

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: AMENDMENT

Application No.: 6-04-088-A12

Applicant: San Dieguito River Park Joint Powers Authority

Agent: Shawna Anderson

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

Original Project Description: Application from Southern California Edison and San Dieguito River Park Joint Powers Authority for implementation of the San Dieguito Wetland Restoration Plan and construction of a portion of the Coast to Crest Trail.

Proposed Amendment: Delete Special Condition No. 6(d) that identifies the boardwalk segment of the Coast to Crest Trail as an interim until such time as the South Overflow Lot is restored to functional wetland habitat; this would retain the boardwalk in its current alignment at the river's edge through the South Overflow Parking Lot wetland restoration site.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to amend Coastal Development Permit No. 6-04-088 in order to delete Special Condition No. 6(d) of the original permit. This special condition originally identified the existing 1,200-foot wooden boardwalk located in the South Overflow Lot as an interim use until the South Overflow Lot is restored to functional wetland habitat, and then at that time required relocation of this trail segment be coordinated with the final restoration plans as addressed in that permit. The proposed deletion of Special Condition No. 6(d) would allow the wooden boardwalk to remain in its current alignment within the wetland restoration area and occupy space that would otherwise facilitate further restoration and ecological connectivity within the site. The subject site is adjacent to the San Dieguito River within the Del Mar Fairgrounds, at 2260 Jimmy Durante Boulevard, in the City of Del Mar.

The primary Coastal Act issues that are associated with this project include public access and habitat protection. The trail section considered by this amendment is part of the larger Coast to Crest Trail, a public trail system that, when finished, will extend from the Pacific Ocean to Volcan Mountain near Julian, 70 miles away. Currently, the boardwalk runs along the San Dieguito River and provides public access through this lower section of the river valley while providing educational opportunities to the public. The question is whether the boardwalk segment should be allowed to remain in its current alignment or be relocated along the inland edge of the newly restored wetland. Relocation of the boardwalk from its current orientation at the river's edge to an area along the inland perimeter of the restoration site could affect the physical and visual access currently afforded by the boardwalk in this location; however, similar benefits at the wetland's edge would still be available if the boardwalk were to be relocated. Habitat protection issues arise because the existing alignment of the boardwalk trail through the South Overflow Lot currently occupies space within the restoration site that could become additional wetland habitat as well as enhance the hydrologic connectivity from the restoration site to the larger estuarine system. Also, if allowed to remain in its current location, the boardwalk section would not only bisect the restoration site, but would also introduce significant human interaction that could further degrade the biological productivity within the restoration site.

In light of the requirement to restore the South Overflow Lot to wetland habitat and the adjacent location available to relocate the boardwalk that would preserve the existing public access and educational benefits provided by the trail, the proposed amendment that would maintain the boardwalk in its current alignment fails as the least environmentally damaging alternative, and contradicts the intent of the Commission's action in the underlying permit and subsequent actions. The boardwalk currently occupies space that could be converted into approximately 1.5 acres of wetland habitat. Furthermore, the boardwalk would still run adjacent to the restored wetland habitat and be at an elevation where views of both the wetlands and the larger river valley would not be impeded. The original Commission approval of Special Condition No. 6(d) in the underlying CDP balanced the interest of protecting natural resources on the subject site while still accommodating public access and educational opportunities. Past Commission action both in the underlying CDP and in related CDPs regarding this site have explicitly

addressed the presence of the boardwalk and reiterated that it was approved as an interim fixture and that the ultimate location would be addressed in connection with the larger wetland restoration design for the South Overflow Lot. Thus, the proposed amendment is inconsistent with Chapter 3 of the Coastal Act, as well as the record and intent of the Commission's past actions, and denial is recommended.

Commission staff recommends **denial** of coastal development permit amendment 6-04-088-A12.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Existing Trail Map

Exhibit 3 – Restoration and Trail Relocation Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-04-088-A12 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **NO** vote on the foregoing motion. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution or findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies coastal development permit amendment 6-04-088-A12 and adopts the findings set forth below on grounds that the development as amended will not be in conformity with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have not been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. AMENDMENT PROJECT DESCRIPTION

The proposed amendment is to modify Coastal Development Permit No. 6-04-088 by deleting Special Condition No. 6(d), which identified the existing wooden boardwalk within the South Overflow Lot as an interim use, and that relocation of the trail would be addressed through the permit for restoration of the South Overflow Lot to wetland habitat. Specifically, the Special Condition states, in relevant part:

