

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-18-0396

Applicant: 22nd District Agricultural Association

Agent: Dustin Fuller

Location: 2260 Jimmy Durante Blvd, Del Mar, San Diego County
(APN: 302-090-11)

Project Description: Construct water quality improvements consisting of lining both infield ponds with PVC liner, converting the western infield pond into a retention basin wetland, and construct a new one-story, 21-ft. tall, approx. 2,552 sq. ft. treatment equipment building along the western boundary of the Del Mar Fairgrounds.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed water quality improvements to the Del Mar Fairgrounds (Fairgrounds) by the 22nd District Agricultural Association (22nd DAA) state agency represent a multi-year program to upgrade the treatment facilities required to address water quality impacts from the Commission-approved fall horse race season. The proposed upgrades consist of: lining both infield ponds to sever hydrological connections with groundwater, converting the existing western pond into artificial water treatment wetlands, and constructing a one-story water treatment equipment pump house between the ponds and the Stevens Creek outfall. The

proposals represent a substantial improvement over the current treatment system in place at the Fairgrounds.

The Fairgrounds occupy over 300 acres on filled tideland, bordered on three sides by streams, rivers, and wetlands into which its runoff has long flowed. However, while the upgrades are a prudent action for such a sizeable facility located in such a sensitive area as the San Dieguito River Valley, their installation still presents potential impacts to coastal resources and public access.

The installation of artificial water treatment wetlands in close proximity to natural wetland vegetation and their related species introduces the possibility of the treatment wetlands becoming naturalized and inhabited by sensitive species, impacting the ability of the Fairgrounds to maintain the water treatment function and perhaps introducing new regulatory requirements with regards to wetland protection and preservation. In response to these concerns, the 22nd DAA submitted for Commission review its draft maintenance plan for the treatment wetland, including measures such as periodic trimming, removal of dead vegetation and algae, replacement planting, and pest control. Through these measures, the 22nd DAA will maintain the flow capacity of the infield pond areas while preventing unintended naturalization and avoiding any future need to impact sensitive species.

Construction of a new structure along the western Fairgrounds property line adjacent to Stevens Creek introduces new temporary water quality concerns from the construction process, as well as permanent concerns from the exterior lighting of the facility, which may introduce light spillover into the vegetated habitat areas along the banks of the creek, altering the sleeping and foraging habitats of species therein as well as exposing them to greater risk of predation. However, through redesign and reduction in the exterior lighting, these impacts can be reduced to a less than significant level.

Finally, the entirety of the Fairgrounds facility is located within the San Dieguito River Valley floodplain, which has experienced substantial flooding events over the years. The construction of a new permanent structure within the floodplain, adjacent to one of the river's tributaries, could introduce increase risk to flood hazards and alter storm flows in the floodplain. However, as the one-story, approximately 2,500 sq. ft. structure will just house pumping and treatment equipment, it should be able to withstand flooding and not substantially alter the hydrology of the floodplain.

To address these potential adverse impacts the Commission staff is recommending **Special Condition 1** to require submittal of revised final plans. Revisions will remove the exterior lighting of the treatment equipment building from the western and southern facades facing toward Stevens Creek to reduce the potential for light encroachment into the creek vegetation, as well as require heat bonding of the PVC liner material installed in the ponds to ensure the most resilient lining feasible. **Special Condition No. 2** requires the submittal of final construction BMP plans for the project to ensure that spillover and detritus from development activity do not enter the habitat area. **Special Condition No. 3** places the 22nd DAA on notice that its development is sited in a floodplain and that the risks inherent in such a location, and from future sea level rise, are to be assumed by the District.

Commission staff recommends **approval** of coastal development permit application 6-18-0396 as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS	5
IV. FINDINGS AND DECLARATIONS	11
A. PROJECT DESCRIPTION/SITE HISTORY	11
B. WATER QUALITY	12
C. HABITAT IMPACTS.....	16
D. PUBLIC ACCESS	18
E. HYDROLOGY AND FLOOD HAZARDS	18
F. LOCAL COASTAL PLANNING.....	22
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT	23

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Plan Segments](#)

[Exhibit 4 – Draft Maintenance Plan](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-0396 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 6-18-0396 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Revised Final Plans.**

