

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4402
(619) 767-2370



W14a

Addendum

December 5, 2011

[Click here to go to the original staff report.](#)

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W14a**, Coastal Commission Permit Application A-6-TJN-11-084 (**City of San Diego Transportation and Storm Water Dept.**) for the Commission Meeting of December 7, 2011

Staff recommends the following changes be made to the above-referenced staff report:

1. Please modify the Project Description on Page 1 of the Staff Report to read as follows:

PROJECT DESCRIPTION: Maintenance dredging of previously constructed pilot channel within the Tijuana River and a portion of Smuggler's Gulch channel to include after the fact authorization for excavation of up to 30,000 cubic yards of sediment, trash and vegetation from existing drainage channels (as a follow up to two emergency permits) as well as authorization to allow for future maintenance dredging and excavation of 10,000-30,000 cubic yards of material from the same areas as needed on an annual basis in the next 3-5 years, maintenance and repair of existing culverts and gabion mattress, and eradication of 9.96 acres of exotic vegetation.

2. Please modify the last sentence of the first paragraph on Page 6 of the staff report to read as follows:

Overall, the proposed project will include after the fact approval of dredging and excavation of up to 30,000 cubic yards of trash, sediment and debris from the Pilot Channel and Smuggler's Gulch channel as well as the future annual maintenance dredging and excavation of 10,000-30,000 cubic yards of material from the same areas as needed in the next 3-5 years, maintenance and repair of existing culverts and gabions, maintenance of existing designated access roads and staging areas and removal of 9.6 acres of invasive exotic vegetation to satisfy the mitigation required by the Resource Agencies for the 4.61 acres of direct wetland impacts associated with the proposed project.

3. Please add the following to the second paragraph on Page 11 of the staff report:

Additionally, the City prepared a mitigated negative declaration for the proposed project that was developed in accordance with commentary from the Department of Fish and Game as well as the U.S. Fish and Wildlife Service. The mitigation and monitoring report program (MMRP), developed in association with the subject mitigated negative declaration, includes conditions regarding protection of biological resources and sensitive avian species located in the area, biological monitoring requirements, timing of construction, pre and post construction monitoring and reporting programs, MHPA land use adjacency guidelines, historical and archaeological resources, wetland impact mitigation requirements, and storage and staging guidelines. The proposed project will not result in any new impacts to sensitive resources for which mitigation has not already been provided through the 1993 emergency work and 1998 follow up CDP permit, resulting in the creation of the existing now 11.02 acre riparian mitigation site. Specifically, the footprint of the Pilot Channel portion of the proposed project, including turnarounds, access routes, and bank reestablishment, is 3.09 acres and is all located within the 3.3 acres that were previously impacted and for which mitigation was required at a 3:1 ratio in 1993. An additional .02 acres of wetlands will be impacted within an existing dirt road, but this area was also part of the 3.3 acres of the prior project for which mitigation has already been provided.

4. Please add the following to the first paragraph on Page 12 of the Staff Report:

through habitat restoration and removal of exotic vegetation in a 9.22 acre area located nearby the project site that is intended to enhance the habitat connectivity throughout the River Valley. As the area of wetland impacts associated with the subject project lies within the footprint of the 1993 emergency work (or is being mitigated for through the 9.22 acres of required restoration mitigation), adequate mitigation for unavoidable permanent wetland impacts is already provided by the now 11.02 acre creation mitigation riparian habitat area located south of the pilot channel and west of Smuggler's Gulch in close proximity to the project. Additionally, through past City permit actions and mitigation requirements, it was understood and acknowledged that future maintenance of the flood control facilities would be needed in the future. The City's CDP has no specific expiration date and, as such, is intended to facilitate annual maintenance work as needed and deemed necessary by all appropriate interested parties and agencies. In addition, while the City's permit has no specific expiration date, the regulatory permits including the Water Resources Control Board 401 permit, the Army Corps of Engineers 404 permit and the Streambed Alteration Agreement issued by the Department of Fish and Game will expire after five years. As conditioned by the City's CDP, future maintenance can occur annually if necessary, but only within the approved project footprint where maintenance work has already occurred and must be found consistent with all previous Special Conditions included in the subject City CDP including the Special Conditions addressing protection of biological and downstream resources and water quality. In addition, special

conditions of the permit require that if the proposed maintenance is different or varies from the approved project plans, separate authorization is required. While the City's efforts and maintenance have been minimal since 1998, with this permit, future maintenance will be permitted, making it more likely that the City will complete the necessary maintenance on a regular basis.

5. Please add exhibit #4- The City of San Diego Coastal Development Permit.
6. Please add exhibit #5- The City of San Diego MMRP

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RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 21000287

COASTAL DEVELOPMENT PERMIT NO. 852981
SITE DEVELOPMENT PERMIT NO. 852978
TJ RIVER VALLEY EMERGENCY PROJECT NO. – 230815 [MMRP]


PLANNING COMMISSION

This Coastal Development Permit No. 852981 and Site Development Permit No. 852978, is granted by the Planning Commission of the City of San Diego to the County of San Diego (Owner) and the City of San Diego (Owner/Permittee), pursuant to San Diego Municipal Code [SDMC] sections 126.0701 and 126.0501. The 19.77-acre site is located between Hollister Street and Monument Road and within the OF-1-1 (Open Space-Floodplain) and AR-1-1 (Agricultural/Residential) and in the Tijuana River Valley Local Coastal Program Land Use Plan. The project site is generally located north of Monument Road, south of Sunset Avenue and west of Hollister Road, east of the Pacific Ocean.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for previous emergency work and long term maintenance of the Tijuana River Pilot and Smugglers Gulch channels described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 8, 2011, on file in the Development Services Department.

The project shall include:

- a. Dredging and maintenance of the Tijuana River Pilot and Smugglers Gulch channels to ensure adequate channel width and depth ;
- b. Annual excavation of approximately 10,000 – 30,000 cubic yards (CY) of materials (i.e., sediment and trash debris);

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- c. Grading and reconstruction of the channel banks with compacted soil material (using on-site soil materials) as needed;
- d. Cleaning and maintenance of existing culverts under Monument Road and Disney Crossing;
- e. Existing gabion maintenance and repair;
- f. Manual and mechanical separation of spoil material to sort sediment from trash and vegetation (to occur at staging areas only);
- g. Relocation of soil materials as delineated in the environmental document;
- h. Maintain access routes as needed from vegetation;
- i. Eradicate approximately 9.96 acres of exotic invasive plant species and maintain as needed; and

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action, or following all appeals.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

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5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs.

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In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

11. This Permit may be implemented in phases.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

13. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration, No. 230815, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration, No. 230815, to the satisfaction of the Development Services Department and the City Engineer. Prior to the issuance of the "Notice to Proceed" with construction, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Cultural Resources (Archaeology), Land Use (MSCP/MHPA) and Biological Resources.

ENGINEERING REQUIREMENTS:

15. This project shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications satisfactory to the City Engineer.

16. This project shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix G of the City's Storm Water Standards, satisfactory to the City Engineer.

17. This project proposes to export 10,000 to 30,000 cubic yards of material from the project site. All export material shall be reclaimed pursuant to the environmental document or discharged into a legal disposal site. The approval of this project does not allow the sale of the export material unless the underlying zone allows a construction and demolition debris recycling facility with an approved Neighborhood Use Permit or Conditional Use Permit per LDC Section 141.0620(i).

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INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on September 8, 2011,
Resolution No. 4721-PC.



Coastal Development Permit No. 852981
Site Development Permit No. 852978
Project No. 230815
Approved September 8, 2011

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Helene Deisher
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

City of San Diego
Owner/Permittee

By _____
NAME
TITLE

County of San Diego
Owner/Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

EXHIBIT A

**MITIGATION MONITORING AND REPORTING PROGRAM
COASTAL DEVELOPMENT PERMIT(CDP) NO. 852981
SITE DEVELOPMENT PERMIT (SDP)NO. 852978
TJ RIVER VALLEY EMERGENCY PROJECT NO. – 230815**

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Mitigated Negative Declaration (Project No. 230815) shall be made conditions of the Coastal Development and Site Development Permits as may be further described below.

A. GENERAL REQUIREMENTS – PART I

Plan Check Phase (prior to permit issuance)

1. Prior to Bid Opening/Bid Award or beginning any construction related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD) (plans, specification, details, etc.) to ensure the MMRP requirements have been incorporated.
2. In addition, the ED shall verify that the MMRP Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "ENVIRONMENTAL/MITIGATION REQUIREMENTS."
3. These notes must be shown within the first three (3) sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website:

<http://www.sandiego.gov/development-services/industry/standtemp.shtml>


4. The **TITLE INDEX SHEET** must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.

B. GENERAL REQUIREMENTS – PART II

Post Plan Check (After permit issuance/Prior to start of construction)

1. **PRE CONSTRUCTION MEETING IS REQUIRED TEN (10) WORKING DAYS PRIOR TO BEGINNING ANY WORK ON THIS PROJECT.** The PERMIT HOLDER/OWNER is responsible to arrange and perform this meeting by contacting the CITY RESIDENT ENGINEER (RE) of the Field Engineering Division and City staff from MITIGATION MONITORING COORDINATION (MMC). Attendees must also include the Permit holder's Representative(s), Job Site Superintendent and the following consultants:

*Archaeological Consultants and Native American Monitor
Biological Consultants/Monitor*

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Note: Failure of all responsible Permit Holder's representatives and consultants to attend shall require an additional meeting with all parties present.

CONTACT INFORMATION:

- a) The **PRIMARY POINT OF CONTACT** is the **RE** at the **Field Engineering Division 858-627-3200**
- b) For Clarification of **ENVIRONMENTAL REQUIREMENTS**, it is also required to call **RE and MMC at 858-627-3360**

- 2. MMRP COMPLIANCE:** This Project, **PTS No. 230815**, shall conform to the mitigation requirements contained in the associated Environmental Document and implemented to the satisfaction of the DSD's ED, MMC and the City Engineer (RE). The requirements may not be reduced or changed but may be annotated (i.e. to explain when and how compliance is being met and location of verifying proof, etc.). Additional clarifying information may also be added to other relevant plan sheets and/or specifications as appropriate (i.e., specific locations, times of monitoring, methodology, etc)

Note:

Permit Holder's Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC **BEFORE** the work is performed.

