

Navigating the Coastal Act/CEQA Equivalency Process: A Tale of Two State Agencies



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Introductions

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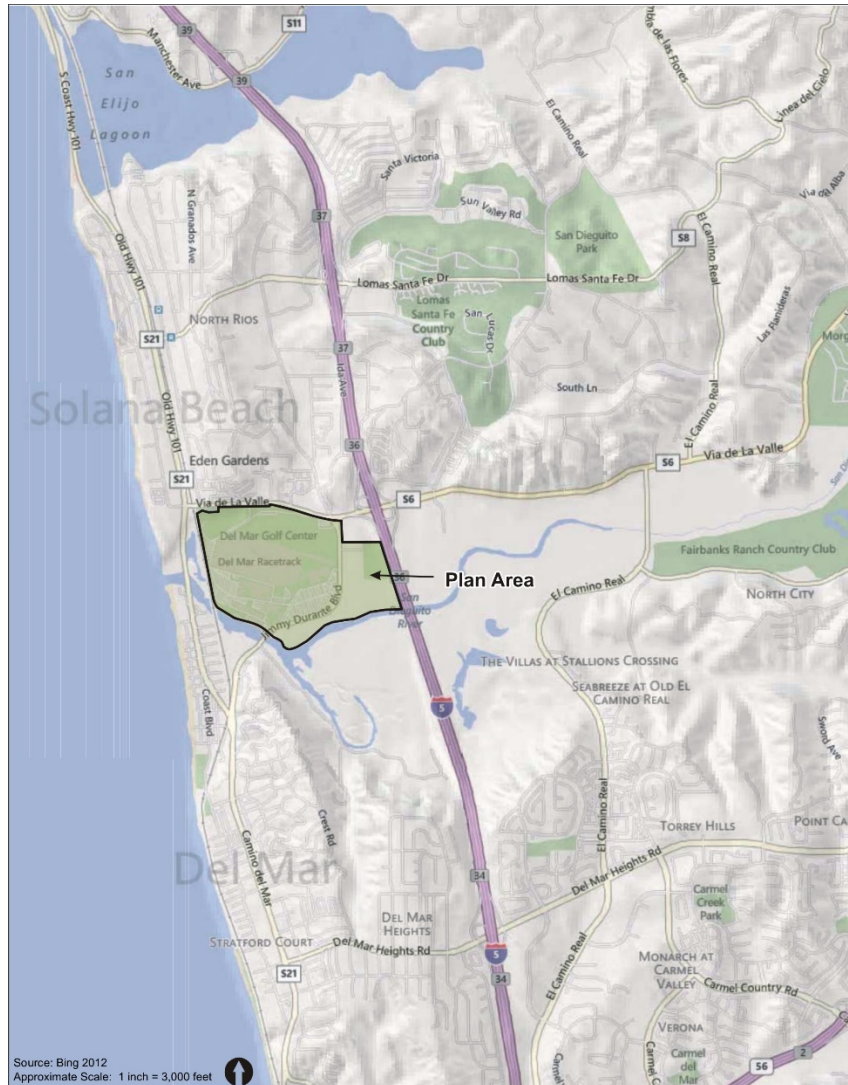
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Overview | Project Setting