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of the following revised final plans, modified as required below.
 - i. Final construction plans that conform with the plans submitted to the Commission, titled “Phase II Storm Water Improvements” and “Treatment Equipment Building” dated January 19, 2018 except that they shall be modified as required below:
 - A. There shall be no exterior lighting on the western and southern sides of the treatment equipment building except for a single lighting sconce above any entry doors.
 - B. All exterior lighting on the approved treatment equipment building shall be shielded, maximum 2400 degrees Kelvin, and directed downward onto the ground; no up lighting shall be included.
 - C. The PVC liner material to be placed in the two ponds shall be heat bonded rather than chemically bonded.
- (b) All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval and with the recommendations of any required technical reports.
- (c) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Construction and Pollution Prevention Plan.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional. The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

- (a) **Property Owner Consent.** The Construction and Pollution Prevention Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to use of their properties.

- (b) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
 - i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.

 - ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

 - iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.

 - iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.

 - v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat storm water and non-storm water runoff.

- vi. Grading shall be avoided during the rainy season, from October 15 to April 15.

(c) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from storm water runoff using temporary perimeter barriers.
 - B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
 - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
 - D. Prompt removal of all construction debris from the beach.
 - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

(d) **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:

- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
- ii. Soil compaction due to construction activities shall be minimized, to retain the natural storm water infiltration capacity of the soil.
- iii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.

(e) Construction In, Over, or Adjacent to Coastal Waters and Habitat.

Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:

- i. No construction equipment or materials (including debris) shall be allowed at any time in the vegetated area along Stevens Creek.
- ii. All work shall take place during daylight hours, and lighting of the vegetated area and Stevens Creek is prohibited.
- iii. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
- iv. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the ocean, waterways, natural drainage swales, and the storm drain system, or being deposited on the beach.
- v. All debris resulting from construction activities shall be removed from the vegetated area along Stevens Creek immediately.
- vi. If preservative-treated wood is used, appropriate BMPs shall be implemented that meet industry standards for the selection, storage, and construction practices for use of preservative-treated wood in aquatic environments; at a minimum, those standards identified by the Western Wood Preservers Institute, et al. in *Treated Wood in Aquatic Environments: A Specification and Environmental Guide to Selecting, Installing and Managing Wood Preservation Systems in Aquatic and*

Wetland Environments (2012) or current revision thereof (<http://www.wwpinstitute.org/documents/TWinAquaticEnvironments-withLinks12.20.12.pdf>). The preservative-treated wood shall be certified by a third party inspection program, as indicated by the presence of a BMP Quality Mark or Certificate of Compliance, to have been produced in accordance with industry BMP standards designed to minimize adverse impacts in aquatic environments.

- (f) **Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- (g) **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
 1. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 2. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
 3. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
 4. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.
- (h) **Construction Site Documents.** The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times, and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.

- (i) **Construction Coordinator.** The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

3. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement.**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/SITE HISTORY

The 22nd District Agricultural Association (22nd DAA) is proposing to implement water quality improvements at the Del Mar Fairgrounds (Fairgrounds) agricultural and event facility in the City of Del Mar in order to address water quality impacts from current and future events held on the Fairgrounds, namely the fall horse race season. The proposed improvements include the installation of new storm drain lines to intercept discharges from the areas of the Fairgrounds designated “Concentrated Animal Feed Operations” (CAFO), defined as an animal feed operation that has over 1000 animals confined for more than 45 days a year, and redirect the discharges to the two existing infield ponds within the horse race track. The two ponds will be drained, regraded, and lined with 40-millimeter thick PVC liner to prevent intrusion of runoff into the groundwater. The western pond will be converted into an artificial wetland to allow for natural filtering and infiltration of overflow from the eastern pond. Additionally, a one-story, approximately 2,552 sq. ft. pump house with filters to the west of the ponds will treat the overflow from the ponds for either recirculation or discharge into Stevens Creek.

The Fairgrounds is a state-owned and operated facility run by the State of California 22nd DAA and originally built to support agricultural activities and horse racing. The Fairgrounds encompasses approximately 300 acres in the City of Del Mar, between Interstate 5 and Camino del Mar, north of San Dieguito Lagoon. The facility includes exhibit halls, a grandstand, barns, stables, a show arena, a satellite wagering facility, maintenance areas, parking lots, and the horse racing track. It hosts an annual summer county fair and thoroughbred horse-racing meet, along with a variety of smaller events in the main Fairgrounds complex during the non-summer off-season. While the 22nd DAA operates the Fairgrounds, operations management for specific events held at the facility is often conducted by independent organizations through agreements with the 22nd DAA.