- 3. OTHER AGENCY REQUIREMENTS:** Evidence that any other agency requirements or permits have been obtained or are in process shall be submitted to the RE and MMC for review and acceptance prior to the beginning of work or within one week of the Permit Holder obtaining documentation of those permits or requirements. Evidence shall include copies of permits, letters of resolution or other documentation issued by the responsible agency.

- *U.S. Army Corps of Engineers (Corps) – Section 404 Permit*
- *Regional Water Quality Control Board (RWQCB) – Section 401 Water Quality Certification and Section 402 National Pollutant Discharge Elimination System (NPDES) Permit*
- *California Department of Fish and Game (CDFG) – Section 1605 Streambed Alteration Agreement*

- 4. MONITORING EXHIBITS:** All consultants are required to submit, to RE and MMC, a monitoring exhibit on a 11x17 reduction of the appropriate construction plan, such as site plan, grading, landscape, etc., marked to clearly show the specific areas including the **LIMIT OF WORK**, scope of that discipline's work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

5. **OTHER SUBMITTALS AND INSPECTIONS:** The Permit Holder/Owner’s representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

Document Submittal/Inspection Checklist

<u>Issue Area</u>	<u>Document submittal</u>	<u>Associated Inspection/Approvals/Note</u>
General	Consultant Qualification Letters	Prior to Pre-construction Meeting
General	Consultant Const. Monitoring Exhibits	Prior to or at Pre-Construction Mtg
Archaeology	Archaeology Reports	Archaeology site observation
Biology	Biology Monitoring Reports	Biology site observation
Final MMRP	Final monitoring reports	Final MMRP inspection

C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

BIOLOGICAL RESOURCES

This Project requires implementation of a Wetlands Mitigation Plan for Invasive Removal in accordance with the Conceptual Wetlands Mitigation and Monitoring Plan (August 2010) and Errata (July 2011) prepared by Dudek & Associates for the project.

I. Entitlements Plan Check

The applicant shall submit the following items to the City Prior to Permit Issuance or Bid Opening/Bid Award or any permits which affects on-site wetlands and/or uplands. Evidence shall include either copies of permits issued, letters of resolutions issued by the responsible agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the City Manager: Evidence of compliance with Sections 401 and 404 of the Federal Clean Water Act, and Section 1601/1603 of the State of California Fish & Game Code.

Environmental Designee shall verify that all Multi-Habitat Planning Area (MHPA) boundaries and limits of work have been delineated on all construction documents.

II. Prior to Permit Issuance or Bid Opening/Bid Award

The Applicant shall provide a Final Wetlands Mitigation and Monitoring Plan satisfactory to the City Manager which identifies methods and protocol for target invasive removal which mitigates for impacts to wetlands associated with prior dredging of the Pilot Channel and Smuggler’s Gulch and future maintenance activities in the same areas. Mitigation must be found to be in conformance with the Conceptual Wetlands Mitigation and Monitoring Plan August 2010) and Errata (July 2011) prepared by Dudek & Associates for the project.

- a. Mitigation Goal. The project shall mitigate for impacts to 9.22 acres of wetland impacts as identified in the technical plan through the removal of invasive target species.
- b. Responsibilities. The Contractor shall be responsible for implementing the Conceptual Wetlands Mitigation Plan (CWMP) which requires the removal of the three following target invasive species: Arundo, Castor Bean and Tamarisk. Standard Best Management Practices shall be implemented to insure that sensitive biological resources would not be impacted during the invasive plant removal process.

- c. Biological Monitoring Requirements. All biological monitoring in or adjacent to wetlands shall be conducted by a qualified wetland biologist. The biologist shall conduct construction monitoring during all phases of the project. Construction related activity shall be limited to the construction corridor areas as identified on the construction plans. Both a detailed Performance Criteria plan and all the maintenance requirements are found in the conceptual plan.

- d. Notification of Completion: At the end of the fifth year, a final report shall be submitted to Mitigation Monitoring Coordination section evaluating the success of the mitigation. The report shall make a determination of whether the requirements of the mitigation plan have been achieved. If the final report indicates that the mitigation has been in part, or whole, unsuccessful, the Applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original mitigation program which were not successful. At such time, the Applicant must consult with the Development Services Department. The Applicant understands that agreed upon remedial measures may result in extensions to the long-term maintenance and monitoring.

General Bird Mitigation

- a. If project grading/brush management is proposed in or adjacent to native habitat during the typical bird breeding season (i.e. Feb. 1-Sept. 15), or an active nest is noted, the project biologist shall conduct a pregrading survey for active nests in the development area and within 300 feet of it, and submit a letter report to MMC prior to the preconstruction meeting.

- b. If active nests are detected, or considered likely, the report shall include mitigation in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) to the satisfaction of the Assistant Deputy Director (ADD) of the Entitlements Division. Mitigation requirements determined by the project biologist and the ADD shall be incorporated into the project's Biological Construction Monitoring Exhibit (BCME) and monitoring results incorporated in to the final biological construction monitoring report.

- c. If no nesting birds are detected per III.a. above, mitigation under III a. is not required.

III. Prior to Preconstruction meeting:

- a. Prior to the first pre-construction meeting, the Applicant Department shall provide a letter of verification to the Mitigation Monitoring Coordination (MMC) Section stating that a qualified Biologist, as defined in the City of San Diego Biology Guidelines, has been retained to implement the project's Wetland Mitigation Plan and MSCP Monitoring Program. The letter shall include the names and contact information of all persons involved in the Biological Monitoring of the project.

A large, bold, handwritten mark, possibly initials or a signature, located in the bottom right corner of the page.

- b. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall submit all required documentation to MMC, verifying that any special reports, maps, plans and time lines, such as, but not limited to, wetland mitigation plans, plant relocation requirements and timing (if applicable), MSCP requirements, avian or other wildlife protocol surveys, impact avoidance areas or other such information has been completed and updated.

IV. Prior to the Start of Construction:

- a. The qualified biologist (project biologist) shall attend the first preconstruction meeting and discuss the projects biological monitoring program. **Due to the nature of this maintenance project which includes an invasive plant removal program, staking and flagging will not be required.**
- b. **MONITORING EXHIBITS** All consultants are required to submit, to RE and MMC, a monitoring exhibit on a 11x17 reduction of the appropriate construction plan, such as site plan, grading, landscape, etc, marked to clearly show the specific areas including the **LIMIT OF WORK**, scope of that discipline's work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

V. During Construction:

- a. The Biological Monitor shall be present full-time during grading/excavation/trenching activities, which could result in impacts to biological resources as identified on the Biological Monitoring Exhibit.
- b. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the RE to MMC the first day of monitoring, the last day of monitoring, monthly.
- c. The Biological Monitor shall immediately notify MMC by phone of any unanticipated impacts outside the approved limits of work, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the impacts to biological resources in context, if possible.

VI. Post Construction

A. Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC via the RE for review and approval within 90 days following the completion of monitoring,
2. MMC shall return the Draft Monitoring Report to the PI via the RE for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC via the RE for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

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B. Final Monitoring Report(s)

1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC of the approved report.
2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC.

LAND USE (MHPA – LAND USE ADJACENCY GUIDELINES)

If future projects are located adjacent to the Multi-Habitat Planning Area (MHPA), the following Land Use Adjacency Guidelines shall be made conditions of project approval in order to reduce potential indirect impacts:

1. Prior to initiation of any construction-related activities within or adjacent to the MHPA, the construction foreman shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor when applicable.
2. Prior to the commencement of any construction related activities adjacent to the MHPA, the limits of grading shall be clearly delineated by a survey crew prior to brushing, clearing, grading or thinning of vegetation. The limits of grading shall be defined with silt fencing and/or flagging, and checked by the biological monitor before initiation of grading activities. If no construction activities would be in areas adjacent to the MHPA, then this measure would not be implemented.
3. Prior to the commencement of any construction related activities, the ADD/Environmental Designee shall review the grading plans to ensure that no invasive, non-native plant species are being introduced into areas adjacent to the MHPA.
4. Construction lighting located in areas adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields.
5. No staging/storage areas for equipment and materials shall be located within or adjacent to the MHPA; No equipment maintenance shall be conducted within or near the adjacent to the MHPA.
6. Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, weed-free hay or straw bales, and/or the installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the adjacent open space. Drainage from all development areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or mechanical trapping devices as specified by the City Engineer.
7. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading or permitted construction activities. All construction related debris shall be removed off-site to an approved disposal facility.
8. Prior to the commencement of any construction related activities adjacent to the MHPA, the ADD/Environmental Designee shall verify that the MHPA boundaries and the following project requirements regarding the Coastal California gnatcatcher, Least Bell's vireo and the southern Willow Flycatcher are shown on the grading plans as indicated below:

COASTAL CALIFORNIA GNATCATCHER (FEDERALLY THREATENED)

Prior to the issuance of any grading permit the City Manager (or appointed designee) shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 1 AND AUGUST 15, THE BREEDING SEASON OF THE COASTAL CALIFORNIA GNATCATCHER, UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE ADD/ENVIRONMENTAL DESIGNEE:

- A. A QUALIFIED BIOLOGIST SHALL SURVEY THOSE HABITAT AREAS WITHIN THE MHPA THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DB(A) HOURLY AVERAGE FOR THE PRESENCE OF THE COASTAL CALIFORNIA GNATCATCHER. SURVEYS FOR THE COASTAL CALIFORNIA GNATCATCHER SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE FOR A MINIMUM OF FOUR WEEKS (WITHIN THE BREEDING SEASON) PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION. IF GNATCATCHERS ARE PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:
- I. *BETWEEN MARCH 1 AND AUGUST 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED GNATCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED, FENCED OR FLAGGED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND
- II. *BETWEEN MARCH 1 AND AUGUST 15, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 DB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED GNATCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 DB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE ADD OF LDR AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR
- III. *AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (E.G., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 DB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE COASTAL CALIFORNIA GNATCATCHER. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 DB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (AUGUST 16).