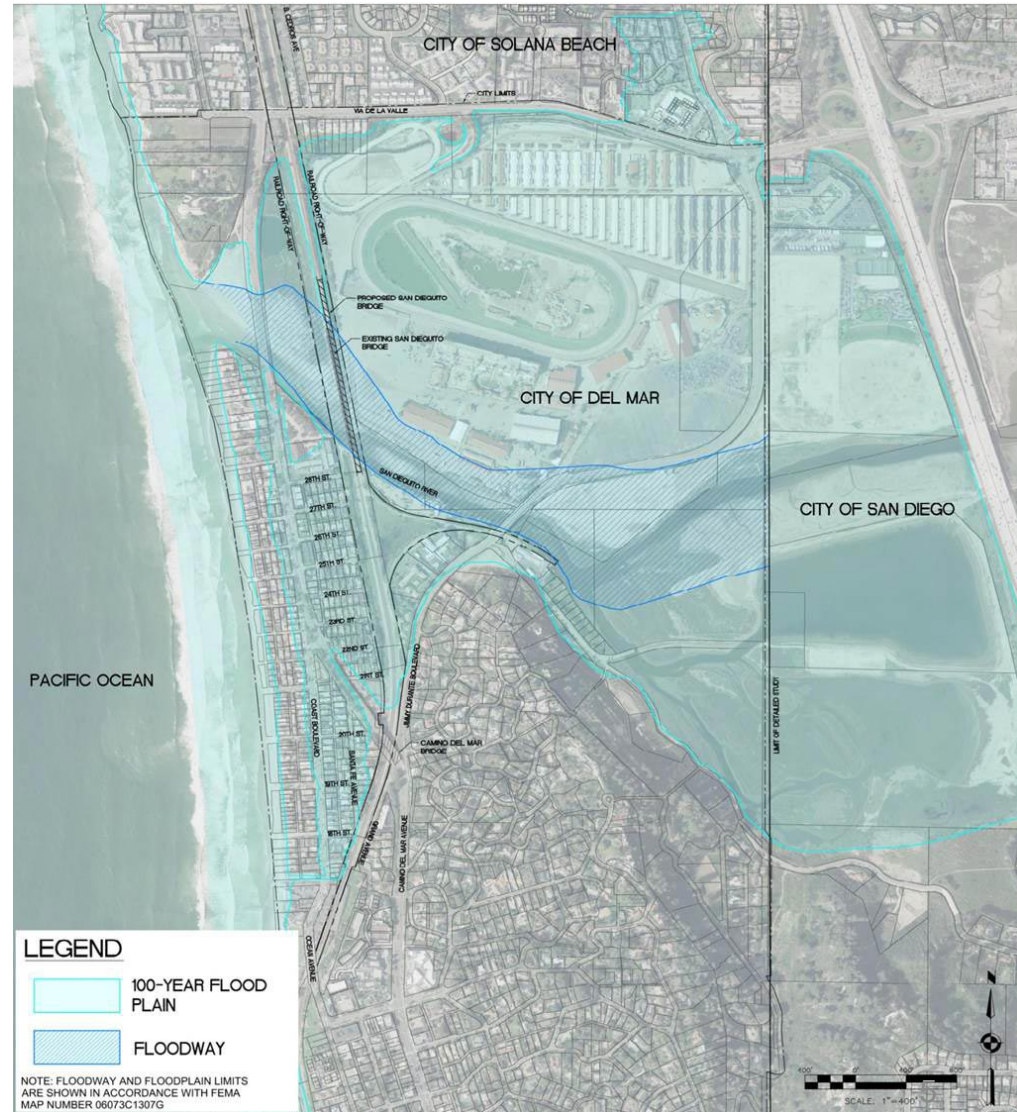
Overview | Del Mar Fairgrounds



Overview | 100-Year Flood Plain

Entire Fairgrounds is within 100-year flood plain and historic state tidelands

- Original Jurisdiction
- No LCP



Overview | Two State Agencies, Two Missions

22nd DAA

To manage and promote a world-class, multi-use, public assembly facility with an emphasis on agriculture, education, entertainment and recreation in a fiscally sound and environmentally conscientious manner for the benefit of all.

- Approx. 3 million visitors per year (1.5 million for San Diego County Fair)
- Largest fair in state, 4th largest in US
- \$260 million impact to local economy

Coastal Commission

To protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.

- Oversees implementation of Coastal Act policies primarily through review of Local Coastal Programs
- Retains original permit jurisdiction over tidelands and public trust lands
- Maintains appellate authority over coastal development approved by local governments

Overview | Resolving Differing Jurisdictional Views

22nd DAA

- Established 1936
- Local permits not required / buildings reviewed by state architect
- Began applying for coastal permits in 1983. Physical development only.

Coastal Commission

- Established 1972
- Began requiring coastal permits under 1976 Coastal Act
- Asserted jurisdiction over fairgrounds in early 80's
- Asserted jurisdiction over temporary uses and activities 2012.

San Dieguito Lagoon Restoration Project approved 2005
JPA intensifies efforts to reclaim historic San Dieguito wetlands

- Differing view regarding CCC's authority to require coastal permits for temporary fairground activities

- Unpermitted development cited in Consent Cease and Desist Order (Consent Order)

Overview | Unpermitted Development

Temporary Uses

- Parking on the EOL, SOL and GDR not associated with the historic Fair and Races
- Various impermanent events year-round on the EOL
- Year-round truck and trailer storage on the EOL and GDR.
- Placement of billboards and other forms of advertising (including signs on truck trailers on the GDR visible from I-5).

Permanent Changes

- Landform alteration on SOL (within wetlands) related to operation of an unpermitted truck driving school
- Placement of riprap in two locations along the north shore of the San Dieguito River.
- Construction of a concert stage at western end of fairgrounds adjacent to wetlands

Overview | 2012 Consent Orders

Consent Orders resolve past unpermitted development on the Fairgrounds, mitigate for that development, and set out a path for future development in compliance with the Coastal Act and Commission regulations.