In November 2013, the Commission approved CDP No. 6-13-010, formally authorizing the Fairgrounds to hold the temporary events within the facility during the non-summer offseason that had been occurring over the years. Among the new events the CDP authorized was the initiation of an approximately five-week fall horse race season to be held in addition to the decades-old, pre-coastal summer horse race season already held on the Fairgrounds. Unlike the summer horse race season, which is held during the dry months of the year, the fall race season overlaps with the rainy season months and introduces a sizeable new use with potential water quality impacts should storm events occur during the fall races. Thus, in applying for CDP No. 6-13-010, the 22nd DAA commissioned Fuscoe Engineering to draft the “Backstretch and Polytrack Water Quality Improvements” report (Fuscoe Report) to analyze the potential quantity of additional CAFO runoff from the fall horse race season and recommend various future measures that could be implemented to mitigate water quality impacts. The Fuscoe Report was reviewed by the Commission’s water quality staff, and the potential suite of water quality measures was found to be satisfactory and subsequently approved by the Commission in CDP 6-13-010.

Subsequent to the Commission's action, the 22nd DAA was sued by San Diego Coastkeeper (Coastkeeper) and the Coastal Environmental Rights Foundation (CERF), third-party environmental non-profit organizations, on the grounds that, among other deficiencies, the proposed water quality measures undercounted the CAFO acreage in the Fairgrounds and did not conform to the treatment and monitoring requirements of the Clean Water Act. In December 2017, all parties entered into a consent decree outlining applicable pollutant limits, monitoring requirements, corrective measures, and modifications to the forthcoming water quality improvements so as to designate more of the Fairgrounds as a CAFO and modify the infield ponds so as to sever any hydrological connection between them and ground water of the river valley.

The 22nd DAA calls the proposed water quality improvements the "CAFO Stormwater Improvement Project" (CAFO Project). The purpose of the CAFO project is to satisfy the Fairgrounds Federal National Pollutant Discharge Elimination System (NPDES) CAFO discharge requirements by designing a water quality system that collects and treats runoff up to a 25-year, 24-hour storm event in accordance with federal regulations governing CAFO-designated areas.

The CAFO Project will implement new storm drain lines to divert storm water runoff from all CAFO designated areas of the Fairgrounds, including the backstretch area where the main stables and horse wash facilities are located, the animal area, multiple barns, and various expo centers, to the proposed infield pond and artificial wetland area. Two existing ponds within the infield inside of the horse race track will be regraded, lined 40-millimeter thick PVC liner, and connected to a new pump house, with filters installed to treat the water flowing into the pump house from the ponds. The race tracks will continue drain into the ponds as they currently do. The proposed project will be designed to retain up to 11.8 acre-feet of water and, following treatment, the water will either remain in the ponds or, if capacity needs dictate, ultimately discharge into Stevens Creek. If the capacity of the two infield ponds is exceeded, excess runoff will enter the proposed pump house. The pump house, located at the western boundary of the Fairgrounds, west of the race track and infield ponds, will then further filter the runoff and either return the water to the ponds if capacity allows or discharge into Stevens Creek.

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

B. WATER QUALITY

The following Coastal Act Policies are most pertinent and state:

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The Del Mar Fairgrounds is located within the San Dieguito River valley and is bordered on the south by the San Dieguito River and on the north and west by Stevens Creek, a tributary. The Fairgrounds property, including the portions east of Jimmy Durante Boulevard, is divided into 16 separate drainage basins, with existing storm drain systems conveying runoff from the various basins to four discharge points along the San Dieguito River and three discharge points along Stevens Creek. Most of the drainage basins in the northern part of the main Fairgrounds complex direct runoff into the existing infield ponds. Here the runoff is treated by either infiltration (percolation) or by evaporation. Additionally, in the backstretch and race track areas, where most of the animal preparation activity related to races occurs, the low-flow and first-flush runoff is manually diverted to the Del Mar Fairgrounds sewage system. This includes horse wash station, runoff from recycling areas, car washes, and stables. However, during heavier storm events sheet flow carries runoff into Stevens Creek. In the basins in the southern portion of the main Fairgrounds complex, the storm drain system conveys runoff to treatment facilities (such as grease traps) and then on to the San Dieguito River.

