the Jefferson Street Bridge upstream, or east, to the South Vista Way Bridge. The services provided to the Maintenance District by the City include periodic cleaning of the overgrowth and silt that impedes the free flow of water in the creek channel. A typical method of removal would be by utilization of dredging equipment consisting of a drag line and/or muck pump. At times, this would require the removal of dense vegetation materials by hand.

The Buena Vista Creek channel serves as a flood control channel and is riprap-sided with a natural bottom. Since the channel was completed, the north half of the channel has been dredged twice, once in 1993 and again in 1997. The resource agencies that issued permits for the

dredging in 1993 and 1997 requested that the City review alternatives to dredging the channel. Further requests for the City to review alternatives to dredging the channel were made by the California Department of Fish and Wildlife (CDFW), U.S. Army Corps of Engineers (ACOE), and Regional Water Quality Control Board (RWQCB) in 2002.

Since the last channel dredging in 1997, continued growth of wetlands plants in the channel has increased channel roughness, requiring further maintenance. The effect of increased channel roughness is greater resistance to water flows that jeopardize the flood control capacity of the stream channel. The City therefore evaluated the need, frequency, and methods to maintain the Buena Vista Creek channel within the Maintenance District. Hydraulic studies were prepared to evaluate the flood control capacity within this portion of the stream channel, and it was determined that during a 100-year storm event, flows would overtop the channel banks and inundate the adjacent parking lots in the Maintenance District. In response, the City approved a Programmatic Environmental Impact Report in 2003 to implement an ongoing maintenance program to reduce flooding of the Maintenance District properties.

Since 2003, the City has conducted this maintenance program (all outside of the Coastal Zone) that is consistent with the proposed program – consisting of hand removal of vegetation within the northern half of the channel between the South Vista Way Bridge and the Coastal Zone boundary over a 5-year period. Permanent vertical marker posts were placed in the project area using Global Positioning System coordinates to mark the corners of each section of the project area. Maintenance activities are performed outside of the bird breeding season and outside of the growing season to avoid and/or minimize impacts on cattails and other wetland plants being cut back. The project area is divided into five segments for vegetation cutting. Only the northern half of the channel is cut, and the southern half is left alone, except to control invasive exotic species and to remove accessible trash. Approximately 10% of the above-ground vegetation in the project area is cut back and removed each year. The remaining vegetation in the channel continues to act as a filter to capture nutrients and other pollutants, as well as trash and debris. A biological monitor visits the site each work day to discuss the work, inspect progress, and answer questions. The biological monitor submits daily reports to the City following each visit, and annual reports to the City and CDFW, as required by the Streambed Alteration Agreement (SAA).

A Revegetation Plan was implemented as part of the 2003 maintenance program. The Revegetation Plan was prepared to revegetate the disturbed wetland areas within the creek channel and upland areas on the riprapped northern bank. A native upland seed mix was sown between the riprap on the northern bank, and native upland plants have become established in the voids where enough soil exists for plants to grow. Since completion of the initial removal of invasive exotic plant species from the creek channel, there have been no significant bare areas that would require revegetation with native species. No further habitat restoration efforts have taken place since the first year, beyond the ongoing control of invasive plant species each year.



## **B. BIOLOGICAL RESOURCES**

Section 30233(a)(2) and (6) of the Coastal Act states:

*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 environmental effects, and shall be limited to the following:*

*(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

*(6) Restoration purposes.*

Section 30233(c) of the Coastal Act states:

*In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

Section 30240 of the Coastal Act states:

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

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

In addition, Policy 3-1.2 within the City of Carlsbad's certified Mello II Land Use Plan states:

*Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

The City of Carlsbad is a member of the North County Multiple Habitat Conservation Plan (MHCP) and has adopted a Habitat Management Plan (HMP), which is a subarea plan under the

MHCP. The Carlsbad HMP is a comprehensive, citywide program with the purpose of preserving the diversity of species and habitats, as well as sensitive biological resources while allowing for development that is consistent with City plans. The objectives of the HMP are to develop a plan that conserves the range of vegetation types with the focus on rare habitat and species; conserve areas capable of supporting covered species, in perpetuity; and maintain functional wildlife corridors and habitat linkages.