6. Final Coast to Crest Trail Plans. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE TRAILS AND WITHIN 18 MONTHS OF COMMISSION ACTION ON THE PERMIT, the applicants shall submit final plans for construction of the coastal segment of the Coast to Crest Trail commencing at Jimmy Durante boulevard and ending at the proposed weir or inland extent of the restoration work. Said plans shall be in substantial conformance with the trail alignment shown in the Wetland Delineation for the Proposed San Dieguito River Park Coast to Crest Trail San Diego, California prepared by Tierra Environmental Services, Inc. and revised July 14, 2005, and City of Del Mar Sheets 36-46 dated 6/17/05 and City of San Diego Sheets 73-89

dated 5/26/05, and shall include the following revisions. Upon written approval by the Executive Director of trail plans for segments 1 through 8, the JPA may commence construction of segments 1 through 3 in accordance with the approved plans and written authorization by the Executive Director.

a. The trail segment including the boardwalk (Segment 1a-1b) shall be designated pedestrian only.

[...]

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

[...]

Currently, the boardwalk is located along the southern rim of the South Overflow Lot, adjacent to the San Dieguito River [Exhibit 2], which is slated to be restored to functioning wetland habitat by the property owner – 22nd District Agricultural Association (22nd DAA) – pursuant to separate a Commission permit (CDP No. 6-12-067). Upon working with 22nd DAA to finalize the restoration plans through condition compliance, at the recommendation of the staff ecologist, Commission staff has required that the boardwalk segment be realigned northward of the existing alignment so as to run along the inland perimeter of the restored wetlands, as opposed to directly through the restoration site [Exhibit 3]. This alternative trail alignment will increase wetland acreage by approximately 20% (additional 1.51 acres of restored habitat) compared to retaining the boardwalk in its current alignment, while still maintaining a public access path through the South Overflow Low that preserves existing educational and viewing experiences.

The JPA as applicant for the trail permit requests that the boardwalk be retained in its current alignment because relocation to the northern boundary of the restoration area, as opposed to its current location along the southern boundary, would diminish current educational benefits afforded by the existing trail alignment. The applicant alleges these public access benefits outweigh the significant habitat benefits gained from the additional wetland acreage that would arise from the realignment of this trail segment.

B. DESCRIPTION OF ORIGINAL PROJECT AND SUBSEQUENT AMENDMENTS

The San Dieguito Wetland Restoration Plan was proposed primarily to meet the requirements of Coastal Development Permit No. 6-81-330 to mitigate adverse impacts to the marine environment occurring through operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. Southern California Edison (SCE), the

principal owner of SONGS, was required to provide approximately 150 acres of new, or significantly restored, wetland habitat. Maintenance of the lagoon tidal inlet was considered a key component of the restoration plan and SCE was therefore granted 35 acres of wetland mitigation credit for agreeing to maintain the inlet in an open condition in perpetuity. Coastal Development Permit No. 6-04-88 for the construction of the wetland restoration project included these requirements. Additional components of the restoration project included the construction of three berms adjacent to the San Dieguito River to confine existing flows and maintain sediment transport to the ocean, bank protection for portions of the berms, culverts in the berms to help balance water levels and a weir to eliminate any backwater effect on the upstream river channel, the creation of four new nesting sites and rehabilitation of an existing site for the California Least Tern and Western Snowy Plover, the creation of treatment ponds to filter freshwater runoff and reduce freshwater flows into the restored tidal wetlands, the construction of a public access trail, including interpretive signage, and improvements to beach access, the upland and beach disposal of excavated material, and maintenance and monitoring programs. The San Dieguito Wetland Restoration Plan encompasses almost the entire San Dieguito River Valley west of El Camino Real, although SCE is only responsible for restoring a portion of that area. Other portions of the restoration plan will be implemented by the San Dieguito River Park Joint Powers Authority (JPA). The permit was originally approved by the Commission on October 12, 2005. Since that time, there have been several amendments as follows:

- 6-04-088-A1: Immaterial amendment to modify the language of Special Condition No. 4 related to the timing of berm construction. Approved August 10, 2006.
- 6-04-088-A2: Material amendment to remove approximately 4,000-5,000 cubic yards of material along an 800' long, 60' wide road and berm. Approved July 7, 2007.
- 6-04-088-A3: Withdrawn August 7, 2007.
- 6-04-088-A4: Material amendment for the replacement of restoration module W45 with restoration module W16, modification of the timing for the construction of public beach accessways, and modifications to the special condition regarding a riverbank revetment. Approved June 9, 2010.
- 6-04-088-A5: Immaterial amendment to modify the language of Special Condition #8 regarding coastal sage scrub mitigation for the trail and treatment ponds. Approved October 11, 2007.
- 6-04-088-A6: Immaterial amendment to allow the use of 40-foot long, 20-foot wide bridges to cross the drainage channels on both sides of I-5 for the continuation of the Coast-to-Crest Trail instead of the use of open bottom concrete culverts, resulting in a reduction of permanent wetland and upland impacts. Approved February 5, 2008.