* CONSTRUCTION NOISE MONITORING SHALL CONTINUE TO BE MONITORED AT LEAST TWICE WEEKLY ON VARYING DAYS, OR MORE FREQUENTLY DEPENDING ON THE CONSTRUCTION ACTIVITY, TO VERIFY THAT NOISE LEVELS AT THE EDGE OF OCCUPIED HABITAT ARE MAINTAINED BELOW 60 DB(A) HOURLY AVERAGE OR TO THE AMBIENT NOISE LEVEL IF IT ALREADY EXCEEDS 60 DB(A) HOURLY AVERAGE. IF

NOT, OTHER MEASURES SHALL BE IMPLEMENTED IN CONSULTATION WITH THE BIOLOGIST AND THE ADD ENVIRONMENTAL DESIGNEE, AS NECESSARY, TO REDUCE NOISE LEVELS TO BELOW 60 DB(A) HOURLY AVERAGE OR TO THE AMBIENT NOISE LEVEL IF IT ALREADY EXCEEDS 60 DB(A) HOURLY AVERAGE. SUCH MEASURES MAY INCLUDE, BUT ARE NOT LIMITED TO, LIMITATIONS ON THE PLACEMENT OF CONSTRUCTION EQUIPMENT AND THE SIMULTANEOUS USE OF EQUIPMENT.

- B. IF COASTAL CALIFORNIA GNATCATCHERS ARE NOT DETECTED DURING THE INITIAL SURVEY, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE ADD ENVIRONMENTAL DESIGNEE AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 1 AND AUGUST 15 AS FOLLOWS:
- C. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR COASTAL CALIFORNIA GNATCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THIS SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

LEAST BELL'S VIREO (STATE ENDANGERED/FEDERALLY ENDANGERED)

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 15 AND SEPTEMBER 15, THE BREEDING SEASON OF THE LEAST BELL'S VIREO, UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE ADD/ENVIRONMENTAL DESIGNEE:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(A)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE WETLAND AREAS THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [DB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE LEAST BELL'S VIREO. SURVEYS FOR THE THIS SPECIES SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. IF THE LEAST BELL'S VIREO IS PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:

BETWEEN MARCH 15 AND SEPTEMBER 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED LEAST BELL'S VIREO HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND

BETWEEN MARCH 15 AND SEPTEMBER 15, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 DB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED LEAST BELL'S VIREO OR HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 DB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF ANY OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED, FENCED OR FLAGGED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR

AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (E.G., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 DB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE LEAST BELL'S VIREO. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED

HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 DB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (SEPTEMBER 16).

* CONSTRUCTION NOISE MONITORING SHALL CONTINUE TO BE MONITORED AT LEAST TWICE WEEKLY ON VARYING DAYS, OR MORE FREQUENTLY DEPENDING ON THE CONSTRUCTION ACTIVITY, TO VERIFY THAT NOISE LEVELS AT THE EDGE OF OCCUPIED HABITAT ARE MAINTAINED BELOW 60 DB(A) HOURLY AVERAGE OR TO THE AMBIENT NOISE LEVEL IF IT ALREADY EXCEEDS 60 DB(A) HOURLY AVERAGE. IF NOT, OTHER MEASURES SHALL BE IMPLEMENTED IN CONSULTATION WITH THE BIOLOGIST AND THE ADD/ENVIRONMENTAL DESIGNEE, AS NECESSARY, TO REDUCE NOISE LEVELS TO BELOW 60 DB(A) HOURLY AVERAGE OR TO THE AMBIENT NOISE LEVEL IF IT ALREADY EXCEEDS 60 DB(A) HOURLY AVERAGE. SUCH MEASURES MAY INCLUDE, BUT ARE NOT LIMITED TO, LIMITATIONS ON THE PLACEMENT OF CONSTRUCTION EQUIPMENT AND THE SIMULTANEOUS USE OF EQUIPMENT.

- B. IF LEAST BELL'S VIREO ARE NOT DETECTED DURING THE PROTOCOL SURVEY, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE ADD/ENVIRONMENTAL DESIGNEE AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 15 AND SEPTEMBER 15 AS FOLLOWS:
1. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR LEAST BELL'S VIREO TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.
 2. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THIS SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

SOUTHWESTERN WILLOW FLYCATCHER (FEDERALLY ENDANGERED)

Prior to the issuance of any grading permit the City Manager (or appointed designee) shall verify that the following project requirements regarding the southwestern willow flycatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MAY 1 AND SEPTEMBER 1, THE BREEDING SEASON OF THE SOUTHWESTERN WILLOW FLYCATCHER, UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY MANAGER:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE WETLAND AREAS THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE SOUTHWESTERN WILLOW FLYCATCHER. SURVEYS FOR THIS SPECIES SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION. IF THE SOUTHWESTERN WILLOW FLYCATCHER IS PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:

BETWEEN MAY 1 AND SEPTEMBER 1, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED SOUTHWESTERN WILLOW FLYCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED

BIOLOGIST; AND

BETWEEN MAY 1 AND SEPTEMBER 1, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED SOUTHWESTERN WILLOW FLYCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR

AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE SOUTHWESTERN WILLOW FLYCATCHER. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (SEPTEMBER 1).

* Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

- B. IF SOUTHWESTERN WILLOW FLYCATCHER ARE NOT DETECTED DURING THE PROTOCOL SURVEY, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE CITY MANAGER AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MAY 1 AND SEPTEMBER 1 AS FOLLOWS:**

- I. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR SOUTHWESTERN WILLOW FLYCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.
- II. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THIS SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

HISTORICAL RESOURCES (ARCHAEOLOGY - MONITORING)

I. Prior to Permit Issuance or Bid Opening/Bid Award

A. Entitlements Plan Check

1. Prior to permit issuance or Bid Opening/Bid Award, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. Prior to Bid Award, the applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coast Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
3. The PI may submit a detailed letter to MMC requesting a reduction to the 1/4 mile radius.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Acknowledgement of Responsibility for Curation (CIP or Other Public Projects)
The applicant shall submit a letter to MMC acknowledging their responsibility for the cost of curation associated with all phases of the archaeological monitoring program.
3. Identify Areas to be Monitored
Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to MMC for approval identifying the areas to be monitored including the delineation of grading/excavation limits.
The AME shall be based on the results of a site specific records search as well as information regarding the age of existing pipelines, laterals and associated appurtenances and/or any known soil conditions (native or formation).
MMC shall notify the PI that the AME has been approved.
4. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as age of existing pipe to be replaced, depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.
5. Approval of AME and Construction Schedule
After approval of the AME by MMC, the PI shall submit to MMC written authorization of the AME and Construction Schedule from the CM.

III. During Construction

- A. Monitor Shall be Present During Grading/Excavation/Trenching
 1. The Archaeological monitor shall be present full-time during grading/excavation/trenching activities including, but not limited to mainline, laterals, jacking and receiving pits, services and all other appurtenances associated with underground utilities as identified on the AME and as authorized by the CM. The Native American monitor shall determine the extent of their presence during construction related activities based on the AME and provide that information to the PI and MMC. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities such as in the case of a potential safety concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the PME.**
 2. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered may reduce or increase the potential for resources to be present.
 3. The monitor shall document field activity via the Consultant Site Visit Record (CSVSR). The CSVSR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.

- B. Discovery Notification Process
1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
 2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
 3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
 4. **In the event that cultural or historical resources are discovered during implementation of the undertaking during Mitigation Monitoring, the City of San Diego may have additional Section 106 responsibilities under certain circumstances as set forth in 36 CFR Part 800 and will be required to consult further with the SHPO pursuant to 36 CFR §800.13(b).**
- C. Determination of Significance
1. The PI and Native American monitor shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
 - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) and obtain written approval of the program from MMC, CM and RE. ADRP and any mitigation must be approved by MMC, RE and/or CM before ground disturbing activities in the area of discovery will be allowed to resume.
 - (1). Note: For pipeline trenching projects only, the PI shall implement the Discovery Process for Pipeline Trenching projects identified below under "D."
 - c. If resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.
 - (1). Note: For Pipeline Trenching Projects Only. If the deposit is limited in size, both in length and depth; the information value is limited and is not associated with any other resource; and there are no unique features/artifacts associated with the deposit, the discovery should be considered not significant.
 - (2). Note, for Pipeline Trenching Projects Only: If significance can not be determined, the Final Monitoring Report and Site Record (DPR Form 523A/B) shall identify the discovery as Potentially Significant.
- D. Discovery Process for Significant Resources - Pipeline Trenching Projects
- The following procedure constitutes adequate mitigation of a significant discovery encountered during pipeline trenching activities including but not limited to excavation for jacking pits, receiving pits, laterals, and manholes to reduce impacts to below a level of significance:
1. Procedures for documentation, curation and reporting
 - a. One hundred percent of the artifacts within the trench alignment and width shall be documented in-situ, to include photographic records, plan view of the trench and profiles of side walls, recovered, photographed after cleaning and analyzed and curated. The remainder of the deposit within the limits of excavation (trench walls) shall be left intact.

- b. The PI shall prepare a Draft Monitoring Report and submit to MMC via the RE as indicated in Section VI-A.
- c. The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) the resource(s) encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines. The DPR forms shall be submitted to the South Coastal Information Center for either a Primary Record or SDI Number and included in the Final Monitoring Report.
- d. The Final Monitoring Report shall include a recommendation for monitoring of any future work in the vicinity of the resource.

IV. Discovery of Human Remains

If human remains are discovered, work shall halt in that area and the following procedures as set forth in the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

A. Notification

- 1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).
- 2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

- 1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenience of the remains.
- 2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenience.
- 3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

C. If Human Remains ARE determined to be Native American

- 1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.
- 2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
- 3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with the California Public Resource and Health & Safety Codes.
- 4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
- 5. Disposition of Native American Human Remains shall be determined between the MLD and the PI, IF:
 - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;
 - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner.