Based on proposed development and biological resources, the HMP designates both hard- and soft-line Focus Planning Areas (FPAs). Hard-line areas require 100% conservation and soft-line areas require specific conservation standards to be implemented during development review. The FPAs are further broken down into HMP cores, linkages, and Special Resource Areas. The proposed project site is located within Core 1 FPA, which is approximately 206 acres in size and consists of Buena Vista Lagoon and adjoining wetland and upland habitats in northwest Carlsbad. No existing or proposed hardline preserves or special resource areas were identified for the proposed project site. According to the HMP, the project site is designated as a development area, not targeted for conservation.

Per the HMP, Core 1 is connected to Core 2 via Buena Vista Creek on the project site. Core 1 consists of the Buena Vista Lagoon and adjoining wetland and uplands that provide habitat for critical populations of many sensitive birds. Least Bell's vireo (*Vireo bellii pusillus*), a federally and state-listed species, are known to occupy habitat in Core 2, upstream of the project in the Buena Vista Creek. The maintenance program was designed so that no suitable breeding habitat for least Bell's vireo was removed during channel maintenance, retaining a contiguous stretch of riparian trees and, thus, providing a habitat linkage for birds and other species between Cores 1 and 2. Additionally, prior to the implementation of the exotics removal program, least Bell's vireo did not nest within the project study area. Following implementation of the exotics removal component of the program, the least Bell's vireo now nests within the portion of the Buena Vista Creek where exotics have been removed.

To avoid potential adverse impacts to breeding activities of least Bell's vireo, migratory songbirds, and other bird species associated with the adjacent sensitive open water, wetland, and riparian habitat, the applicant proposes to avoid vegetation removal during the bird nesting season, between February 15<sup>th</sup> and September 15<sup>th</sup> of any year; it would only undertake development in the bird nesting season if an unforeseen issue or emergency arises that requires immediate attention. In case that were to happen, **Special Condition #3** requires a qualified biologist to be onsite should any work be necessary during nesting season, to ensure that the proposed work does not disturb breeding bird species. Additionally, **Special Condition #5** requires the applicant to abide by mitigation measures within the Final Supplemental Environmental Impact Report to protect the riparian and wetland habitat. With respect to special-status riparian woodland/scrub bird species, including least Bell's vireo, yellow warbler, Nuttall's woodpecker, and Allen's hummingbird, there will not be any removal of willows or any trees as part of the proposed project, and therefore, there are no anticipated impacts to suitable habitat for these species.

While work will occur within wetlands, no diking, filling, or dredging of wetlands is proposed as part of the project. Thus, the subject project is not subject to Section 30233 of the Coastal Act. The applicant has assured the Commission that the proposed project is for flood control purposes only and work will be limited to the hand removal of vegetation. Vegetation would be cut at ground level or the water's surface with non-mechanized equipment to ensure no ground disturbance.

As discussed previously, no more than one-tenth of the freshwater marsh and understory of the southern willow scrub within the project area will be removed by hand each year. Within the Coastal Zone, a total of 1.61 acres of vegetation would be removed in Years 1 and 2 of the maintenance program. In Year 1, 0.91 acres of freshwater marsh would be removed and in Year 2, 0.52 acres of freshwater marsh would be removed and 0.05 acres of the understory of southern willow scrub would be removed. Impacts to special-status plants are not anticipated, because none are present in the project area. No trees, including riparian trees, will be removed during maintenance activities and no ground-disturbance is proposed. Therefore, the depth of the channel will not be altered. Additionally, freshwater marsh habitat typically passively revegetates/recovers within six months of being removed and can often function as suitable habitat the summer after being removed. Because 90% of the channel will not be maintained in any given year in combination with the fact that freshwater marsh revegetates in less than one year, the impacts to biological resources associated with the proposed project are considered temporary in nature. The Commission's staff ecologist has reviewed the proposed project and concurs with the determination that habitat impacts will be minor and temporary.