6-04-088-A12 (San Dieguito River Park Joint Powers Authority)

- 6-04-088-A7: Immaterial amendment to establish a pedestrian-only trail along an existing slope stability bench on the engineered slope of Disposal Site 32 (DS32) located directly south of Via De La Valle. Approved October 9, 2009.
- 6-04-088-A8: Immaterial amendment to modify the location of coastal sage scrub mitigation sites required in Special Condition #8 as mitigation for impacts associated with the Coast to Crest Trail and Freshwater Treatment Ponds. Approved November 17, 2010.
- 6-04-088-A9: Immaterial amendment to modify the timing restriction placed upon the staging or storage of construction equipment on North Beach in association with dredging activities associated with the San Dieguito Wetland Restoration Project. Approved July 14, 2010.
- 6-04-088-A10: Material amendment to modify the location of wetland mitigation required in Special Condition No. 8 as mitigation for impacts associated with the Coast to Crest Trail and Freshwater Treatment Ponds, while adding the Mesa Loop Trail to the final plans. Approved September, 2011.
- 6-04-088-A11: Immaterial amendment to modify the approved location of permanent access roads within the San Dieguito Wetland Restoration Project used for maintenance and monitoring responsibilities. Approved September, 2012.

C. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

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

[...]

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

Section 30213 of the Coastal Act states, in part:

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

[...]

Section 30604 of the Coastal Act states, in part:

[...]

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

The Del Mar Fairgrounds, the property owned by the 22nd District Agricultural Association on which the subject boardwalk is sited, is located near the mouth of the San Dieguito River, west of Interstate 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. As the 22nd DAA is another state agency, the property is in public ownership, and for the most part, the public can freely access various portions of the grounds, including the riverfront, particularly when no formal events are taking place. The portion of the Del Mar Fairgrounds on

which the boardwalk is located is called the South Overflow Lot (SOL). The SOL portion of the restoration is located south of the Del Mar Fairgrounds racetrack complex and is bounded by the San Dieguito River on the south and Jimmy Durante Boulevard on the north [Exhibit 1].

A portion of the Coast to Crest Trail is sited on Fairgrounds property, which enhances public access in this area [Exhibit 2]. The portion of the Coast to Crest trail within the SOL is built as a slightly elevated boardwalk. In this current location the trail provides access through and allows views of the river and the existing and restored wetlands. The coastal portion of the trail begins at the westernmost point of the SOL at Jimmy Durante Boulevard and continues east along the San Dieguito River, crosses underneath I-5, and continues to El Camino Real.

The original permit (CDP No. 6-04-088) for the San Dieguito Lagoon restoration project included the installation of the Del Mar segment of the Coast to Crest Trail, located along the northern perimeter of the lagoon and river channel. Special Condition No. 6 of the permit detailed the location of the trail and contained specific direction regarding trail construction and maintenance. The Commission's approval of the original CDP did recognize that the proposed Coast to Crest Trail created the benefit of formalizing pedestrians' access along a pre-determined path and eliminated the uncontrolled access across the yet-to-be restored wetlands, as well as providing viewing and nature study benefits. However, wetland surveys did indicate that the proposed trail alignment would have direct and indirect impacts to existing wetland resources.

At the October, 2005, hearing wherein CDP No. 6-04-088 was brought before the Commission, the Commission's staff ecologist stated on the record that having a public access trail through restoration areas, with impacts to wetlands, is not an ideal development, and that the alignment approved in CDP No. 6-04-088 was simply the least impactful of the alignments being considered at the time. This sentiment was echoed by various Commissioners during the motion to approve CDP No. 6-04-088. However, at the time of that original hearing, plans for restoration of the SOL were yet to be realized, and so the original permit included Special Condition No. 6(d) that allowed for the boardwalk section of the Coast to Crest Trail to be constructed in its current location as an interim use, with the provision that at the time that future restoration plans for the SOL were developed the ultimate location of the trail would be determined in concert with the final restoration design.

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 through the middle of a sensitive habitat area also has the potential to disturb wetland species and may increase the amount of refuse that enters the restoration area.

