CALIFORNIA COASTAL COMMISSION
SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384

Th18a

Filed:	3/18/24
270th Day:	12/13/24
Staff:	S. Leach-SD
Staff Report:	8/22/24
Hearing Date:	9/12/24

STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-23-0899**
Applicant:	**22nd District Agricultural Association**
Agent:	Dustin Fuller
Location:	Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar, San Diego, San Diego County. (APNs: 299-042-01, 299-042-02, 299-003-04)
Project Description:	After-the-fact permitting of a 57-space recreational vehicle lot used for public overnight accommodations.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is after-the-fact authorization of an existing RV parking lot on the main Del Mar Fairgrounds complex known as the Red Lot. The Del Mar Fairgrounds ("Fairgrounds") is a state-owned and operated facility run by the 22nd District Agricultural Association (22nd DAA) and originally built to support agricultural activities and horse racing. It is located north of the Coast to Crest Trail, a multi-use trail system for hikers, bicyclists, and horseback riders, that is still being designed and constructed in several areas, including directly south of the Red Lot. The Red Lot itself is a 57-space recreational vehicle/travel trailer park that is used exclusively for short-term parking of RVs and travel trailers, and the 22nd DAA states it been used continuously since at least the early 1970s. The primary purpose of the RV lot is to accommodate event-related patrons, but when the lot is not serving this purpose, it is available for short-term stays by members of the public. While the primary use of the lot pertains to the normal operations of the Fairgrounds, overnight rental of RV spaces by the public is a use that

was never approved by the Commission and for available information does not demonstrate was in effect before the Coastal Act.

While the specific use of these 57 spaces as public overnight accommodations has not received a permit, the Red Lot is arguably in service for a priority use under the Coastal Act. Sections 30210 and 30213 emphasize the mandate to maximize public access to the coast and provide and encourage recreational opportunities where feasible. Nevertheless, this unpermitted development runs contrary to the intent of a 2012 Consent Order approved by the Commission, the purpose of which was to disclose and address all unpermitted activities at the Fairgrounds. In order to resolve the violation, the 22nd DAA has requested after-the-fact authorization of the unpermitted development through this application and has agreed to implement a public access improvement along a nearby open segment of the Coast to Crest Trail. As described in **Special Condition #4**, a public bench will be installed along the trail in an area that will not block public views or public access. **Special Condition #5** places the permittee on notice that only the work explicitly described in this permit is authorized, and that future development, including a change in use, will require Commission review and approval.

Because the Red Lot is a paved parking lot within the floodplain of the San Dieguito River, risks to water quality must be considered and addressed. While there are numerous water quality protections in place, such as accidental spill protocols, RV spaces plumbed to sewer, and BMPs surrounding the two closest discharge points, **Special Condition #1** will strengthen water quality protections by requiring submittal of final plans that includes an engineered stormwater filtration device.

The Coastal Act also requires new development to minimize risks to life and property of both the project site and the surrounding area. In this case, the proposed development is not adding new permanent structures to the floodplain, but instead consists of holding temporary trailers and RV's. These should not substantially alter flood flows, as they can be relocated relatively quickly or, if not, would not be able to hold back substantial amounts of water. Additionally, despite local flooding issues, the Red Lot itself does not flood due to an elevation difference of three to four feet compared to the surrounding area. Therefore, there is no significant risk of flooding for the members of the public utilizing the lot for temporary recreational vehicle stays. Nevertheless, **Special Condition #3** requires 22nd DAA to waive any future flood protection devices to protect the development proposed in this permit, while **Special Condition #2** requires the Applicant to assume all risks and liabilities arising from hazards.