An *Exotic Plant Species Control Plan* prepared by Dudek in 2003 and implemented as part of the current maintenance program is proposed to continue as part of the subject project. This plan identifies species-specific control measures and takes into account the type of species, size and amount of biomass, and/or the location of the species. Control measures include pulling species, treating them with herbicide and leaving them in place to decompose, or cutting and treating them with herbicide. The exotics removal program will be expanded to include exotics removal in the portion of the creek in the Coastal Zone, increasing the functional capacity of the creek in that area.

Although the proposed maintenance program has been implemented since 2003 in the creek channel outside the Coastal Zone, the proposed program would be extended into the Coastal Zone to increase flood control of the adjacent Maintenance District. **Special Condition #2** limits the initial permit term to five (5) years to ensure that, as proposed, the project will not adversely impact coastal resources. As no permanent impacts to wetlands and native vegetation are anticipated or authorized by the subject coastal development permit, if any permanent impacts are shown to have occurred, the applicant shall be required to apply for an amendment to the permit. **Special Condition #7** also requires maintenance crews to be trained in the parameters of the maintenance program, to ensure vegetation is only trimmed and roots are not removed. As conditioned, the proposed development is not expected to have any impacts to environmentally sensitive habitat areas or biological resources. In addition, the project does not involve the diking, filling or dredging of wetlands. Therefore, the Commission finds that the development, as conditioned, conforms to Sections 30233 and 30240 the Coastal Act.

## C. FLOOD CONTROL & WATER QUALITY

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

Section 30236 of the Coastal Act states:

*Channelizations, 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 flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section II, Standards for Protection of Sensitive Habitats, of the *Standards for the Identification and Protection of Sensitive Habitat Areas* (City of Oceanside 1985), the following uses are permitted within sensitive habitats:

*5. Flood control projects providing the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain.*

*6. Habitat restoration measures specifically approved by the State Department of Fish and Game.*

The Buena Vista Creek channel drains into the Buena Vista Lagoon, located immediately west of the proposed project site. The Buena Vista Lagoon flows for approximately 1.5 miles until its convergence with the Pacific Ocean. The project is located within the Buena Vista Creek

Hydrologic Area (HA) of the Carlsbad Hydrologic Unit (HU) and, specifically, within the El Salto Subarea Area (SA). Both the Buena Vista Creek and Buena Vista Lagoon are the major water sources in the project vicinity mapped on the USGS topographic quadrangles. The on-site portion of Buena Vista Creek channel is a perennial stream that receives water from naturally occurring runoff within the watershed. The portion of the channel within the Coastal Zone is an earthen bottom, riprap-sided channel with a small portion (less than 2% of the channel) being concrete-lined (which are limited to the headwalls). Within the portion of the project in the Coastal Commission's permit jurisdiction (960 feet upstream of the Jefferson Street Bridge), there are jurisdictional wetlands, including freshwater marsh, southern willow scrub, southern coastal saltmarsh, and open water.

Because the Streambed Alteration Agreement terminated on December 13, 2013, the City reevaluated the need, frequency, and methods to maintain the Buena Vista Creek channel within the Maintenance District through preparation of additional hydraulic studies. Since the initiation of the channel maintenance program in 2004, the portion within the Coastal Commission's original permit jurisdiction, which has not been maintained since the dredging in 1989, is starting to accumulate sediment, and at times, impeding the channel outlet and upstream capacity.

It is anticipated that the benefits of the proposed program will be the same as those of the program implemented in 2004. The benefits are expected to be the same because the proposed maintenance program is consistent with the current maintenance program, except for the addition of the 960 feet of channel in the Coastal Zone added to the proposed project. Therefore, adding the portions of the channel in the Coastal Zone will increase flood protection for Carlsbad and Oceanside residents, including the Plaza Camino Real regional shopping center and improve water quality in the Buena Vista Creek and Lagoon.