Pursuant to Section 30233 of the Coastal Act, the Commission acknowledged that proposed trail improvements, if sited appropriately, were permitted uses in wetlands at the time of CDP No. 6-04-088's approval. It should be noted that although the SOL

periodically ponds water and is technically a wetland, it has been routinely scraped to remove vegetation and facilitate its use as a parking lot. As a result of this frequent disturbance, it provided few habitat functions at the time of the Commission's original action. The Commission found that the impacts to existing wetlands associated with the construction of a public access trail system were a permitted use within wetlands. However, for any use allowed within existing wetlands, the Commission must find the impacts to be the least environmentally damaging feasible alternative and that such impacts are unavoidable. In 2005, during the approval of the original permit, that finding could be made because the boardwalk was located along the periphery of the greater 150-acre San Dieguito wetland restoration, and studies indicated that the trail alignment would not occupy areas containing high quality wetland vegetation or where it would be subject to tidal influence. However, the Commission's approval also noted that the South Overflow Lot was historic wetland that, while "atypical" due to periodic disturbance arising from operation of the Del Mar Fairgrounds, was fully capable of being restored to viable functioning salt marsh.

It is no longer the case today that the boardwalk is in the least environmentally damaging feasible alternative, alignment which was foreseen when the original Special Condition No. 6 was drafted and approved by the Commission. Indeed, the Commission's report at the hearing approving CDP No. 6-04-088 stated that "due to the possibility that the south overflow lot may be restored to functional salt marsh habitat in the future, Special Condition #6d acknowledges the boardwalk to be a *temporary interim use that may be relocated* in the future in association with any future wetland restoration of the south overflow lot." [emphasis added]. Now that the 22nd DAA is coordinating with Commission staff to develop the final plan for that restoration, the Commission's staff ecologist has directed that the boardwalk can and should be relocated to the northern periphery of the SOL restoration area to allow for greater habitat benefits from the proposed restoration.

At the March 8, 2012, hearing, the Coastal Commission approved Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 ("Consent Order"), which, among other requirements, mandated the restoration of the SOL to functional wetland habitat. Specifically, Section 3.2.H, which addresses restoration of the SOL, 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 salt marsh within thirty (30) months of Commission approval of a CDP for development or use on the EOL... This SOL Restoration Plan shall be harmonious with the San Dieguito Restoration Plan detailed in CDP 6-04-088...

The Commission once again foresaw the benefit of a related northern alignment for public access along the restored South Overflow Lot, and included in the approved Consent order Section 3.6.A, addressing mitigation, which further states, in relevant part:

DAA shall include the alignment of the Trail, from its terminus at the existing Boardwalk through the northern portion of the SOL, in the CDP application identified in Section 3.2.B of these Consent Orders. DAA will be responsible for construction of the trail, which shall be completed within thirty (30) days of completion of revegetation of the SOL pursuant to Section 4.4 of these Consent Orders...

The current wetland restoration being undertaken by 22nd DAA is actually the second of two phases for the full restoration of the SOL into wetland habitat [Exhibit 3]. At the November, 2012, hearing, the Commission approved CDP No. 6-12-040, which authorized Phase I of the SOL restoration – and resulted in restoration of approximately 3.5 acres of salt marsh and related upland habitat. Phase I was handled in a separate CDP action from Phase II due to Phase I being partly driven by enforcement action of the Army Core of Engineers (ACOE). Because the Commission understood that Phase I would be soon followed by the adjacent – and much greater – Phase II restoration, the Commission’s approval for Phase I restoration contained Special Condition No. 9, which stated:

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

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

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

Thus, the Commission once again reiterated that the boardwalk trail segment located within the SOL restoration area would possibly require realignment pursuant to the final restoration plan for the whole of the SOL to wetland habitat. The realignment did not occur with the approval of Phase I because Phase I only contained approximately 300 feet of the 1,200 foot boardwalk, and the exact parameters of the Phase II restoration were yet to be detailed between 22nd DAA and Commission staff, and therefore a final, environmentally acceptable realignment was not available at that time. Commission staff was aware that once Phase II restoration was finalized, a full realignment of the boardwalk segment of the Coast to Crest Trail could be determined.

When the preliminary SOL Phase II restoration plan was submitted to the Commission pursuant to CDP No. 6-12-067 (which approved the SOL restoration in accompaniment to year-round use of the East Overflow Lot and Golf Driving Range by the 22nd DAA) the plan depicted two trail alignment alternatives through the SOL – the current boardwalk alignment along the southern boundary of the restoration area and an alternate alignment along the northern boundary. Because the submitted plan depicted both possible alignments of the boardwalk, as well as information on the plant pallets and monitoring methods to be used in the restoration, the Commission was able to approve CDP No. 6-12-067 with a condition that a final plan be submitted as condition compliance that would include details regarding the ultimate trail location. The findings for CDP No. 6-12-067 further emphasized that proposed restoration plans should not adversely impact wetlands and should result in major habitat enhancement through the creation of additional native habitat and through increased wetland connectivity to the larger estuarine system. To this end, the staff ecologist has identified the northern alignment of the boardwalk as the biologically superior alternative that would maximize wetland restoration efforts at the SOL site.