The Red Lot furthers public access opportunities to the coast and is therefore a beneficial supplementary use of the area when not needed by event vendors. **Special Condition #1** requires the submittal of final plans to memorialize the boundaries of the lot as well as the services provided to members of the public who choose to stay there.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-23-0899, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION 4

II. STANDARD CONDITIONS 4

III. SPECIAL CONDITIONS 5

IV. FINDINGS AND DECLARATIONS 7

A. Project Description and Background 7
B. Public Access and Recreation 8
C. Marine Resources and Water Quality 10
D. Flood Hazards 11
E. Unpermitted Development 13
F. Local Coastal Planning 14
G. California Environmental Quality Act 14

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS 15

EXHIBITS

Exhibit 1 – Vicinity Maps

Exhibit 2 – Location Maps

Exhibit 3 – Coast to Crest Trail

Exhibit 4 – Localized Flooding

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-23-0899 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation**. Any questions of intent 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 applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of final plans that include a depiction of the Red Lot, hookup locations, and plumbing utilities for gray and black water. The plans shall include the following:

   a. Drainage from the Red Lot shall be directed through an engineered stormwater device, certified by the State Water Resources Control Board for Trash Full Capture Systems, that removes pollutants, including petroleum hydrocarbons, trash, and gross solids larger than five mm. The device will be sized for the entire tributary area. This device must be maintained regularly to ensure effectiveness and compliance with water quality standards. Additionally, the stormwater treatment system shall be maintained for pollutant removal to ensure ongoing water quality protection. Housekeeping measures will be deployed, including enhanced sweeping and monthly inspections with visual observations.

   The applicant shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. **Assumption of Risk.** The Permittee acknowledges and agrees in relation to this CDP and the development that it authorizes that the location is subject to coastal hazards, including flooding, and therefore (a) to assume all risks; (b) to unconditionally waive any claim of damage and/or liability against the Commission and/or its officers, employees, agents, successors and/or assigns; (c) to indemnify and hold harmless the Commission and its officers, employees, agents, successor and/or assigns against and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement, including as it relates to any damages to public and/or private properties and/or personal injury; and (d) that any adverse effects to property or people caused by the development authorized by this CDP shall be fully the responsibility of the Permittee.

3. **No Future Shoreline Protective Device.** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-23-0899 in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other coastal hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all

successors and assigns, any rights to construct such devices that may exist under applicable law.

a. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove all or a portion of the development authorized by this permit and restore the site, if:
    i. Any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed.
    ii. Essential services to the site can no longer feasibly be maintained (e.g., utilities, roads).
    iii. The development is no longer located on private property due to the migration of the public trust boundary.
    iv. The development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act.
b. Approval of CDP No. 6-23-0899 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

4. Public Access Improvement. WITHIN 90 DAYS OF ISSUANCE OF THIS PERMIT, the Permittee shall submit, for the review and written approval of the Executive Director, plans approved by the San Dieguito River Park Joint Powers Authority that depict the location of a new public bench with shade structure along the Coast to Crest Trail between Interstate 5 and Jimmy Durante Boulevard. The bench shall not block public views of the San Dieguito Lagoon or public access along the trail. WITHIN 90 DAYS OF APPROVAL OF THE PLANS BY THE EXECUTIVE DIRECTOR, the Permittee shall install the bench with shade structure and submit photographic evidence that the bench and shade structure was installed as required by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Future Development. This permit is only for the development described in Coastal Development Permit No. 6-23-0899. Except as provided in Public Resource Code section 30610 and applicable regulations, any future development, including any change in use, as defined in Public Resource Code section 30106, shall require an amendment to this permit from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project is an after-the-fact authorization of an existing RV parking lot, known as the Red Lot, on the main Del Mar Fairgrounds complex. The Del Mar Fairgrounds ("Fairgrounds") is a state-owned and operated facility run by the 22nd District Agricultural Association (22nd DAA) and originally built to support agricultural activities and horse racing. 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. The main Fairgrounds complex is located north of Jimmy Durante Boulevard and includes exhibit halls, a Grandstand, barns, stables, a show arena, a satellite wagering building, maintenance areas, parking lots, and the horse racing track (Exhibit 2).