- c. To protect these sites, the landowner shall do one or more of the following:
 - (1) Record the site with the NAHC;
 - (2) Record an open space or conservation easement; or
 - (3) Record a document with the County.
- d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.

D. If Human Remains are NOT Native American

- 1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
- 2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
- 3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant department and/or Real Estate Assets Department (READ) and the Museum of Man.

V. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

- 1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
- 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVR and submit to MMC via fax by 8AM of the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV – Discovery of Human Remains.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - d. The PI shall immediately contact the RE and MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night and/or weekend work becomes necessary during the course of construction

- 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
- 2. The RE, or BI, as appropriate, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

A. Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC via the RE for review and approval within 90 days following the completion of monitoring.
 - a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program or Pipeline Trenching Discovery Process shall be included in the Draft Monitoring Report.
 - b. Recording Sites with State of California Department of Parks and Recreation
The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.
2. MMC shall return the Draft Monitoring Report to the PI via the RE for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC via the RE for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Artifacts

1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued
2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.

C. Curation of artifacts: Accession Agreement and Acceptance Verification

1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
2. The PI shall submit the Accession Agreement and catalogue record(s) to the RE or BI, as appropriate for donor signature with a copy submitted to MMC.
3. The RE or BI, as appropriate shall obtain signature on the Accession Agreement and shall return to PI with copy submitted to MMC.
4. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
5. When applicable to the situation, the PI shall include written verification from the Native American consultant/monitor indicating that Native American resources were treated in accordance with state law and/or applicable agreements. If the resources were reinterred, verification shall be provided to show what protective measures were taken to ensure no further disturbance in accordance with Section IV – Discovery of Human Remains, subsection 5.(d).

D. Final Monitoring Report(s)

1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC of the approved report.
2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.



THE CITY OF SAN DIEGO

W142

December 1, 2011

California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Dear Coastal Commissioners:

SUBJECT: Appeal No. A-6-TJN-11-084

The City of San Diego (City) supports Coastal Commission's staff recommendation and determination that no substantial issue exists with respect to the grounds on which Appeal No. A-6-TJN-11-084 has been filed under § 30603 of the Coastal Act. The City recommends you vote YES to find that no substantial issue exists with the appeal filed by San Diegans for Open Government c/o Briggs Law Corporation; and adopt the resolution and findings included in the staff report enclosed.

As noted in the staff report, the maintenance dredging of two man-made storm drainage channels is entirely consistent with the Tijuana River Valley Local Coastal Program Land Use Plan, which specifically permits such minor incidental public service projects. The scope of the proposed maintenance dredging is limited to what is necessary to protect public safety, existing development, and wildlife habitat in the Tijuana River Valley and Otay-Nestor Community from destructive flooding, and the proposed project includes all appropriate measures to mitigate any impacts. The City therefore urges a finding of no substantial issue so that work on this necessary and time-sensitive project may begin before seasonal flooding occurs.

Sincerely,

Signature on file

[Handwritten signature]

Kris McFadden
Deputy Director
Transportation & Storm Water Department

RECEIVED

DEC 02 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Letter from City 27



Transportation & Storm Water Department

9370 Chesapeake Drive, Suite 100, MS 1900 • San Diego, CA 92123

Hotline (619) 235-1000 Fax (858) 541-4350

Enclosure: California Coastal Commission Staff Report and Recommendation on Appeal.

cc: Melissa Ahrens, Coastal Program Analyst, California Coastal Commission
Almis Udrys, Deputy Director, Office of the Mayor
Garth K. Sturdevan, Interim Director, Transportation & Storm Water Department
Gus Brown, Assistant Deputy Director, Transportation & Storm Water Department
Anne Jarque, Senior Planner, Transportation & Storm Water Department
Nina Fain, Deputy City Attorney
Heather Stroud, Deputy City Attorney

BRIGGS LAW CORPORATION

W142

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92101

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 619-497-0021
Facsimile: 619-515-6410

Telephone: 909-949-7115
Facsimile: 909-949-7121

Please respond to: Inland Empire Office

BLC File(s): 1593.06

1 December 2011

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

DEC 02 2011

Re: Item 14a on December 7, 2011 Agenda (Coastal Development Permit for Long Term Maintenance of Tijuana River Pilot and Smuggler's Gulch Channels)

Dear Commissioners:

I am writing on behalf of San Diegans for Open Government ("SanDOG") to **oppose the current staff recommendation** on this item and ask the Commission to find that the appeal presents a **substantial issue**. SanDOG is a non-profit, public-interest organization that advocates for good-governance issues, including environment-related quality-of-life issues in the County of San Diego. SanDOG has been active in storm water issues in the City of San Diego, particularly with respect to the Tijuana River Valley, in recent years. SanDOG believes that flood control work is necessary, but should be done in a way that maximizes flood control benefits and minimizes environmental harm. SanDOG also believes that the best way to achieve this goal is to have a process that includes, rather than excludes, the public in the decision-making process. After all, it is members of the public who live, work, and recreate in and near the channels who are most intimately familiar with the consequences of the City's actions or inactions.¹ Under the terms of the coastal development permit ("CDP") at issue here, the public loses critical opportunities for meaningful public participation.

The staff report incorrectly indicates that the project is the removal of 10,000-30,000 cubic yards of material as needed in the next 3-5 years. In fact, the CDP and the mitigated negative declaration are for an *indefinite* time period. The Coastal Commission will not have appellate jurisdiction over this permit again. There is *no expiration date* included in the CDP. Exhibit "A." The mitigated negative declaration describes the project as a follow-up on previous emergency work and for *on-going* maintenance. Exhibit "B." The Executive Summary for the City Council describes the CDP and site development permits as being for *long term* maintenance. Exhibit "C."

¹ For example, many members of the community have been concerned about the lack of maintenance near the Hollister bridge. See "Photos" Folder. This area appears to have been the where some of the most severe flooding has taken place. If the City of San Diego is required to have a public hearing every couple of years with permits that expire every three to five years and have a more descriptive plan of what areas will be dredged when, these types of issues can be the subject of a public dialogue and the public's insights into which areas for maintenance would be most effective may prove invaluable.

29

Letter from Appellant w/ attachments

Furthermore, at the City Council hearing, Councilmember David Alvarez questioned city staff about the relationship of this project to the Master Storm Water Program.² City staff indicated that the intent was to use the mitigated negative declaration for the first round of regulatory permits (the 401 certification, the Streambed Alteration Agreement from Fish and Game, and the Army Corps permit). If the programmatic environmental impact report for the Master Storm Water Program was approved, city staff intends to use that environmental document for future regulatory permits when the first round of regulatory permits expire. Implicit in the statement is that the mitigated negative declaration will be used if the programmatic environmental impact report and master program are not permitted to go forward.

As with the Master Storm Water Maintenance Program CDP, the Commission would be giving up its jurisdiction to review the analysis of potential impacts or required mitigation for the foreseeable future if the CDP stands as approved by the City of San Diego. This sets a dangerous precedent, particularly where, as here, there are significant biological and coastal resources at stake.

The CDP for the Tijuana River Valley suffers many of the same problems as the Master Storm Water Maintenance Project. For example, while the coastal development permit allows for annual removal of 10,000 to 30,000 cubic yards of material, the project description does not include a prioritization of which areas of the channel will be maintained. From the experience over the last few years, it is known that removal of 10,000 to 30,000 cubic yards may only be a small segment of the overall project. Exhibit "D," p. 25, ¶ 25 (explaining that 13,244 cubic yards of material was removed from the segment in Smuggler's Gulch up to point of first horse trail between October 24, 2010 and November 15, 2010). In the areas not maintained annually, vegetation and habitat may establish that is not anticipated. See Exhibit "E" (copies of photos showing how much vegetation can re-establish in just one year). In this way, the project may have impacts to sensitive biological resources that are not covered and cannot be reviewed by the Coastal Commission in the future due to the long-term nature of the permit.

Another example of a consequence of the project is the deferred analysis of hazardous materials and other downstream impacts. As acknowledged in the staff report for the Master Program, the removal of large amounts of vegetation in a natural channel, such as the Tijuana River, it can be expected that increased sedimentation may occur. The Tijuana River project is upstream of and drains into sensitive biological areas. Sensitive biological resources could be adversely impacted by increased sedimentation caused by the proposed maintenance activities. By way of example, the mitigated negative declaration acknowledges that the project site is known to contain secondary hazardous materials and/or pollutants, but unfortunately, the analysis does not go further. The Department of Toxic Substances Control raised a number of issues regarding the need to evaluate soil and water contamination in the mitigated negative declaration. While the City of San Diego has identified steps to be taken if contaminated soils are encountered, the analysis remains deficient. Altogether, we know that there is contaminated soil and water and we know that the

² The portion of the hearing referred to can be found between time markers 39:30 and 40:35 of the hearing video: http://granicus.sandiego.gov/MediaPlayer.php?view_id=3&clip_id=4971

increased sedimentation may occur downstream and adversely impact biological resources, but the type and extent of the contamination has not been disclosed and the impacts of the contaminated material being transported downstream as a result of the project have not been analyzed.

As another example, SanDOG is concerned that the project lacks an examination of the cumulative impacts and, consequently, lacks the mitigation that would otherwise be included. The City of San Diego determined that the Master Storm Water Maintenance Program would have cumulative impacts in the areas of aesthetics/neighborhood character, air quality, greenhouse gas emissions, biological resources, historical and paleontological resources, and solid waste. It is reasonable to this project, which is also part of the Master Storm Water Maintenance Program, would likewise have cumulative impacts in these areas and require mitigation measures aimed at reducing these impacts.

As a final note, SanDOG has commenced litigation against the City of San Diego under the California Environmental Quality Act. SanDOG understands that some of its concerns expressed to the City of San Diego throughout the administrative process extend beyond the Coastal Commission's jurisdiction and must be taken up in that lawsuit. Nevertheless, SanDOG believes that the appeal presents a substantial issue under the Coastal Act and this Commission should hear the appeal. SanDOG requests that if the Commission finds that there is a substantial issue, the hearing on the appeal should take place in Southern California so that members of the public in San Diego can participate.

Thank you for your consideration of these issues.