The applicant contends that the alternative trail alignment depicted on 22nd DAA's submitted plans represent the final location of the actual Coast to Crest Trail, and presents that the boardwalk is a distinct public access resource that, while connected to the trail, is unrelated to Commission action governing the Coast to Crest Trail, and thus is not subject to a realignment as described in Special Condition No. 6(d) of the original CDP. Analysis of the original staff report and the record from the October, 2005, hearing approving the original permit, as well as findings from subsequent Commission actions clearly demonstrates that this depiction is counter to the position taken by the Commission consistently through the permit history for the subject trail segment. The Commission has never represented the boardwalk segment of the Coast to Crest Trail as distinct from the trail itself, and indeed, all 8 segments in the original permit were all treated and addressed as smaller components of the larger Coast to Crest Trail at the hearing approving the trail along with the greater San Dieguito Wetland Restoration Project.

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), 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 adjacent to the river. The elevated boardwalk provides views of the river without the necessity to walk through habitat to get close enough to see the water, and, in combination with the presence of informational kiosks, plays an important role in public education of the local ecology.

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." Throughout the San Dieguito River

Valley, trail segments of the Coast to Crest Trail were constructed with a buffer of 100 feet between the trails and wetland habitat areas except where constraints limited the distance that the trail could be constructed away from sensitive habitats. This buffer was implemented in order to allow for valuable public access and visual interaction with the natural environment while minimizing disturbance to the sensitive ecological systems present within the restoration site. If the boardwalk were permitted to persist in its current location, this would be counter to these efforts that were implemented as a part of the larger restoration efforts, and instead would create a situation where a public accessway would directly bisect sensitive habitat restoration. By moving the boardwalk section north along the perimeter of the restoration site, as was accepted by the Commission staff as a part of the condition compliance for CDP No. 6-12-067, this conflict between public access and biological resources would be minimized in a manner consistent with the other Commission approvals for the surrounding area.

The applicant suggests that relocating the boardwalk from its current location to an alignment along the northern boundary of the SOL restoration site would substantially impact the educational value of the boardwalk. The boardwalk in its realigned location would still border the restoration area of the SOL and would be at an elevation below the adjacent roadway and Fairgrounds complex in order to buffer the natural experience from the surrounding uses. Furthermore, due to the low, flat grade of the SOL (which will actually become lower in parts once the tidal channels are dug) and the higher elevation of the transitional upland in which the realigned trail would be located, views of the San Dieguito River and the river valley beyond will still be available. The applicant's position does not recognize the fact that the alternative alignment recommended by the Commission would still retain viewing platforms at the eastern and western terminus of the existing boardwalk alignment, providing pedestrians with additional visual access to observe the river valley [Exhibit 3]. These areas provide space for informational kiosks and allow for additional river-side views of the wetlands while still directing the majority of through traffic to the border of the restoration site.

Thus, for the reasons stated above, the applicant's proposed amendment is contrary to the intent of past Commission action and is not in conformance with the public access policies of Chapter 3 of the Coastal Act, and must be denied.

D. 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, and boat launching ramps;*
 - 3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities;*
 - 4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
 - 5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas;*
 - 6) *Restoration purposes;*
 - 7) *Nature study, aquaculture, or similar resource dependent activities*
- (b) *Dredging and spoils 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, which comprises approximately 12 acres in total area (both Phase I and Phase II combined). In addition, all of the

Fairgrounds is within the 100-year floodplain of the adjacent San Dieguito River and experiences periodic inundation during average winter rainy seasons.

Historically, the SOL was used by the 22nd DAA as public parking during the annual summer county fair and races. According to historical and more recent photographs of the site, when the SOL has not been used for parking, sparse wetland vegetation returned, and the area was 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 lot was historically used for parking.

As mentioned in earlier findings, the restoration of the SOL is being undertaken in two phases. The size and location of the SOL Phase I restoration was a result of discussions between the 22nd DAA and the ACOE, and was found acceptable by ACOE to satisfy its enforcement action. 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 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 22nd DAA to restore 2.14 acres of salt marsh habitat and additional areas of upland in the SOL in addition to restoring wetlands in other parts of the Fairgrounds. 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 the balance of the SOL that remained available for restoration.