The main Fairgrounds complex, and by extension the Red Lot, is located north of the 150-acre San Dieguito Wetland Restoration Project, which the Commission granted a Coastal Development Permit ("CDP") as mitigation for the San Onofre Nuclear Generating Station's cooling system's effects on fish populations (CDP No. 6-04-088). As part of that same CDP, a portion of the Coast to Crest Trail was also constructed. 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 the Coast to Crest trail has not been completed, numerous segments are open to the public. The planned segment of the trail just south of the Red Lot is known as "Reach the Beach," and is approximately 0.90 mile long (Exhibit 3). While trail easements have been secured and a feasibility study completed, the trail is not constructed or in use. The connecting segment just east of the trail, stretching from Jimmy Durante Blvd. to El Camino Real, is available for public use and is part of the focused planning area for the San Dieguito River Park's acquisition and planning efforts. This area roughly corresponds to the viewshed of the San Dieguito River Valley and its tributary streams. The San Dieguito River Park Joint Powers Authority ("JPA") is responsible for implementing and maintaining the Coast to Crest Trail as a whole.

The Red Lot is a 57-space recreational vehicle/travel trailer park that is used exclusively for short-term parking of RVs and travel trailers, and the 22nd DAA states it been used continuously since at least the early 1970s. Satellite imagery confirms that the Red Lot has been used for parking of trailers and recreational vehicles since the early 1970s. The primary purpose of the RV lot is to accommodate event-related patrons, but when the lot is not serving this purpose, it is available for short-term stays by members of the public. For example, during the Fair, the entire area is rented to ride and game owners or concessionaires, or other entities directly affiliated with the Fair. Similarly, during the race meets, the area is rented to horse owners and their employees. Individual members of the public are limited to renting for 21 days in a calendar year and when the lot is not utilized for Fair activities. While the primary use of the lot pertains to the normal operations of the Fairgrounds, overnight rental of RV spaces by the public is a use that

was not permitted by the Commission and that 22nd DAA has not been able to prove was in effect before the Coastal Act.

In an enforcement action, the Commission issued Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02 ("Consent Orders") on March 8, 2012 to address unpermitted activities at the Fairgrounds. These activities included landform alteration within a wetland, change in the intensity of use of the subject property from its pre-Coastal Act levels of use, including greatly increased parking use in floodplain/habitat areas, new regular and special events, and other improvements developed without a CDP. The Consent Orders approved by the Commission were intended to address as much of the unpermitted development on the subject property as possible and establish a framework for complying with the Coastal Act in the future; however, staff appears to have been unaware of the unpermitted use of the Red Lot for public overnight accommodations at the time of that staff report publication.

The Del Mar Fairgrounds is located both within the cities of Del Mar and San Diego (the Red Lot specifically is located within City of Del Mar), each of which have effective 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 site is within the Coastal Commission's area of original and retained jurisdiction, making Chapter 3 of the Coastal Act the legal standard of review for the subject CDP application.

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 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.

The Fairgrounds is located near the mouth of the San Dieguito River, west of the I-5 and east of Camino del Mar (Old Highway 101). It is between the river to the south and Via de la Valle, which is the first public east-west road north of the river. El Camino Real (east of the I-5) is currently the first continuous north-south public road east of the site. Thus, the entire Fairgrounds complex, including the project site, is located between the sea and first public roadway, where maintaining shoreline public access to the river/lagoon and west to the municipal beaches is of greatest concern (Exhibit 1). 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 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 one million visitors during its summer run of early June until the Fourth of July. The annual thoroughbred horse racing season subsequently begins two weeks later and runs until early September.

As described above, the Red Lot has been used for short-term parking of RVs and travel trailers since the early 1970s, with its primary use being for vendors staying at the Fairgrounds for events such as the annual San Diego County Fair and horse race meets. These events total approximately 250 days of the year. When not used for event parking, the spaces are available to the public for overnight accommodations in their RVs for a maximum of 21-days in a calendar year. Stays for members of the public may be shortened depending on the dates requested in order to accommodate vendor parking needed.