- Annual SD County Fair and horse race meet determined to be historic (grandfathered) uses
- Off-season temporary events within main Fairgrounds and overflow parking lots requires coastal development permit

East Overflow Lot | Complying with Consent Orders

2 Permits

- **Temporary uses on EOL/GDR (6 months)**
- Temporary uses on main fairgrounds (12 months)

3 Restoration Plans

- South Overflow Lot
- Buffer Area (EOL/GDR)
- Rip-Rap (main fairgrounds)

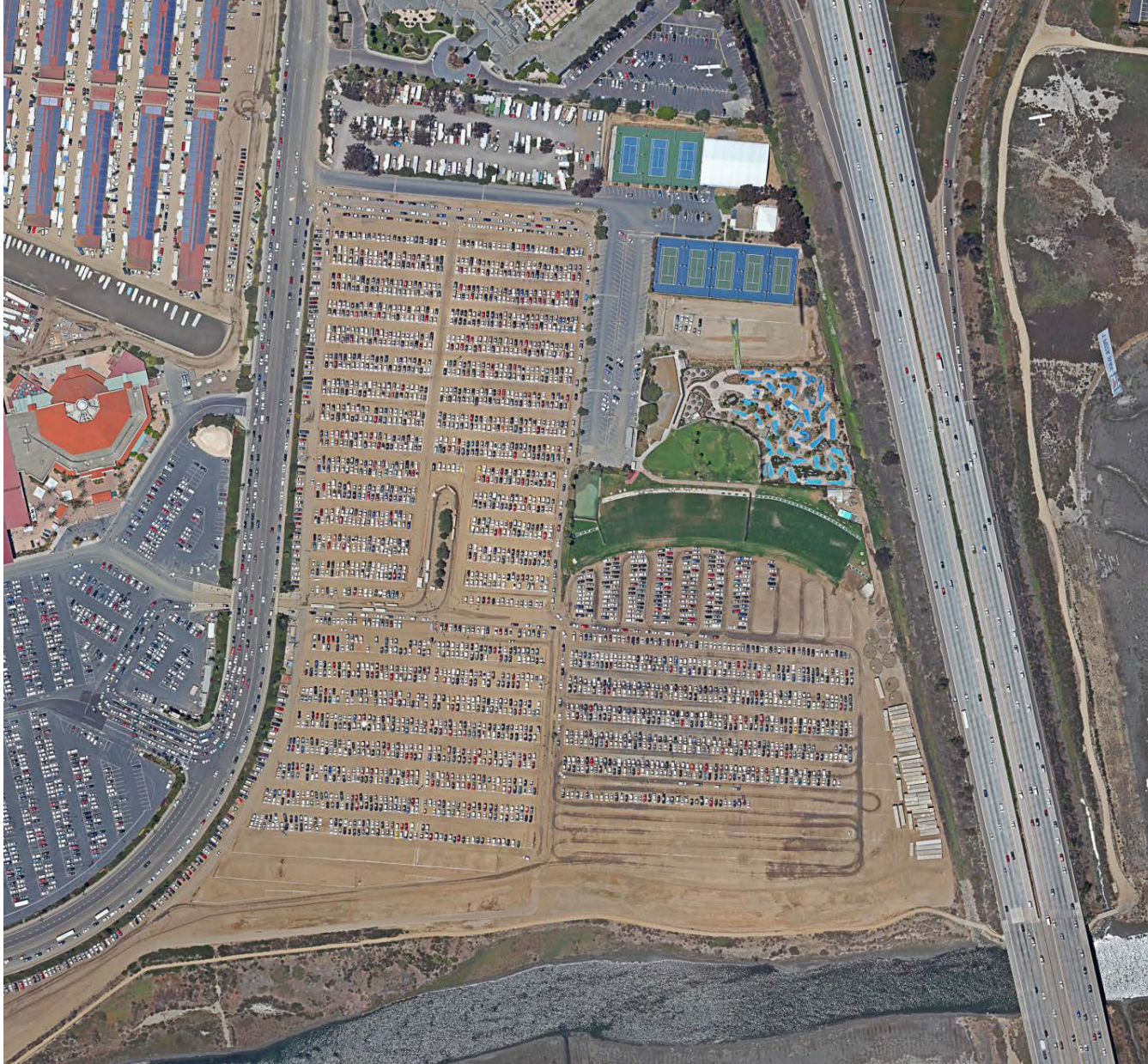
East Overflow Lot | Aerial View



East Overflow Lot | Ground View



East Overflow Lot | Parking



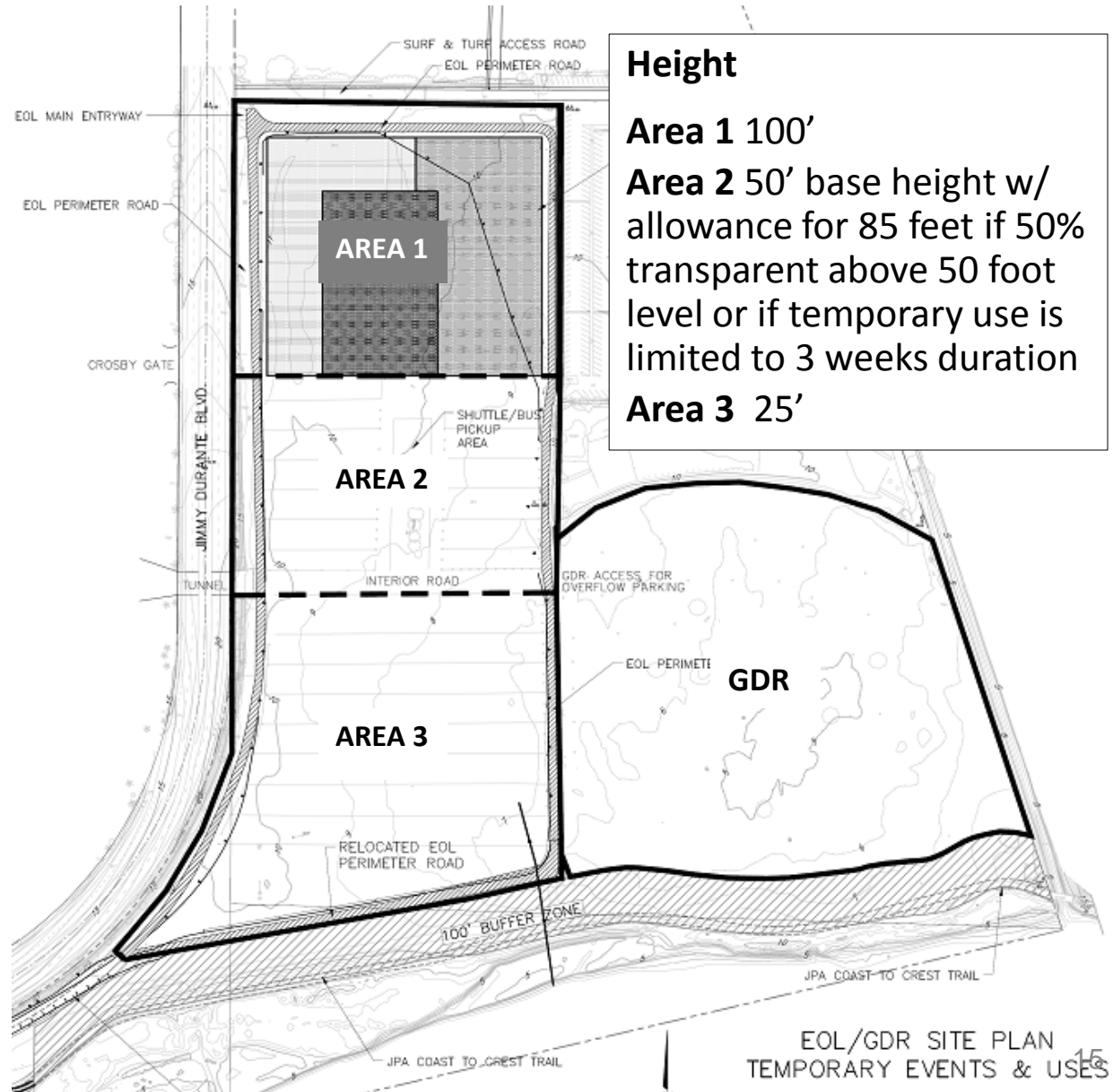
East Overflow Lot | Temporary Events/Fairground Logistics