The proposed addition of channel maintenance in the Coastal Zone will increase the protection of the shopping mall's adjacent parking lots from becoming inundated, which reduces the risk of floodwater carrying pollutants from the parking lot into the creek, adversely affecting the water quality in the creek and downstream lagoon. The proposed program does not include any diking, filling, or dredging; however it does require alteration of a stream, and thus, needs another Streambed Alteration Agreement from the California Department of Fish and Wildlife, which is required to be submitted to the Executive Director as part of **Special Condition #4** prior to issuance of the CDP. The proposed project is a flood control project that is necessary to protect the existing, adjacent shopping center parking lots; however, mitigation measures have been incorporated as part of the project description through imposition of the conditions in the Final Supplemental Environmental Impact Report. Thus, as proposed with the conditions required in the EIR, the project is consistent with Section 30236 of the Coastal Act. In addition, as conditioned, the proposed development will not result in erosion or adverse impacts to water quality. Therefore, the Commission finds that the development, as conditioned, conforms to Sections 30230, 30231 and 30236 of the Coastal Act.

## **D. HAZARDS**

Section 30253 of the Coastal Act states, in part:

*New development shall do all of the following:*

*(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(b) 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...*

Due to the fact that the proposed project is located in an area subject to a potential for damage or destruction from natural hazards, including flooding, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk, **Special Condition #6**, the applicant acknowledges the nature of the hazard that exists on the site and that may affect the safety of the proposed development. Thus, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

## **E. PUBLIC ACCESS & RECREATION**

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 30212(a) of the Coastal Act states:

*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.*

Section 30214 of the Coastal Act states, in part:

*(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access*

*depending on the facts and circumstances in each case including, but not limited to, the following:*

- (1) Topographic and geologic site characteristics,*
  - (2) The capacity of the site to sustain use and at what level of intensity,*
  - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

The proposed project is not anticipated to result in any adverse impacts to public access or recreation. Although there are several dirt trails located in close proximity to the project that offer access to and along Buena Vista Lagoon, the applicant has confirmed that there are no public trails located within the proposed project site. In addition, **Special Condition #7** requires the applicant to maintain public access on adjacent trails during all project operations. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. Therefore, the Commission finds that the development, as conditioned, conforms to Sections 30210, 30212, and 30214 of the Coastal Act.

## **F. LOCAL COASTAL PLANNING**

The proposed project site spans three jurisdictions, including the Cities of Carlsbad and Oceanside, both of which have certified LCPs, as well as the Commission's original permit jurisdiction. Section 30601.3 of the Coastal Act provides that when a project requires a CDP from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, and with the agreement of the City of Oceanside, Commission staff has agreed to process the subject permit as a consolidated CDP. Therefore, the Chapter Three policies of the Coastal Act remain the legal standard of review, with both Cities' certified LCPs providing guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the Cities of Oceanside and Carlsbad to continue to implement their certified LCPs for their respective jurisdictions.