Current rental rates are $48 per space regardless of the time of year. This is the same rate that patrons doing business at the 22nd DAA and utilizing the RV spaces pay. While this rate has not changed over the past 10 years, an increase to $73 per space per night for members of the public is planned in 2024. Patrons doing business at the 22nd DAA will continue to be charged $48 per space per night. Each space includes water, power and sewer services. Additionally, RV users are permitted access to the adjacent bathrooms, which include showers and washers and dryers.

The Red Lot furthers public access opportunities to the coast and is therefore a beneficial supplementary use of the area when not needed by event vendors. **Special Condition #1** requires the submittal of final plans to memorialize the boundaries of the Red Lot as well as the services provided to members of the public who choose to stay there. As conditioned, this after-the-fact approval is consistent with the cited policies of the Coastal Act.

C. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Because the Red Lot is a paved parking lot within the floodplain of the San Dieguito River, risks to water quality must be considered and addressed.

First, 22nd DAA is not proposing to increase the impervious surface area within the main Fairgrounds complex, so additional runoff is not foreseen. Satellite imagery confirms that the Red Lot has been paved and used for parking of trailers and recreational vehicles since the early 1970s. The proposed development is solely after-the-fact approval for use of the RV lot by the general public. Secondly, the 22nd DAA has a Small Phase 2 MS4 Storm Water Permit (MS4) that is issued by the San Diego Regional Water Quality Control Board and encompasses the area in which the Red Lot is located. The Small MS4 permit includes requirements for protocols to address accidental spills in the event there is a discharge from a recreational vehicle or trailer, or other utilities on site. While the Red Lot does not have a separate stand-alone dump station area, all spaces are plumbed to sewer and so both black and gray water is safely disposed of on-site.

Additionally, there are two discharge points located within and adjacent to the Red Lot, both of which have BMPs in place to help ensure that only rain water goes into the San Dieguito River. BMPs include catch-basins in the discharge point, fiber rolls outside the inlet, and coconut mats on inlets to the north. To strengthen the BMPs in place, **Special Condition #1** requires submittal of final plans that includes an engineered stormwater device that will remove additional pollutants, including petroleum hydrocarbons, trash, and gross solids larger than five millimeters. The special condition require the device to be sized for the entire tributary area and to be inspected and maintained regularly to ensure pollutant removal prior to discharge into the river.

In summary, the Commission finds that after-the-fact authorization will not result in an adverse impact to water quality. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act.

D. Flood Hazards

Section 30253 of the Coastal 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.
>
> […]

Section 30236 of the Coastal Act states:

> Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

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 therefore be inconsistent

with Coastal Act Section 30236 because such project wouldn't consist of an allowable project under Section 30236. Further, such placement of fill or permanent structures in a floodplain may 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. On the other hand, structures that can accommodate periodic inundation without being damaged do not cause natural water flows to be redirected and therefore can be found consistent with Section 30236. The entire main Fairgrounds complex is comprised of structures which can withstand periodic inundation occasionally during severe rain events.

The Coastal Act requires new development to minimize risks to life and property of both the project site and the surrounding area. 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. In this particular case, the proposed development is not adding new permanent structures to the floodplain, but instead consists of holding temporary structures (i.e. trailers and RV's). These should not substantially alter flood flows, as they can be relocated relatively quickly or, if not, would not be able to hold back substantial amounts of water. 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.

The 22nd DAA confirmed that two stormwater discharge points in and around the Red Lot are subject to periodic flooding. The Fairgrounds discharge points along the San Dieguito River are largely controlled by the tides, such that if there is a high tide during a storm event, no storm water leaves the facility. If there's a larger than average storm event coupled with a high tide, water accumulates in the areas immediately surrounding the discharge points (Exhibit 4). Despite the local flooding issues, the Red Lot RV parking itself does not flood due to an elevation difference of three to four feet compared to the surrounding area. Moreover, as discussed above, the Red Lot is used for the parking of trailers and recreational vehicles, which by their nature are considered temporary uses that can easily be moved in the event of a flooding emergency.