Sincerely,

BRIGGS LAW CORPORATION

Signature on file

Mekaela M. Gladden

Mekaela M. Gladden

Attachments:

- Photos-Taken in December 2010
- Exhibit "A"-Coastal Development Permit/Site Development Permit
- Exhibit "B"-Final Mitigated Negative Declaration
- Exhibit "C"-Executive Summary for City Council Hearing
- Exhibit "D"-Declaration of Kris McFadden, City of San Diego
- Exhibit "E"-Photos taken by City of San Diego consultants



**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 09/12/2011

ORIGINATING DEPARTMENT: Development Services Department

SUBJECT: Appeal of the Tijuana River and Smuggler's Gulch Channel Maintenance

COUNCIL DISTRICT(S): 8

CONTACT/PHONE NUMBER: Helene Deisher/619-446-5223

DESCRIPTIVE SUMMARY OF ITEM:

Process Four Appeal of a Coastal Development Permit and Site Development Permit for Environmentally Sensitive Lands for previous emergency work authorized by the city Council and ongoing regular maintenance of the Tijuana River Pilot and Smuggler Gulch channels to restore storm water conveyance capacities to reduce the risk of flooding to the surrounding properties. Zone: OF-1-1 and AR-1-1. There is no recognized community planning group for the Tijuana River Valley.

STAFF RECOMMENDATION:

Approve requested actions

On September 23, 2009, the San Diego City Council declared a State of Emergency in the Tijuana River Valley (Resolution Number R-305356) due to the potential for severe flooding. This action authorized the Mayor to deploy City forces to perform emergency flood control work necessary to alleviate the severe and imminent threat to life and damage to property.

On October 2, 2009, the Development Services Department (DSD) issued Emergency Coastal Development Permit No. 688571 and a California Environmental Quality Act (CEQA) Environmental Exemption under CEQA §15269 - Emergency Projects to perform the emergency work (Attachments 8 and 9 of the Planning Commission Report). However, the City was not able to complete the entire project in 2009 due to the early onset of rains which created unsafe conditions in the channels for crews to work and operate machinery and in 2010, again the City issued emergency permits to work in the channel.

On January 27, 2011, the Transportation and Stormwater Department (T&SWD) submitted the project for a Coastal Development Permit and Site Development Permit for the previously completed emergency work and to allow long term maintenance of the Tijuana River Pilot and Smuggler's Gulch channels. On September 8, 2011, the Planning Commission approved the project 5-0-2 as recommended by staff. On September 9, 2011, San Diegans for Open Government appealed the project and the environmental document to the City Council.

A report has been prepared with staff responses to each of the appeal issues. The original Planning Commission Report is also attached which contains a detailed project scope and discussion.

FISCAL CONSIDERATIONS: All costs associated with this project and planned ongoing maintenance will be funded by the City of San Diego's T&SWD (Fund No. 100000). Based on

the accounting information for the emergency work done in FY 2010, the T&SWD estimates the cost to implement the proposed project to be approximately \$1.4 million annually.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On September 23, 2009, the San Diego City Council declared a State of Emergency in the Tijuana River Valley (Resolution Number R-305356).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: There is no recognized community planning group for the Tijuana River Valley. On September 8, 2011, the Planning Commission approved the project 5-0-2 as recommended by staff.

KEY STAKEHOLDERS (& Projected Impacts if applicable): Residents and landowners of the Tijuana River Valley; County of San Diego and the City of San Diego.

Westlake, Mike
Originating Department

Goldstone, Jay
Deputy Chief/Chief Operating Officer

1 JAN I. GOLDSMITH, City Attorney
DONALD R. WORLEY, Assistant City Attorney
2 CHRISTINE M. LEONE, Chief Deputy City Attorney
California State Bar No. 208803
3 ALEXIS L. JODLOWSKI, Deputy City Attorney
California State Bar No. 246845
4 FREDERICK M. ORTLIEB, Deputy City Attorney
California State Bar No. 131751
5 Office of the City Attorney
1200 Third Avenue, Suite 1100
6 San Diego, California 92101-4100
Telephone: (619) 533-5800
7 Facsimile: (619) 533-5856
Attorneys for Defendant
8 CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

10
11 SAN DIEGANS FOR OPEN GOVERNMENT,) Case No. 37-2010-00103095
12)
13) Petitioner,)
14) v.) DECLARATION OF KRIS MC FADDEN
15)) IN SUPPORT OF CITY OF SAN
16)) DIEGO'S OPPOSITION TO
17)) PETITIONER'S EX PARTE
18)) APPLICATION
19))
20)) Date: November 16, 2010
21)) Time: 8:30 a.m.
22)) Dept: 72
23)) Judge: Hon. Timothy Taylor
24))
25)) Complaint filed: October 26, 2010
26)) Trial: Not Set
27))
28))

19 I, Kris McFadden, declare as follows:

20 1. I am the Interim Director of the Storm Water Department of the City of
21 San Diego. I make this declaration based on my own knowledge and, if called as a witness,
22 would competently testify to the facts contained within my declaration.

23 2. I have personal knowledge of the flood control risks existing in the Tijuana River
24 Valley on this date, particularly the in the areas around the Tijuana River Pilot Channel and
25 Smuggler's Gulch drainage channels (Subject Channels).

26 3. The Subject Channels are prone to the rapid accretion of sediment and debris,
27 which is being hydraulically transported in large volumes from Tijuana, Mexico, from the
28

1 Tactical Border Infrastructure project erected by the United States Department of Homeland
2 Security (Border Fence Project) and from other sources.

3 4. When the Subject Channels fill with sediment and debris, with storms of even
4 relatively modest magnitude, floodwaters from the Tijuana River watershed could overrun the
5 banks of the channels and flood adjoining lands, creating peril for lives and property in the
6 Valley.

7 5. Certain federal and state agencies have jurisdiction over the permitting of channel
8 maintenance work, and these include *inter alia* the U.S. Army Corps of Engineers, the U.S. Fish
9 and Wildlife Service, and the Regional Water Quality Control Board (Permitting Agencies).

10 6. In the past, the City would obtain permits for drainage channel maintenance from
11 the Permitting Agencies on an individual basis, and applications were made for specific permits
12 for specific drainage channels on an *ad hoc* basis.

13 7. On or about 2007, the Permitting Agencies, led by the Army Corps of Engineers,
14 embarked on imposing a new paradigm for issuing drainage maintenance permits; this new
15 approach entails public review and adoption of "Master Storm Water System Maintenance
16 Permit" (Master Permit) for all of the City's drainage facilities on a City-wide basis, rather than
17 continuing to issue these permits on a one-at-a-time basis for specific drain facilities.

18 8. The Master Permit concept will provide for a more comprehensive approach to
19 identifying and mitigating any impacts from channel maintenance activity, and also to facilitate
20 the Permitting Agencies' review and approval of permits for specific activities.

21 9. Issuance of the Master Permit by the Permitting Agencies is conditioned on the
22 public review and adoption of a Programmatic Environmental Impact Report (PEIR) by the City.

23 10. Until the Master Permit has been issued the Permitting Agencies will not issue
24 permits on an *ad hoc* basis for specific drain facilities unless the facilities present a justifiable
25 emergency condition.

26 11. For the winter months between September 2009 and February 2010 the City
27 applied for and received from the Permitting Agencies an emergency permit to perform
28 maintenance work on the subject channels (2009-10 Permit).

1 12. The 2009-10 permit expired on February 15, 2010 and is not valid to perform
2 maintenance work in the Subject Channels for the coming winter of 2010-2011.

3 13. It had been the City's hope that the PEIR for the Master Permit would have been
4 adopted by now and the Master Permit issued.

5 14. The City completed the PEIR for the Master Permit and presented it to the City's
6 Planning Commission in May 2010.

7 15. The Planning Commission approved the PEIR for the Master Permit in May 2010,
8 however that decision was appealed to the City Council by environmental interest groups.

9 16. In an effort to resolve the concerns of the appellant interest groups, the City
10 decided to meet and confer with them before proceeding with the appeal of the Planning
11 Commission's approval of the PEIR.

12 17. The City has met and conferred with the appellant interest groups regarding
13 revisions to the PEIR, and has in good faith considered and indeed will make some or all of these
14 revisions with the aim of re-circulating a revised PEIR document in January 2011 for its
15 adoption by the City Council in early 2011 after the public comment period has elapsed.

16 18. As of summer 2011 it was apparent to City that the Master Permit would not be
17 issued in time to permit maintenance of the Subject Channels to proceed on that basis for the rain
18 season of 2010-2011, and the City therefore applied to the Permitting Agencies for another
19 emergency permit (2010-11 Permit).

20 19. Despite the performance of work under the 2009-10 Permit, the Subject Channels
21 have filled once again with sediment and debris, and an emergency situation still exists if the
22 Subject Channels are not promptly maintained.

23 20. Due to the amount of new accretion over the past year, it is necessary to maintain
24 channel again; moreover, full performance of the 2009-10 scope of work was not achieved
25 because excavation activities necessarily ended on January 17, 2010 due to the onset of heavy
26 winter rains which inundated the channels and eliminated almost a month of work time off the
27 2009-10 Permit.

28

36

1 21. As of September 2011 there was approximately two feet of free board left in the
2 Smuggler's Gulch channel where excavation averaged 10 feet in depth and one foot in the Pilot
3 channel where excavation averaged 5 feet in depth, i.e. the Subject Channels have been refilled
4 by sediment and debris to approximately 80% above their levels of excavation by the 2009-10
5 project.

6 22. Sediment continues to accrete and will accrete even faster with each rain event.

7 23. The very little amount of free board left in the Subject Channels presents a real
8 flood risk and lives and property are exposed to peril unless maintenance is done forthwith.

9 24. The Permitting Agencies have issued to City the 2010-11 Permit to perform this
10 work, and though I do not speak for them, it is my opinion they did so because they understand
11 the flood peril presented does form a basis for an emergency permit.

12 25. Excavation started on October 24, 2010. Approximately 13,244 cubic yards of
13 soil have been excavated in Smuggler's up to first horse trail at Sta 32+00. For this past week
14 (October 6 - October 14), crews have been dealing with removing the muck/sludge the
15 equipment have been getting stuck within an area between the Confluence (west) toward the first
16 horse trail (Sta 32+00).