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

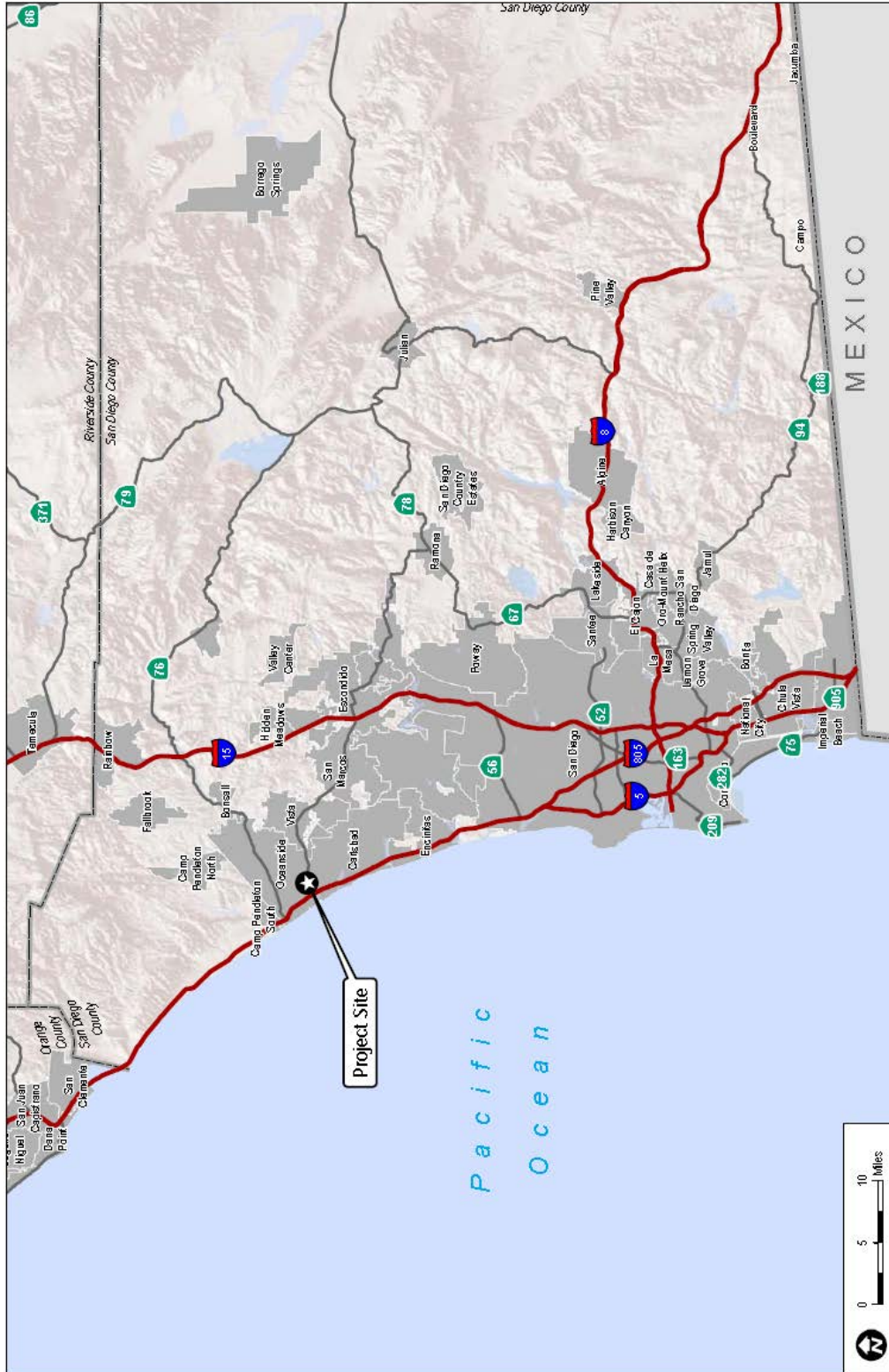
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter Three policies of the Coastal Act. Mitigation measures, including special conditions addressing the protection of biological resources and water quality will minimize all potentially adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.



**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Supplemental Environmental Impact Report, State Clearinghouse No. 200210; Streambed Alteration Agreement No. 1600-2004-0006-R5, California Department of Fish and Wildlife, February 11, 2004



**FIGURE 2-1**  
**Regional Map**

BUENA VISTA CREEK CHANNEL MAINTENANCE PROJECT - ENVIRONMENTAL IMPACT REPORT



**DUDEK**

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<p>EXHIBIT NO. 1 APPLICATION NO. <b>6-13-0713</b> Location Map</p>