Because the 22nd DAA operates a second fall thoroughbred horse racing season during the traditional rainy season, there is the potential to introduce a higher pollutant load related to such use, such as fecal material and detritus from animal wash areas. Because much of the main Fairgrounds complex is paved, its permeability, and thus ability to absorb runoff, is limited. As part of the development necessary to address the impacts from the second fall race meet, the 22nd DAA plans to install various phases of BMP improvements to minimize foreseeable water quality impacts arising from greater presence of racing animals and related equipment.

Due to the number of horses housed on the Fairgrounds property during the race meets and other events, the Fairgrounds is considered by regulatory agencies to be a Concentrated Animal Feeding Operation (CAFO) (the non-CAFO areas of the Fairgrounds that do not experience animal use are governed by a general Phase II Municipal Separate Storm Sewer System (MS4) permit). As such, the Fairgrounds is subject to regulations that require containment or treatment of runoff from horse production areas prior to discharge for all storm events up to the 25-year, 24-hour storm event. The horse production area of the Fairgrounds is primarily located in the backstretch area in the north of the facility and encompasses approximately 51 acres of stables, dormitories, and adjacent areas, though horses and other agricultural animals also periodically occupy the barns and arenas located elsewhere on the Fairgrounds.

The Fairgrounds currently discharges all surface runoff and horse wash water from the backstretch area to the City of Del Mar sewer system when horses are present, pursuant to an agreement with the city stating daily and monthly sewer discharge limits. However, when horses are not present, the Fairgrounds allows surface runoff to discharge to adjacent Stevens Creek, which feeds into the San Dieguito River.

Currently, the two infield ponds within the race track area receive and retain runoff from certain parts of the Fairgrounds property, such as the main race track. In the event of a storm, all runoff from the racetrack is diverted to the infield ponds. In the event that the runoff from a storm event exceeds the capacity of the ponds, the first flush flows are diverted to the ponds, with excess capacity flows draining into Stevens Creek. These excess flows were monitored for five years under an approved monitoring program required pursuant to a past Commission CDP permitting race track upgrades (CDP No. 6-06-054). This monitoring program has shown exceedances for pathogenic organisms and other pollutants, and the project currently proposed by the 22nd DAA is designed to address these exceedances.

Of the options set forth by the March 2013 Fuscoe Report, the redirection of runoff flows from the backstretch area and tracks into the infield pond and construction of a treatment building was the preferred method, and it is this method, revised pursuant to the consent decree entered into with Coastkeeper and CERF, that is currently proposed by the 22nd DAA.

As proposed, substantially more runoff area of the Fairgrounds facility, beyond the backstretch area originally envisioned in the 2013 Fuscoe Report, will be directed to the infield ponds. Barns, show arenas, expo areas, and other areas where farm animals are walked or displayed will now be directed to the ponds, increasing the amount of animal-related pollutants that will be captured and processed through higher-grade treatment.

The two infield ponds will be upgraded and enhanced based on new data gathered since the approval of CDP 6-13-010. At the time of the Commission's action, it was believed that the two infield ponds were suitable receptacles for the runoff due to their hydrologically isolated nature with regards to the nearby San Dieguito Lagoon. However, subsequent observation and hydrological surveys by the 22nd DAA discovered that the infield ponds are actually hydrologically connected to the nearby river and lagoon area

through the groundwater. When the tidal elevation in the river system would change, so would the elevation of the infield ponds, though to a greatly muted extent. Thus, directing runoff into the ponds is potentially impacting water quality in Stevens Creek and the adjacent San Dieguito Lagoon.

Consequently, in order to make the infield ponds suitable for runoff retention, they will be drained, graded, and lined so as to sever the hydrological connection to the ground water. The 22nd DAA proposes to install a 40-millimeter thick PVC liner laid over a 3-inch thick layer of coarse sand and layers of Class 2 base and geotechnical membranes, to provide stabilization to the liner and minimize the risk of sharp material cutting into the liner over time and causing leakage. Groundwater monitoring determined that the groundwater level is approximately 3 feet above mean sea level. To avoid having the groundwater uplift the liner, the liner will be installed at an elevation of 4.5 feet above sea level.