17 I declare under the penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed this 15th day of November, 2010, at San Diego, California.

20
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22
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27
28

Signature on file

C.

Kris McFadden
Interim Director, Stormwater
Department, City of San Diego

37

Attachment A: Photo Exhibits Week Three



Photo Exhibit A: Represents initial dredging of confluence at Sta. 25+50.
Photo taken 10/30/10.



Photo Exhibit B: Represents overhanging limbs along Pilot Channel before trimming.
Photo taken 10/31/10

Attachment A: Photo Exhibits Week Three



Photo Exhibit C: Represents vegetation trimming for existing freeboard/bank identification.
Photo taken 10/31/10.

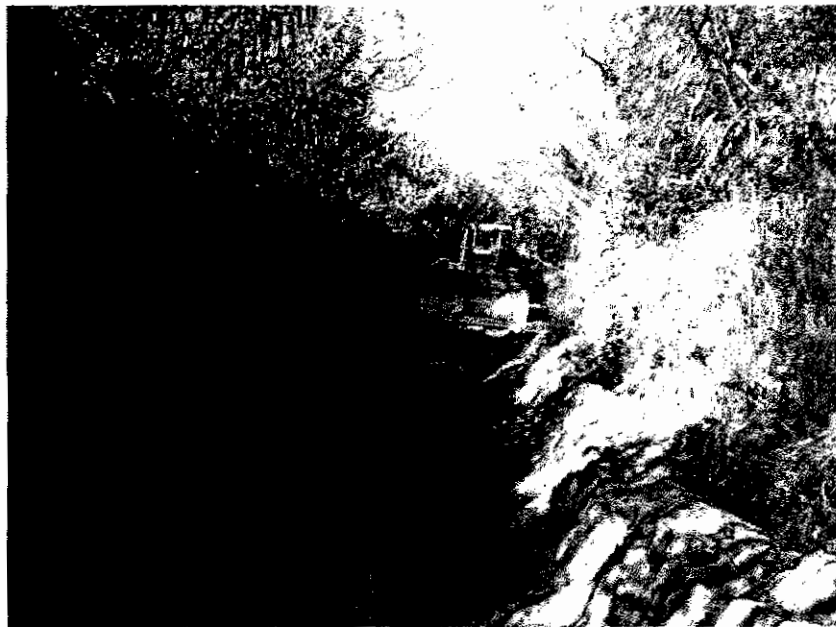


Photo Exhibit D: Represents dredging of Pilot Channel after vegetation trimming.
Photo taken 11/1/10.

Attachment A: Photo Exhibits Week Three



Photo Exhibit G: Represents existing orange environmental fencing in place from maintenance last season, overgrowth of vegetation along the channel banks/work limits, and the existing 2-4 foot freeboard within the Pilot Channel prior to any maintenance activities this season.

Photo taken 11/5/10.

Attachment A: Photo Exhibits Week Four



Photo Exhibit A: Represents excavated Pilot Channel west of the confluence at Sta. 27+50.
Photo taken 11/7/10.



Photo Exhibit B: Represents the Pilot Channel before excavation and vegetation trimming at
Sta. 32+00. Photo taken 11/7/10.

Attachment A: Photo Exhibits Week Four



Photo Exhibit C: Represents excavated Pilot Channel at Sta. 31+50.
Photo taken 11/08/10



Photo Exhibit D: Represents overhanging arundo in the Pilot Channel before excavation and vegetation trimming. Photo taken 11/11/10.

Attachment A: Photo Exhibits Week Four

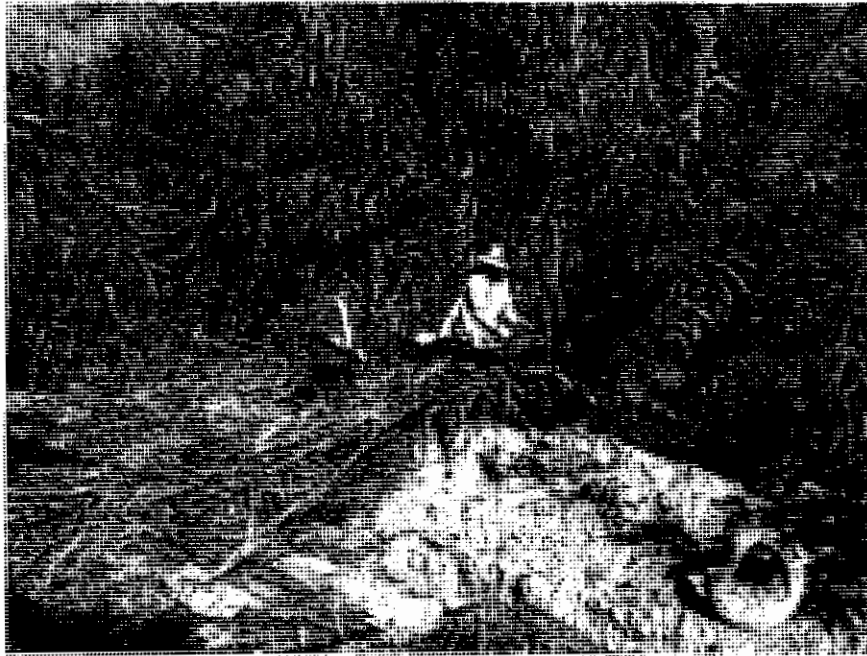


Photo Exhibit E: Vegetation trimming in the Pilot channel before excavation to delineate the 23-foot work limits and to expose the existing orange construction limits fencing from maintenance activities last season. Photo taken 11/11/10.



Photo Exhibit E: Represents the Pilot channel after vegetation trimming to delineate the 23-foot work limits and before excavation. Photo taken 11/12/10.

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**COASTAL
ENVIRONMENTAL
RIGHTS
FOUNDATION**

W14a

December 2, 2011

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Via Electronic Mail
jstaben@coastal.ca.gov
clester@coastal.ca.gov
tluster@coastal.ca.gov

RE: Item 14a on Commission's Agenda for December 7, 2011
(CDP for Long Term Maintenance of Tijuana River Pilot
and Smuggler's Gulch Channels, San Diego)

Dear Commissioner Shallenberger::

The Coastal Environmental Rights Foundation (CERF) submits this letter in support of comments submitted by Briggs Law Corp on behalf of San Diegans for Open Government to **oppose the current staff recommendation** and instead, urge that the Commission find that **the appeal presents a substantial issue**. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF shares San Diegans for Open Government's concerns regarding the Tijuana CDP and the City's mischaracterization of the long-term scope and consequences of the CDP.

CERF therefore urges the Commission make a finding of substantial issue under the Coastal Act, and hear the appeal in San Diego.

Thank you for your consideration of CERF's comments in advance of the December meeting.

Sincerely,

Signature on file

SARA HONADLE
PROGRAMS DIRECTOR

Comment Letter



CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W14a

Filed: 11/14/11
49th Day: 1/2/12
Staff: M.Ahrens-SD
Staff Report: 11/22/11
Hearing Date: 12/7/11

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-TJN-11-084

APPLICANT: City of San Diego Transportation & Storm Water Department

PROJECT DESCRIPTION: Maintenance dredging of previously constructed pilot channel within the Tijuana River and a portion of Smuggler's Gulch channel to include after the fact authorization for excavation of up to 30,000 cubic yards of sediment, trash and vegetation from existing drainage channels (as a follow up to two emergency permits) as well as authorization to allow for future dredging and excavation of 10,000-30,000 cubic yards of material from the same areas as needed in the next 3-5 years, maintenance and repair of existing culverts and gabion mattress, and eradication of 9.96 acres of exotic vegetation.

PROJECT LOCATION: Within the Tijuana River and Smuggler's Gulch, west of Hollister Street and north of Monument Road, Tijuana River Valley, San Diego, San Diego County.

APPELLANTS: San Diegans for Open Government

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The City's CDP authorizes the maintenance and repair of existing stormwater control and flood protection channel systems in order to increase the protection of surrounding sensitive habitat resources as well as agricultural and residential properties within the Tijuana River Valley. The project is considered to be a necessary incidental public service project and has been reviewed by all appropriate resource agencies to ensure that the project has been conditioned consistent with local, state, and federal policies concerning habitat protection, water quality, flood control systems, and sensitive resources and that adequate mitigation for associated wetland impacts has been provided.

The proposed project will occur in the same footprint of previous flood control construction work and repair that occurred in 1993 and was mitigated at a 3:1 creation/restoration ratio, creating 9.9 acres of viable riparian habitat that still remains intact today (pursuant to a CDP issued by the City in 1998). The proposed project will result in 4.61 acres of wetland impacts, yet, as all wetland impacts will occur within the footprint of the initial 1993 project impact area, the proposed project will not require any creation mitigation, based on all previous special conditions of the 1998 CDP, as well as the City's Land Development Code regulations. However, the U.S. Fish and Wildlife Service, Army Corps of Engineers and the California Department of Fish and Game, are still requiring the City to provide a restoration plan for the rehabilitation (removal of exotics) of a 9.22 acre area adjacent to the project site to function as mitigation for the project impacts. The City has included Special Conditions in the subject City CDP to ensure that this mitigation requirement is implemented in accordance with the requirements of the Resource Agencies.

The subject appeal is for maintenance of flood control channel facilities within the Tijuana River Valley and will occur in the same area and be similar in design as numerous maintenance and repair projects reviewed by Commission staff and sanctioned by the City of San Diego in the past two decades. Thus, while the project does involve impacts to wetland habitats, which are significant coastal resources, adequate mitigation has already been provided for such impacts, consistent with the applicable LCP, and the objections to the project suggested by the appellants do not raise any substantial issues of regional or statewide significance.