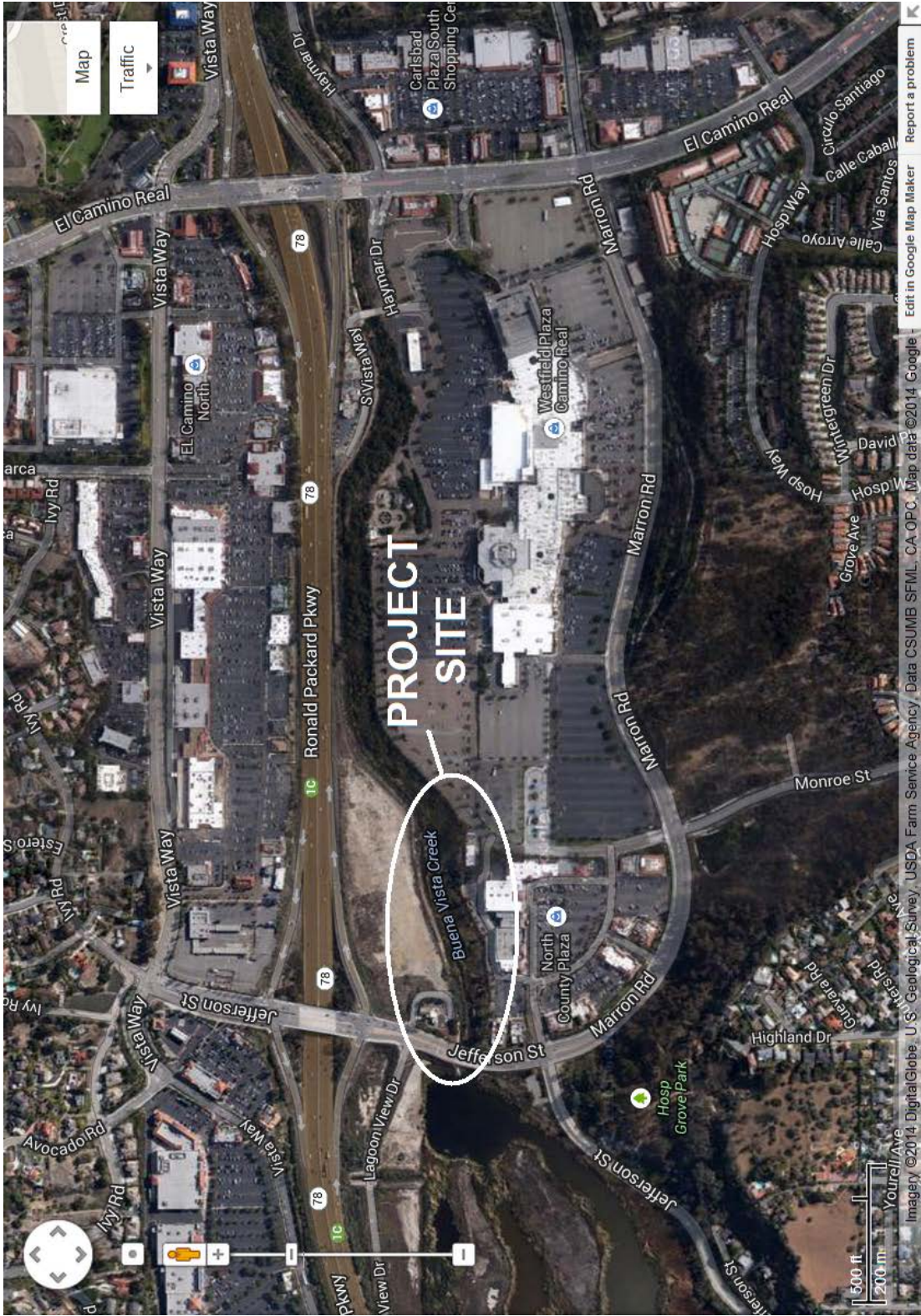


EXHIBIT NO. 2
APPLICATION NO.
<b>6-13-0713</b>
Aerial Map
California Coastal Commission





FIGURE 3-1  
Proposed Maintenance Area

SOURCE: Cal Coastal Commission, SeacoGIS, Bing Maps  
 UENA VISTA CREEK CHANNEL MAINTENANCE PROJECT - ENVIRONMENTAL IMPACT REPORT

<p><b>EXHIBIT NO. 3</b></p> <p><b>APPLICATION NO.</b></p> <p><b>6-13-0713</b></p> <p>Site Plan</p>