While the eastern pond will remain a liquid body of water, the western pond will be converted into an artificial wetland into which the eastern pond will overflow when its capacity is exceeded. The western artificial wetland will consist of a native plant palette along the berms bordering the site, with graded hydric soils lining the bottom to capture and retain runoff through infiltration (the boundary berms of the eastern pond will also be planted with native plants).

Finally, the western pond will connect to a one-story, approximately 2,552 sq. ft. pump house, into which excess capacity will enter. The pump house will house various water treatment equipment to further filter and process the CAFO runoff. Once treatment is complete, the pump house will implement one of two actions: if capacity exists, pumps will recirculate the runoff back into the eastern pond for retention or further processing, or, if no capacity exists, the runoff will be discharged into the neighboring Stevens Creek.

The proposed project has been designed to applicable state and federal water quality standards. The Commission's water quality staff reviewed the materials related to the proposed water quality improvements and the found measures to line and upgrade the ponds to be satisfactory, though water quality staff did recommend, and the 22nd DAA agreed, that the PVC material should be heat bonded, rather than chemically bonded, in order to achieve a more resilient lining connection between the PVC components. The water quality staff also agreed that the MS4 permit governing the remaining, non-CAFO areas of the Fairgrounds provides sufficient protection of the waters, consistent with the water quality protection policies of the Coastal Act.

Given that the applicant is undertaking significant improvements to treat water quality from the CAFO areas, Commission staff asked if the proposed improved infield pond water quality system could accommodate additional, non-CAFO runoff. The 22nd DAA responded that federal regulations require that CAFO treatment systems be able to handle a capacity up to a 25-year, 24-hour storm, and that directing non-CAFO areas into the ponds would exceed the required capacity. As to the potential to increase the size of the ponds accordingly, the 22nd DAA said the ponds could not be deepened due to the aforementioned issue of the ground water connection, and to increase the ponds laterally

would occupy almost the entirety of the infield area, which would cost millions of dollars and remove an active preparation and event space from future use. Thus, directing additional runoff into the proposed facility is not feasible at this time.

To ensure that the 22nd DAA constructs the proposed development in conformance with approved methods, **Special Condition No. 1** requires the 22nd DAA to submit and adhere to revised final construction plans for the pond improvements and pump house. **Special Condition No. 2** requires the 22nd DAA to submit final construction BMP plans containing designated protection measures to prevent water quality impacts to nearby Stevens Creek and San Dieguito River.

C. HABITAT IMPACTS

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 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.*

The main Fairgrounds complex north of Jimmy Durante Boulevard is almost completely developed, with numerous permanent structures including the Grandstands, show arenas, stables, race track, exhibit halls, etc. Most of the remaining surface area not occupied by structures is paved, with some unpaved areas in the northern stable and practice track areas. As such, the main Fairground complex contains almost no undeveloped areas, and what little vegetation is present is concentrated around Stevens Creek, which flows along the northern and western boundaries of the main Fairgrounds complex. Stevens Creek is a tributary of the San Dieguito River and San Dieguito Lagoon, and its waters occupy 1.57 acres of the main Fairground complex. Along the creek's length within the main Fairgrounds complex are approximately .29 acres of chenopod scrub, .13 acres of coastal

and valley freshwater marsh, 11.11 acres of diegan coastal scrub, 1.34 acres of disturbed habitat, 9.42 acres of non-native vegetation, .04 acres of saltgrass, .86 acres of southern coastal salt marsh, and .23 acres of southern willow scrub. No permanent or temporary development is being proposed within Stevens Creek and the vegetated areas along its bank, and this permit will not affect its current state.

However, the proposed one-story pump house structure will be as close as fifteen feet to the vegetated area along Stevens Creek. While construction of the pump house is expected to occur outside the bird breeding season, and the finished structure is not expected to experience high levels of activity compared to other parts of the Fairgrounds due to its function as housing for water treatment equipment, the structure could still have habitat impacts due to its proposed lighting design. The proposed design would have twenty-four surface-mounted light fixtures around the exterior of the structure (ten each on the east and west sides and two each on the north and south sides), with each of the three access doors having two additional lighting sconces. The 22nd DAA states that the lighting is required for security due to the location of the structure by the perimeter of the Fairgrounds, which is necessary to capture and treat the runoff from the infield ponds prior to discharge into Stevens Creek.