The SOL Phase II restoration plan that calls for the realignment of the boardwalk has been reviewed by the Commission's staff ecologist, who has found that restoration will greatly enhance the habitat value of the subject site. Habitat restoration is an allowable use in wetlands under Section 30233. The proposed grading is necessary to lower existing elevations to historic levels in order to introduce tidal influences, which are necessary for the re-establishment of salt marsh habitat in the restoration area. 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 grading that is necessary to restore habitat is proposed.

The portion of the SOL proposed to be restored currently functions as a disturbed wetland during parts of the year. However, the proposed project will significantly improve the functionality of the wetland habitat to a significantly enhanced capacity. Existing vegetation on the SOL restoration area consists of some incidental nonnative species such as ice plant and grasses, although the majority of the site is bare compacted dirt. The restoration of Phase II of the SOL that leaves the existing boardwalk in place would result in 9.55 acres of sub tidal, salt marsh, and upland transitional habitat. These 9.55 acres would be composed of approximately 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 that retains the boardwalk in its current location would result in 7.63 acres of wetland habitat.

By realigning the boardwalk to the northern boundary of the restoration area, an additional 1.51 acres of prime wetland habitat will be gained (for an approximate total of 9.17 acres of wetland). Relocating the boardwalk to upland habitat would reduce the amount of non-wetland upland habitat by 0.74 acres. The Commission's staff ecologist further believes that the conversion of the current area of the boardwalk alignment into lower and mid-salt marsh will improve the hydrological connection between the restoration area and the adjacent river, by allowing for sheet flow rather than constraining the tidal connection to a single channel under a boardwalk bridge. Furthermore, by realigning the boardwalk through the transitional upland, potential adverse impacts to wetland species from pedestrian activity will be largely eliminated.

At the November, 2013, hearing to approve CDP No. 6-12-067, which authorized year-round activity on the East Overflow Lot and Golf Driving Range portions of the Del Mar Fairgrounds and the impacts to the unvegetated wetlands contained therein, many stakeholders and members of the public – including the San Dieguito River Park JPA – stated on the record that the wetlands gained in compensation for permitting such year-round activity were inadequate when compared to historical mitigation ratios utilized by the Commission. Commission staff also recognized this, and by realigning the boardwalk to the northern boundary of the restoration area, additional acreage for this important wetland restoration can be achieved that would result in increasing the wetland acreage within Phase II of the SOL by approximately 20%.

The Commission typically does not endorse public access paths 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 and to minimize disturbance. A path through the middle of a wetland habitat will result in human disturbance to sensitive wetland species, increase the risk of weed invasion, and increase the amount of refuse in the habitat.

The Commission's staff ecologist has reviewed the proposed restoration plan for Phase II of the SOL [Exhibit 3] and concurs that the proposed restoration project will not adversely impact any existing wetland habitat if the existing boardwalk segment is relocated to the northern perimeter of the restoration site. Further, the proposed restoration project with the relocated trail would result in major habitat enhancement through the creation of additional native habitat and through increased wetland connectivity between the restoration area and the larger San Dieguito River system.

Although there is existing functioning wetland habitat immediately adjacent to both Phase I and Phase II of the SOL, 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.

In approving the Coast to Crest Trail and the San Dieguito Wetland Restoration, the Commission approved trail alignments further inland from wetland resources and separated from restoration areas by a buffer of 100 feet whenever feasible. Commission staff is recommending that the replacement for the boardwalk segment in the SOL be located within an area of transitional habitat at the base of a slope below Jimmy Durante Boulevard [Exhibit 3]. Within the subject site, it is not feasible to provide for a 100 foot buffer from wetland habitats for a trail while still maximizing restoration potential across the site, so a compromise was reached that would place the trail proximate to the restoration site but still provided some separation from the wetlands within. The final location allows for close exposure to the wetland habitats for trail users, while still affording separation from the adjacent roadway and Fairgrounds development. This was done in recognition that the primary goal of the San Dieguito Wetland Restoration Project was to maximize habitat restoration and to minimize direct and indirect impacts arising from public access in the river valley, but also to acknowledge that providing a valuable public access experience to these sensitive coastal environments also is an important resource.

The realignment of the boardwalk segment of the Coast to Crest Trail currently recommended by the Commission properly balances the public access benefits of the boardwalk with the habitat restoration goals of the Commission's underlying action by realigning the boardwalk in a nearby location that retains public views while expanding potential habitat area. Thus, the applicant's proposed permit amendment is not in conformance with the intent of past Commission action nor the resource protection policies of Chapter 3 of the Coastal Act, and must be denied.