SUBSTANTIVE FILE DOCUMENTS: Biological Resource Technical Report and Conceptual Wetlands Mitigation Plan by Dudek consultants dated July 2011, City of San Diego report to the Planning Commission dated September 1, 2011, Final Mitigated Negative Declaration Project No. 230815; Certified Tijuana River Valley Land Use Plan, City of San Diego LDC, 6-TJN-98-232,

I. Appellants Contend That: The proposed development is inconsistent with the goal of the certified LCP to focus almost exclusively on long-term restoration, enhancement, and preservation of the natural ecosystem within the Tijuana River Valley. The City has not protected, preserved, and restored natural coastal resources when weighing the balance between flood control and preserving the natural ecosystem.

The City has not sufficiently analyzed the biological impacts of the project, adequately mitigated for berming and channelization, adequately analyzed or mitigated for the water quality impacts of the project, and has not committed to maintaining the floodplain in its natural condition to the extent feasible.

II. Local Government Action. The City of San Diego Planning Commission approved the proposed flood control maintenance project with special conditions regarding timing

of construction, protection of biological resources, access roads and staging areas, monitoring, construction BMPs, mitigation, and water quality on October 18, 2011. The San Diegans for Open Government group appealed the project to the City Council and the City Council subsequently denied the appeal and upheld the Planning Commission's decision to approve the project and certify the environmental document.

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30604(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-TJN-11-084 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. **A-6-TJN-11-084** does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. **Project Description/History.** The subject City of San Diego Coastal Development Permit involves the maintenance and repair of existing flood management and storm water maintenance facilities in the Tijuana River Valley. The proposed project is part of a large ongoing restoration and flood control maintenance effort in a largely undeveloped region of the Tijuana River Valley that was primarily initiated in 1993 through emergency flood control work activities and followed up with a City issued CDP in 1998 (Ref. 6-TJN-98-232). The emergency flood control activities that took place in 1993 as a result of severe El Nino storms included removal of 3,500 cubic yards of illegally placed fill in several locations (and associated habitat restoration and enhancement mitigation of a 45.9 acre site within the Tijuana River Valley through CDP 6-TJN-94-38), reconstruction of an erodible berm that helps to direct low flows in the river into the appropriate storm water control channels, formation and repair of a pilot channel, widening of Smuggler's Gulch channel to accommodate increased flood flows, and repair and armoring of flood control berms adjacent to two residential developments. The flood control activities permitted in 6-TJN-98-232 resulted in 3.3 acres of new wetland impacts, which were required to be mitigated at a 3:1 creation/restoration ratio. The required mitigation for that project created/restored 9.9 acres of riparian habitat located on the south side of the Tijuana River, near the western terminus of the Pilot Channel. The mitigation site was completed in 1995 and has expanded from 9.9 acres to 11.02 acres of riparian habitat since that time. The proposed project will occur in the same locations and footprint as the original 1993 emergency work.

The proposed project site occupies a 19.77 acre area including 4.48 acres of jurisdictional waters. The current project proposal is for the after the fact approval of flood control emergency work as well as additional maintenance and repair activities within the Tijuana River Valley in the southernmost part of the City of San Diego near the

U.S./Mexico border. The emergency work covered in the subject permit was initially sanctioned pursuant to City issued emergency Coastal Development Permits in 2009 and 2010. As such, this permit will authorize prior emergency work that occurred in 2009 and 2010, as well as the remaining repair and maintenance work not yet finished. The purpose of the emergency work and the goal of the long term maintenance of the flood control channels is to restore storm water conveyance capacities and to reduce the risk of flooding to the surrounding properties and sensitive habitat areas. Overall, the proposed project will include after the fact approval of dredging and excavation of up to 30,000 cubic yards of trash, sediment and debris from the Pilot Channel and Smuggler's Gulch channel as well as the future dredging and excavation of 10,000-30,000 cubic yards of material from the same areas as needed in the next 3-5 years, maintenance and repair of existing culverts and gabions, maintenance of existing designated access roads and staging areas and removal of 9.6 acres of invasive exotic vegetation to satisfy the mitigation required by the Resource Agencies for the 4.61 acres of direct wetland impacts associated with the proposed project.

The 1998 follow-up CDP for the 1993 emergency work outlines that both of the flood control channels were expected to require future maintenance due to their construction design, the hydrological conditions of the area and the propensity for flooding within the River Valley. The Department of Fish and Game, the Regional Water Quality Control Board, Army Corps of Engineers, and the U.S. Fish and Wildlife Service all worked collaboratively to develop the mitigation and monitoring to compensate for the 3.3 acres of direct wetland impacts associated with the 1993 emergency work and 1998 follow up permit. In order to ensure consistency with past CDP actions, Special Conditions and environmental regulations in this area, the City included all of these same agencies in the review and development of the City's current maintenance and repair CDP permit including the special conditions of the permit and the mitigation and monitoring requirements.

The proposed project requires a Section 404 permit from the Army Corps of Engineers a Section 401 Water Quality Certification and a Section 402 NPDES permit from the Regional Water Quality Control Board, a Section 1605 Streambed Alteration Agreement from the Department of Fish and Game as well as a U.S. Fish and Wildlife Service Section 7 Biological Opinion to be submitted prior to the start of any construction activities. None of these agencies have submitted any comments or letters indicating that they are opposed to the subject project and would not grant the required permits or require additional mitigation beyond the proposed removal of exotic species. Additionally, the proposed Tijuana River Valley maintenance and repair project is in compliance with the Special Conditions and requirements of the original 1998 CDP permit and associated Streambed Alteration Agreement 5-683-93 from CDFG allowing for the 3.3 acres of wetland impacts associated with the 1993 emergency work.

2. Protection of Sensitive Resources. The following are applicable LCP policies from the Tijuana River Valley Land Use Plan:

Tijuana River Valley Land Use Plan- Specific Recommendations,

(C) Flood Control

- Flood Control should generally be limited to existing agreements with wildlife agencies and where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety and unless demonstrated to be needed based on a cost benefit analysis and pursuant to a restoration plan. Floodplains within the MHPA, and upstream from the MHPA if feasible, should remain in a natural condition and configuration in order to allow for the ecological, geological, hydrological, and other natural process to remain or be restored.
- No berming, channelization, or man-made constraints or barriers to creek, tributary, or river flows should be allowed in any floodplain within the MHPA unless reviewed by all appropriate agencies, and adequately mitigated. Review must include impacts to upstream and downstream habitats, flood flow volumes, velocities and configurations, water availability, and changes to the water table level. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain 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.
- No riprap, concrete, or other unnatural material shall be used to stabilize river, creek, tributary, and channel banks within the MHPA. River, stream, and channel banks shall be natural, and stabilized where necessary with willows and other appropriate native plantings. Rock gabions may be used where necessary to dissipate flows and should incorporate design features to ensure wildlife movement.

(E) Environmentally Sensitive Habitat Areas

- The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to minor incidental public service projects, restoration purposes, nature study and mineral extraction.

(G) Grading/Sediment Control/Water Quality

- Sediment control measures (debris basins, desilting basins or silt traps) shall be installed in conjunction with any new development in which grading is proposed. The prevention and control of runoff of fertilizers, pesticides and other urban pollutants into riparian and floodplain areas should be required.

City of San Diego Land Development Code, LDC Regulations

Section 143.0101 Purpose of Environmentally Sensitive Lands Regulations

The purpose of these regulations is to protect, preserve and, where damaged restore, the *environmentally sensitive lands* of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that *development*, including, but not limited to *coastal development* in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of *development*, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to *flooding* in specific areas while minimizing the need for construction of *flood* control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

Section 143.0130 Uses Allowed Within Environmentally Sensitive Lands

Allowed uses within *environmentally sensitive lands* are those allowed in the applicable zone, except where limited by this section.

(d) *Wetlands* in the Coastal Overlay Zone. Uses permitted in *wetlands* shall be limited to the following:

- (1) Aquaculture, *wetlands*-related scientific research and *wetlands*-related educational uses;
- (2) Wetland restoration projects where the primary purpose is restoration of the habitat;
- (3) Incidental public service projects, where it has been demonstrated that there is no feasible less environmentally damaging location or alternative, and where mitigation measures have been provided to minimize adverse environmental effects.

Section 143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes *encroachment* into *sensitive biological resources* or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(a) State and federal law precludes adverse impacts to *wetlands* or listed noncovered species habitat. The *applicant* shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the *development* proposal. The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The applicant

shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing. *Grading or construction permits* shall not be issued for any project that impacts *wetlands* or Listed non-covered species habitat until all necessary federal and state permits have been obtained.

Section 143.0145 Development Regulations for Special Flood Hazard Areas

(a) *Special Flood Hazard Areas* within the City of San Diego are established in accordance with the report entitled "*Flood Insurance Study, San Diego County, California*," dated June 16, 1999 and the accompanying *Flood Insurance Rate Maps (FIRM)*, published by the Federal Emergency Management Agency (FEMA), on file in the office of the City Clerk as Document Nos. 18910-1 and 18910-2, including any supplements, amendments, and revisions which are properly promulgated by FEMA or the Federal Insurance Administrator.

(b) For the purpose of Sections 143.0145 and 143.0146, the City Engineer is the designated Floodplain Administrator and shall administer, implement, and enforce these regulations.

(c) The degree of *flood* protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger *floods* can and will occur on rare occasions. It is possible that increased *flood* heights may result from man-made or natural causes. This section does not imply that land outside a *Special Flood Hazard Area* or uses permitted within such areas will be free from *flooding* or *flood* damages. This section shall not create liability on the part of the City, any officer or employee thereof, or the FEMA, for any *flood* damages that result from reliance on this chapter or any administrative decision lawfully made there under.

(d) The following development regulations and all other applicable requirements and regulations of FEMA apply to all *development* proposing to encroach into a *Special Flood Hazard Area*, including both the *floodway* and *flood fringe* areas or that does not qualify for an exemption pursuant to Section 143.0110(c):

Land Development Code Biological Guidelines

Identification of the Mitigation Program

1. Mitigation Element. Mitigation must be determined on a case-by-case basis. Mitigation refers to actions to help sustain the viability and persistence of biological resources, as exemplified below. Mitigation will consist of actions that either compensate for impacts by replacing or providing substitute habitats, or rectify the impact by restoring the affected habitats. The requirements of the mitigation will be based on the type and location of the impacted habitat, and additionally for uplands, on the location of the mitigation site. The Mitigation Element will consist of a

discussion of the amount (i.e. quantity) and the type (i.e. method) of mitigation. The following guidelines are provided to achieve consistency and equity among projects. Mitigation for specific projects may differ depending on site-specific conditions as supported by the project-level analysis.