The Fairgrounds is a sizeable developed facility that is illuminated at night to various levels depending on the amount of temporary night time events being hosted at any given time. Furthermore, the area surrounding the pump house site consists of parking lots illuminated by several pole-mounted lights. Nevertheless, the presence of lighting can have potential adverse impacts on nearby habitat and the species therein. Light encroachment into habitat areas can alter the sleep and foraging patterns of animals, as well as increase predation by allowing predators to hunt when it normally would be too dark.

The Commission's staff ecologist has reviewed the proposed plant palette for the artificial wetland to be constructed in the western infield pond and the upland vegetation and found it to be suitable for the proposed project and given area. However, it is important that their primary function as water quality treatment facilities be maintained not only to ensure water quality, but because planted vegetation features that are not maintained can take on characteristics of natural habitat that then must be protected and preserved as habitat, which may not be consistent with the original purpose of the project.

As both the 22nd DAA and the Commission share the goal of ensuring that the water treatment wetlands perform their intended function while avoiding impacts to habitat, the 22nd DAA submitted its draft pond maintenance plan for review, describing the maintenance measures to be undertaken, including but not limited to periodic trimming, removal of dead vegetation, replacement planting, weeding, and removal of floating algae. Review of the draft maintenance plan indicates that sufficient steps will be taken to maintain its water quality function and avoid future habitat issues. As long as the vegetation is maintained as proposed to function as a water quality treatment feature, future modifications or revisions to the vegetation would not be considered impacts to sensitive habitat.

Thus, the main habitat impact arising from the proposed development is related to lighting. Despite the proximity of the pump house structure to Stevens Creek, it is possible to design the lighting to minimize light encroachment, and in turn impacts, into the vegetated areas. **Special Condition No. 1** requires 22nd DAA to submit revised final plans that will eliminate the lighting on the western and southern sides of the structure facing toward Stevens Creek except for one sconce over any entrances located therein. All other lighting permitted on the structure must be shielded and aimed down onto the ground – not up into the sky – so as to focus their footprint and prevent any atmospheric illumination. As conditioned, no significant impacts to habitat are expected, consistent with the resource protection policies of the Coastal Act.

D. PUBLIC ACCESS

The following Coastal Act policies are most pertinent to this issue, and state in part:

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

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

[...]

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14,*

inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30213 of the Coastal Act states, in part:

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

[...]

Section 30252 of the Coastal Act states:

- (a) *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

Section 30604 of the Coastal Act states, in part:

[...]

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

The Fairgrounds is located near the mouth of the San Dieguito River, west of the I-5 and east of Camino del Mar (Old Highway 101). It is between the river to the south and Via de la Valle, which is the first public east-west road north of the river. El Camino Real (east of the I-5) is currently the first continuous north-south public road east of the site. The entire Fairgrounds property is located between the sea and first public roadway, where maintaining shoreline public access to the river/lagoon and west to the municipal beaches is of greatest concern. As the applicant property owner is another state agency,

the property is in public ownership, and is open to the public for numerous events throughout the year.

Relatedly, the Coast to Crest Trail is a multi-use trail system for hikers, bicyclists, and horseback riders that will eventually extend from the ocean at Del Mar to the San Dieguito River's source on Volcan Mountain, just north of Julian, a distance of approximately 55 miles. Although the entirety of Coast to Crest trail has not been completed, numerous segments of trail are open to the public and some cross the Fairgrounds property on the other side of Jimmy Durante Blvd. The San Dieguito River Park Joint Powers Authority ("JPA") – the agency responsible for maintaining and expanding the San Dieguito River Valley Park – is responsible for implementing and maintaining the Coast to Crest Trail.

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

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

Because of the status of the Fairgrounds as a coastal destination and its location in close proximity to other coastal destinations such as the beach, San Dieguito Lagoon, and the Coast to Crest Trail, public access has always been a high priority in the area, and always been vulnerable to the traffic impacts and schedule of the Fairgrounds. While hundreds of acres in size, there are many times when the Fairgrounds does not have adequate parking on site to accommodate all of the singular or combined events scheduled on a given day. In such times, traffic backup and parking spillover into adjacent neighborhoods greatly impacts the ability of the public to utilize coastal resources and destinations, dissuading their visitation and decreasing coastal access.