E. LOCAL COASTAL PLANNING

The Cities of Del Mar and San Diego have fully certified Local Coastal Programs (LCPs) and issue their own coastal development permits (CDPs) throughout most of their coastal zone areas. However, the subject site is an area of filled tidelands within wetlands; this area remains under the Coastal Commission's jurisdiction, and Chapter 3 of the Coastal Act is the legal standard of review. Parts of the restoration project are located in the Torrey Pines Community Plan for North City in the San Diego LCP, with the rest located in the City of Del Mar's LCP jurisdiction. Both LCPs call for protection and enhancement of natural resource areas, and the overall restoration plan was found consistent with both LCPs. The proposed project serves to protect the resource value of the area, and is thus consistent with both LCPs. Therefore, the Commission finds that the proposal, as conditioned, will not prejudice either City's ability to continue implementation of its certified LCP.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

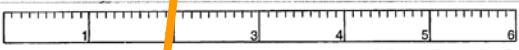
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the amendment were approved. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

Even if CEQA did apply, 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. As discussed above, the proposed removal of Special Condition No. 6d in order to retain the existing boardwalk is inconsistent with the policies of Chapter 3 of the Coastal Act. The proposed amendment would pose risks to the integrity of the surrounding environmentally sensitive areas and future restoration efforts. In addition, there are feasible alternatives to the proposed amendment available which would substantially lessen any significant adverse impact which the activity may have on the environment.

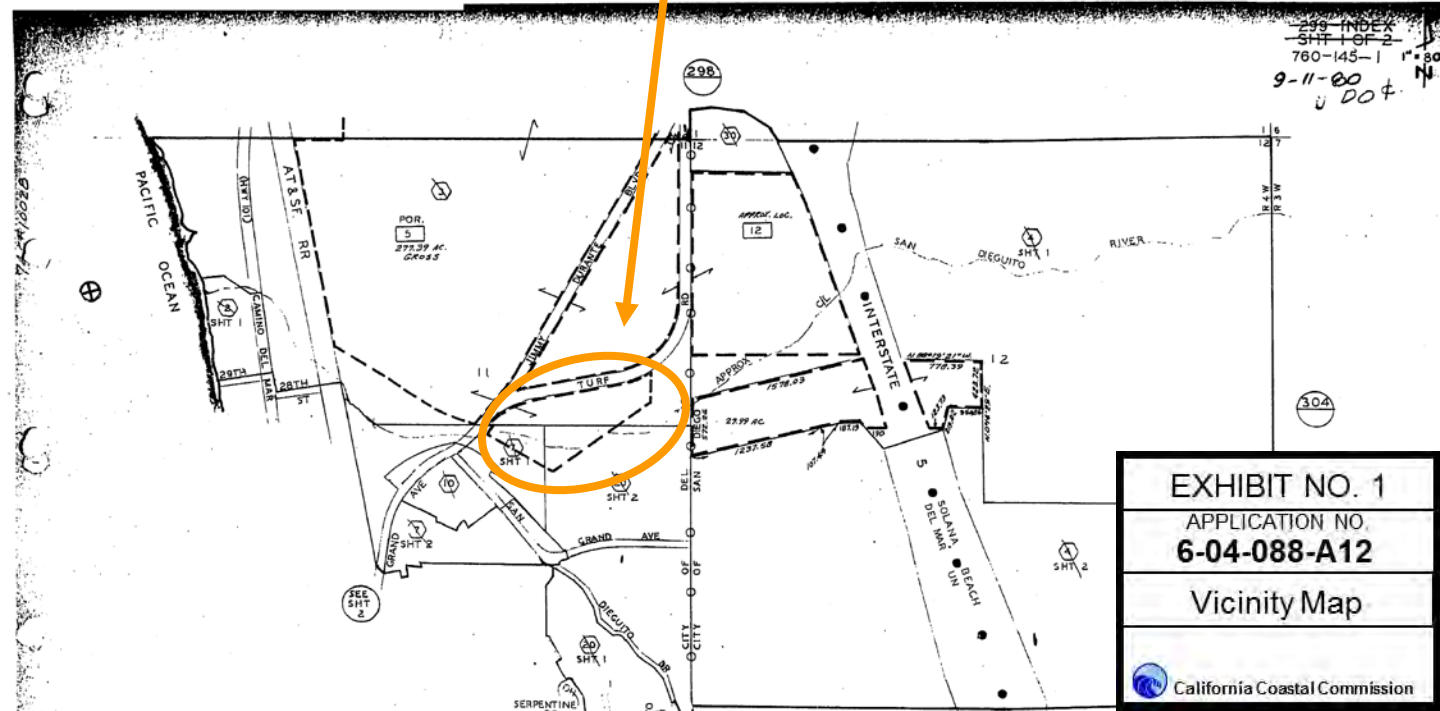
APPENDIX A

- Coastal Development Permit No. 6-04-088
- Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02
- Coastal Development Permit No. 6-12-040
- Coastal Development Permit No. 6-12-067