East Overflow Lot | Site Plan with Development Regulations

Regulations

Uses Permitted
Height
Lighting
Water Quality
Noise
Signage
Landscaping

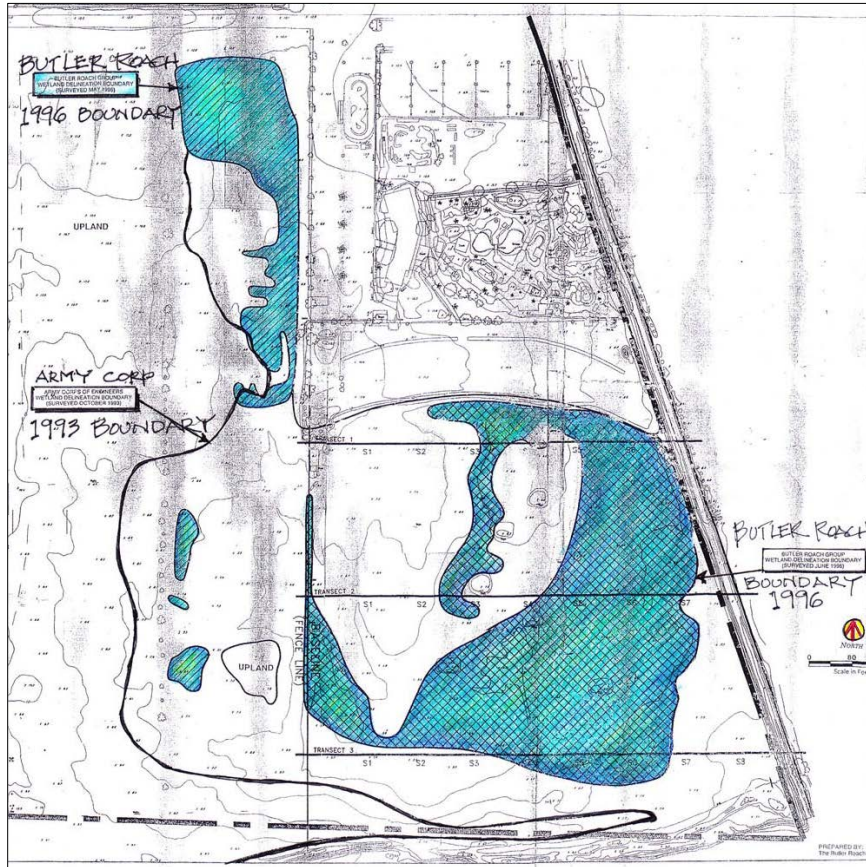


East Overflow Lot | One Small Detail

“In addition to all information and requirements of the Coastal Commission application form, DAA shall include the following documents, information, and proposal as part of the CDP application:

1. **Wetland delineation**, completed pursuant to Coastal Commission protocol, of the Subject Properties, submitted for review and approval of the Executive Director...”

East Overflow Lot | Inconsistent Prior Studies



1993 & 1996



2009

Potential USACE Jurisdiction

- Nonwetland
- Wetland

East Overflow Lot | Wetland Delineation 2012



East Overflow Lot | CCC Staff Recommendation

- Immediately place lower 1/3 of the EOL (Area 3) in an open space easement
- Discontinue parking within Area 3 for all events except the Fair and Races
- Phase out all parking and use of Area 3 within 10 years



East Overflow Lot | Accumulated Loss of Parking



Lessons Learned | Commission Action

- Commission approved project November 2013
 - Found project, as amended, consistent with Coastal Act
 - Action deviated from Staff Recommendation; included amending motions:
 - Revised permit term to 10 years in order to analyze parking
 - Required two (2) parking studies
 - Allowed parking to continue in lower 1/3 of EOL in interim
 - Commission utilized “conflict resolution” or “balancing” of Coastal Act policies in approving project
 - Public access – wetland protection

Lessons Learned | Conflict Resolution

Coastal Act Section 30007.5 states:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

Coastal Act Section 30200(b) states:

Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Lessons Learned | Conflict Resolution

Based on the Commission's history and practice, resolving conflicts through application of Section 30007.5 involves the following seven steps:

1. The project, as proposed, is inconsistent with at least one Chapter 3 policy;
2. The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources;
3. The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;
4. The project, if approved, would result in tangible resource enhancement over existing conditions;
5. The benefits of the project are not independently required by some other body of law;
6. The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict"; and,
7. There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

Lessons Learned | Application to Other CCC Projects

When project is subject to multiple regulatory processes/jurisdictions; Coastal Act is standard of review

- Staff will always apply most protective/restrictive interpretation of policies
- Conformance with all policies required
- Conflict resolution/balancing is *last resort*; only used in rare circumstances

Coastal Commission action - CEQA equivalency

- CEQA equivalency findings included with all staff reports
- Includes finding that proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA
- Coastal Act consistency findings are thorough

Lessons Learned | CCC Process

Working with Staff

- Communicate/be responsive
- Provide additional materials - technical documentation, studies, graphics, etc.
- Be aware of precedent
- Understand pace and timing expectations

Commissioner Outreach

- Briefing book
- Correspondence
- Hearing presentation

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