The proposed pump house is sited in the western parking area and will displace twenty parking spaces. The 22nd DAA indicated that the pump house must be located there as that is where the existing storm water system outfall into Stevens Creek is located and thus where the pump house must be located to capture and treat the runoff. Additionally,

because almost the entirety of the western property area of the Fairgrounds is utilized for parking, redirecting the outfall and structure north or south would similarly displace parking regardless.

In light of the overall size of the Fairgrounds and its multiple parking facilities, the displaced twenty parking spaces represent less than one percent of the available parking supply and will not represent a substantial reduction in the ability of the Fairgrounds to accommodate event parking from current levels. Furthermore, the parking being displaced is located in the western segment of the Fairgrounds, opposite from the main vehicular entrance and parking lots used by the majority of event attendees. The 22nd DAA is currently conducting the 5-year parking monitoring plan as required by CDP No. 6-12-067 in order to gauge future parking requirements and maximize on-site parking through a suite of measures, and it is expected that they will come forward with measures that will result in tangible improvements in the Fairgrounds ability to accommodate adequate parking for its future events.

Thus, as proposed, the location of the pump house is not anticipated to cause substantial disruption to parking operations and increased spillover into public areas, and the project can be found in conformance with the public access policies of Chapter 3 of the Coastal Act.

E. HYDROLOGY AND FLOOD HAZARD

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

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

[...]

Section 30253 of the Act states, in part:

New development shall do all of the following:

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

[...]

The Del Mar Fairgrounds is located within the 100-year floodplain of the San Dieguito River, and is thus subject to flooding during storm events. However, a large number of permanent and temporary structures already exist in the main Fairgrounds complex west of Jimmy Durante Boulevard, many of them pre-dating the Coastal Act. In past actions, the Commission has found that the placement of fill or permanent structures in a floodplain may substantially alter natural water flows and would not be an allowable project under Section 30236. Further, such placement of fill or permanent structures in a floodplain may also not be consistent with Section 30253 of the Coastal Act because the development may not sufficiently minimize the risks to life and property in areas of high flood hazard. However, moderately sized structures that can accommodate periodic inundation without being damaged do not cause natural water flows to be redirected and therefore can be found consistent with Section 30236. The entire main Fairgrounds complex is comprised of structures which are, and will continue to be, able to withstand periodic inundation occasionally during severe rain events. Thus, the Commission has found that the addition of new structures on the Fairgrounds that are similarly designed can be consistent with the hydrology and hazard policies of the Coastal Act.

The Coastal Act requires new development to minimize risks to life and property of both the project site and the surrounding area. Any additional fill or creation of building footprints could result in changes in the hydrology of the San Dieguito River or Stevens Creek. Modifications to the current flooding patterns, in which a large portion of the 100-year flood waters are contained on the Fairgrounds property, could result in increased flood hazards to existing up- and downstream developments. This could, in turn, lead to proposals for further channelization of the river. However, in this particular case, the proposed development is only adding a single one-story, approximately 2,552 sq. ft. pump house designed to support the proposed water quality improvements, and is expected to be able to withstand periodic flooding. The improvements to the existing infield ponds will not substantially increase their size or depth, and thus not significantly change flood patterns in the river valley. Therefore, the proposed development does not constitute a substantial alteration of a river and is thus consistent with Section 30236 and will minimize risks to life and property in the floodplain given the temporary and impermanent nature of the development.

Special Condition No. 4 requires the 22nd DAA to assume all risks liabilities arising from approval of this permit. In summary, the Commission finds that the proposed development will not result in a significant change to current flood flows across the site. The amount of impermeable surfaces will not substantially increase, and existing storm drains, as always, will continue to allow the passage of flood waters. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act.

F. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the

local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Fairgrounds straddles the border between the cities of Del Mar and San Diego. However, because it is property belonging to a state agency, does not fall under the certified LCPs of either city. Although much of the project site is in an area of original jurisdiction and thus not subject to the policies and regulations of San Diego's and Del Mar's certified LCPs, it is nonetheless consistent with the Fairgrounds/Racetrack land use designation and zone of that plan. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the Cities of San Diego and Del Mar to continue to implement their certified LCPs.

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 3 policies of the Coastal Act. Mitigation measures, including conditions flood hazards, water quality, and habitat impact will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Consent Decree, San Diego Coastkeeper and Coastal Environmental Rights Foundation vs. 22nd District Agricultural Association (No. 3:17-cv-02448-CAB-BGS, S.D. Cal, Dec. 11, 2017)