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EXHIBIT NO. 1
APPLICATION NO.
6-04-088-A12
Vicinity Map



EXHIBIT NO. 2
 APPLICATION NO.
 6-04-088-A12

Trail Map

California Coastal Commission

San Dieguito River Park Coast to Crest Trail

Figure 4.17. Coast to Crest Trail Plan

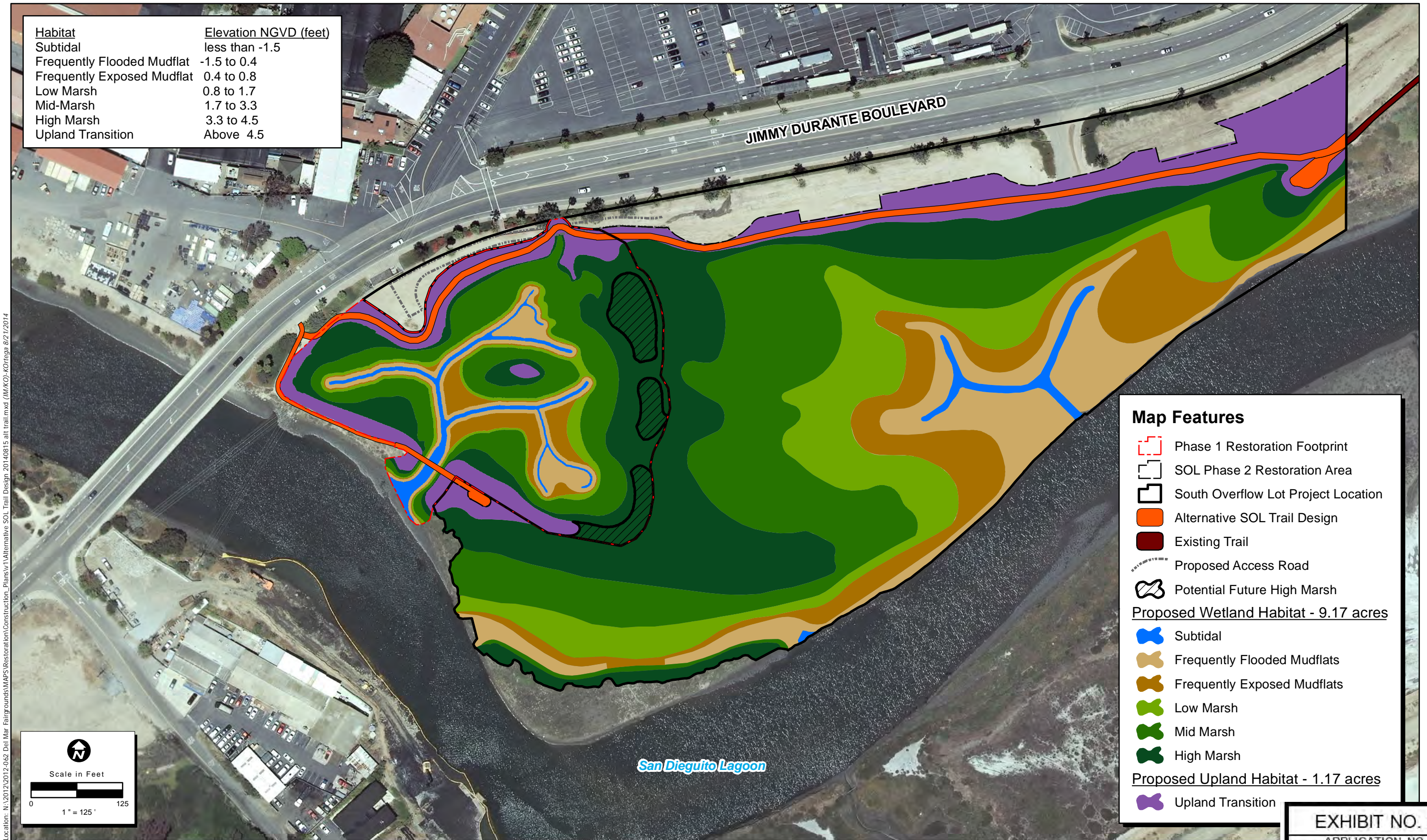


Figure 3. Conceptual Phase 2 Alternative SOL Trail Design Exhibit

2012-062 Del Mar Restoration



EXHIBIT NO. 3
APPLICATION NO.
6-04-088-A12
Restoration and Trail
Realignment Plan
 California Coastal Commission