Because the Red Lot is receiving after-the-fact approval, it is considered new development that is not entitled to shoreline protection and as such, the applicant is required to waive any right to construct a shoreline protective device to protect the development in the future as detailed in **Special Condition #3**. Further, 22nd Ag must remove the development if any government agency has ordered that the area is not to be occupied due to hazards such as waves, erosion, storm conditions, or if any public agency requires the structures to be removed. Special Condition #3 also makes it clear that the development must be removed if essential services to the site, such as the utilities or access roads, cannot be maintained, and that the development cannot be located on public trust lands in the event that sea level rise causes the public trust boundary to migrate. **Special Condition #2** requires 22nd DAA to assume all risks liabilities arising from approval of this permit. In summary, the Commission finds that after-the-fact authorization will not result in a change to current flood flows across the

site and no change in impervious surfaces is proposed. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act.

E. Unpermitted Development

Unpermitted development has occurred on the site in violation of the Coastal Act, including the 22nd DAA's renting of spaces in the Red Lot as overnight accommodations to the public, which is a change of intensity of use, and thus requires Commission-authorization. The applicant is requesting after-the-fact authorization of the use of the Red Lot for public stays up to 21 nights a year per individual. Satellite imagery confirms that the Red Lot has been used for parking of trailers and recreational vehicles since the early 1970s; however, the 22nd DAA has not found records to substantiate when public use of the lot as an overnight accommodation began.

While the specific use of these 57 spaces as public overnight accommodations has not received a permit, the use in and of itself is a priority use. Sections 30210 and 30213 emphasize the Coastal Act mandate to maximize public access to the coast and provide and encourage recreational opportunities where possible. Because of this, the unpermitted development did not result in a particular impact to coastal resources. Nevertheless, the occurrence of this unpermitted development runs contrary to the intent of the 2012 Consent Orders, which was to disclose and address unpermitted activities at the Fairgrounds.

In order to resolve the Coastal Act violation described above, the 22nd DAA has applied to obtain after-the-fact authorization of the unpermitted development through this application and has agreed to implement a public access improvement along a nearby segment of the Coast to Crest Trail. As described in **Special Condition #4**, the applicant will install a public bench with shade structure along the trail between Interstate 5 and Jimmy Durante Boulevard in an area that will not block public views of the San Dieguito Lagoon or public access along the main trail's right-of-way. The special condition also requires the submission of plans approved by the San Dieguito River Park JPA within 90 days of the issuance of the Coastal Development Permit. These plans must be reviewed and approved by the Executive Director, and within 90 days of this approval, the bench must be installed and photographic evidence submitted to the Commission.

Special Condition #5 places the permittee on notice that only the work explicitly described in this permit is authorized, and that future development, including a change in use, will require Commission review and approval through a coastal development permit.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of applicant's liability for the violations described above. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the

Chapter 3 policies of the Coastal Act as though the development were new. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

F. Local Coastal Planning

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

The 22nd District Agricultural Association is the lead agency for purposes of CEQA review for this project, and the Coastal Commission is a responsible agency. Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Del Mar Municipal Code Section 30.72.030 of the Del Mar Municipal Code provides that allowable uses shall be regulated by the 22nd DAA on land zoned as Fairgrounds-Racetrack. The 22nd DAA considers the development to be exempt from CEQA. (See Cal. Code of Regs., tit. 14, § 15301 – (Existing Facilities), § 15321 (enforcement actions), and § 15323 – (Normal Operations of Facilities for Public Gatherings),.).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing public access, water quality, flooding hazards, and unpermitted development 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Cease and Desist Order CCC-12-CD-02 and Restoration Order CCC-12-RO-02
- CDP No. 6-04-088