The following guidelines are provided to achieve consistency and equity among projects. Mitigation for specific projects may differ depending on site-specific conditions as supported by the Project-level analysis.

a. Mitigation for Wetlands Impacts

The ESL regulations require that impacts to wetlands be avoided. Unavoidable impacts should be minimized to the maximum extent practicable, and mitigated as follows: As part of the project-specific environmental review pursuant to CEQA, all unavoidable wetlands impacts (both temporary and permanent) will need to be analyzed and mitigation will be required in accordance with Table 2; mitigation should be based on the impacted type of wetland habitat. Mitigation should prevent any net loss of wetland functions and values of the impacted wetland.

The subject permit will authorize a flood control project 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. The appellants contend that the City did not follow the goal of the certified Tijuana River Valley LCP to focus exclusively on long-term restoration, enhancement, and preservation of the natural ecosystem within the River Valley. However, flooding in this river valley can result in extensive damage to existing agricultural and residential properties as well as to sensitive wetland, riparian, and upland sage scrub habitat areas. Without the continued maintenance of the existing floodwater and storm water channels within the River Valley, it is likely that large areas of existing sensitive habitats would be adversely impacted by seasonal flooding throughout the river valley. The proposed project will utilize existing flood control channels and berms to enhance and restore the functionality of the existing flood control and storm water management infrastructure in this region.

Flood control efforts in the mostly undeveloped and naturally vegetated Tijuana River Valley require comprehensive analysis to ensure that the project protects natural resources and sensitive habitats while providing effective storm water conveyance and control systems, as allowed and required in the LCP. The City of San Diego has gone through an extensive review process in consultation with numerous Resource Agencies to ensure that the proposed project constitutes the least environmentally damaging alternative that still proves effective in managing the flooding problems in this region. Numerous special conditions regarding timing of construction, staging and access road requirements, construction BMP's, water quality and hazardous materials requirements, and monitoring of sensitive environments have been attached to the City's CDP to ensure that no additional impacts to sensitive resources occur as a result of the proposed project.

Additionally, the City has coordinated with all of the pertinent Resource Agencies in order to adequately mitigate impacts associated with the proposed project, and the proposed mitigation will be consistent with the requirements of the City's LDC and the Tijuana

River Valley LUP, which allows for Flood Control to occur where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety and a restoration plan is incorporated with agreements from the Resource Agencies. As the City's LDC, as well as the Tijuana River Valley's LUP, allows for flood control maintenance activities to occur in environmentally sensitive lands as an incidental public service, the subject project would not be inconsistent with the goals of the LCP or the LDC. Therefore, no substantial issue exists with regard to the appellant's contention that the City did not follow the goal of the LCP to focus almost exclusively on long-term restoration, enhancement, and preservation of the natural ecosystem when weighing the balance between flood control and preserving the natural ecosystem in the Tijuana River Valley.

Additionally, the City prepared a mitigated negative declaration for the proposed project that was developed in accordance with commentary from the Department of Fish and Game as well as the U.S. Fish and Wildlife Service. The proposed project will not result in any new impacts to sensitive resources for which mitigation has not already been provided through the 1993 emergency work and 1998 follow up CDP permit, resulting in the creation of the existing now 11.02 acre riparian mitigation site. Specifically, the footprint of the Pilot Channel portion of the proposed project, including turnarounds, access routes, and bank reestablishment, is 3.09 acres and is all located within the 3.3 acres that were previously impacted and for which mitigation was required at a 3:1 ratio in 1993. An additional .02 acres of wetlands will be impacted within an existing dirt road, but this area was also part of the 3.3 acres of the prior project for which mitigation has already been provided.

A 1.40 acre impact area within the manufactured channel of Smuggler's Gulch would also be associated with the proposed project. Smuggler's Gulch is a historical agricultural ditch that is a mostly unvegetated muddy flood control trough that is only considered to be a wetland due to its hydrological conditions and does not contain any sensitive wetland vegetation. Due to the disturbed nature of the existing Smuggler's Gulch channel as well as its function as a flood control channel that carries high velocity flows, the mitigation required for wetland impacts in this area is a 2:1 restoration, consistent with the regulations of the LDC's Biological Guidelines (Table 2). This mitigation would be integrated into the required 9.22 acres of restoration mitigation area, as outlined in the mitigated negative declaration attached to the City's CDP permit. The same type of mitigation for impacts within the Smuggler's Gulch and Pilot channels was required in the City's 1998 CDP permit, also at a 2:1 restoration ratio along with the 9.9 acres of creation mitigation required for different types of wetland impacts. The restoration mitigation site is required to be situated nearby the project site through Special Conditions of the City's CDP, consistent with the City's LDC guidelines. Therefore, the proposed maintenance work within Smuggler's Gulch has been adequately mitigated through the City's CDP, pursuant to all applicable City of San Diego Land Development Code and LCP policies in this region of San Diego.

Although the LCP does not require additional creation mitigation for this project, the Resource Agencies are still requiring mitigation for the 4.61 acres of wetland impacts

through habitat restoration and removal of exotic vegetation in a 9.22 acre area located nearby the project site that is intended to enhance the habitat connectivity throughout the River Valley. As the area of wetland impacts associated with the subject project lies within the footprint of the 1993 emergency work (or is being mitigated for through the 9.22 acres of required restoration mitigation), adequate mitigation for unavoidable permanent wetland impacts is already provided by the now 11.02 acre creation mitigation riparian habitat area located south of the pilot channel and west of Smuggler's Gulch in close proximity to the project. Additionally, through past City permit actions and mitigation requirements, it was understood and acknowledged that future maintenance of the flood control facilities would be needed in the future. While the City's efforts and maintenance have been minimal since 1998, with this permit, future maintenance will be permitted, making it more likely that the City will complete the necessary maintenance on a regular basis.

Through the development of comprehensive biological reports and conceptual wetlands mitigation reports as well as through the mitigated negative declaration, the City has proposed and conditioned the project to ensure that the proposed maintenance and repair work constitutes the least environmentally damaging alternative and that adequate mitigation has been provided. Additionally, the proposed project incorporates future annual maintenance efforts which will reduce the necessity for larger and potentially more intrusive maintenance projects and likely result in fewer habitat impacts over time. The proposed project has undergone review by the Water Quality Control Board to ensure that there are no substantial water quality impacts associated with the proposed project. As such, the appellant's contention that the City has not sufficiently analyzed the biological impacts of the project, adequately provided mitigation for berming and channelization, adequately analyzed or mitigated the water quality impacts of the project, and has not committed to maintaining the floodplain in its natural condition to the extent feasible does not constitute a substantial issue.

The subject project constitutes necessary flood control and storm water channel maintenance and repair work that is consistent with all of the applicable Tijuana River Valley LCP policies as well as the City's LDC Biology and Environmentally Sensitive Land Regulations. The proposed project will help prevent destructive flooding in the Tijuana River Valley while not expanding existing storm water management facilities and will result in increased protection of surrounding sensitive natural resources and wetland habitats as well as surrounding public resources. Therefore, based on the above findings, the project, as approved by the City, is consistent with the certified LCP. Thus, the project does not raise a significant issue on the grounds raised by the appellants.

3. Conclusion/Substantial Issue Factors. Generally speaking, the Commission considers five specific findings when considering whether a project raises a "substantial issue." These factors are listed on Page 4 of this staff report and none of them support a finding of substantial issue in this case. As discussed above, the proposed project is considered an incidental public service project and can be found consistent with the certified LCP for the Tijuana River Valley and the City of San Diego's LDC. While the City's LCP protects sensitive environmental resources and wetland habitats, the proposed

project will function to provide necessary flood protection and remediate existing failures in the stormwater channel infrastructure in this region. As the wetland habitat impacts that result from the proposed project all occur within areas for which mitigation has already been provided at a 3:1 creation/restoration ratio, there is no significant impact to coastal resources associated with the subject project.

The land use designation of the site is Open Space and Agriculture and the Zoning designation is OF-1-1 (Open Space Floodplain) and AR-1-1 (Agriculture-Residential). These land use and zoning designations do not preclude maintenance of existing storm water facilities. The proposed project would not conflict with the existing zoning or general plan land use designations since the project would entail the on-going maintenance of existing flood control facilities. Additionally, as the maintenance activities proposed are considered an incidental public service project they can be found consistent with the City's Land Development Code (LDC) biology Guidelines, which identify that unavoidable impacts include those associated with essential public facilities where no feasible alternative exists. Furthermore, within the Coastal Overlay Zone the City's LDC allows for impacts to wetland to occur for incidental public service projects.

The 1998 follow up emergency permit for flood control maintenance and repair activities states that all the emergency work permitted in CDP 6-TJN-98-232 conforms with the Tijuana River Valley Task Force's recommended flood control alternatives, the Tijuana River Valley Community Plan, the Tijuana River Valley Local Coastal Program Land Use Plan, and the City of San Diego's LDC. The emergency repair work and additional maintenance and restoration activities permitted through the subject CDP would occur within the same project footprint as the 1993 emergency repair work activities and would not result in impacts to wetlands outside the initial project footprint. Additionally, the proposed maintenance work would be similar in scope and design as the work permitted through the 1998 CDP 6-TJN-98-232. The record therefore shows that there is adequate factual and legal support for the City's decision.

The subject appeal is for maintenance of flood control channel facilities within the Tijuana River Valley and will occur in the same area and be similar in design as numerous maintenance and repair projects reviewed by Commission staff and sanctioned by the City of San Diego in the past two decades. Thus, while the project does involve impacts to wetland habitats, adequate mitigation has already been provided for such impacts, consistent with the applicable LCP. The proposed project is an appropriate flood control and maintenance project and therefore does not raise any substantial issues of regional or statewide significance. Finally, the City's approval of this CDP is consistent with the LCP and will not create an adverse precedent for future interpretation of this LCP.

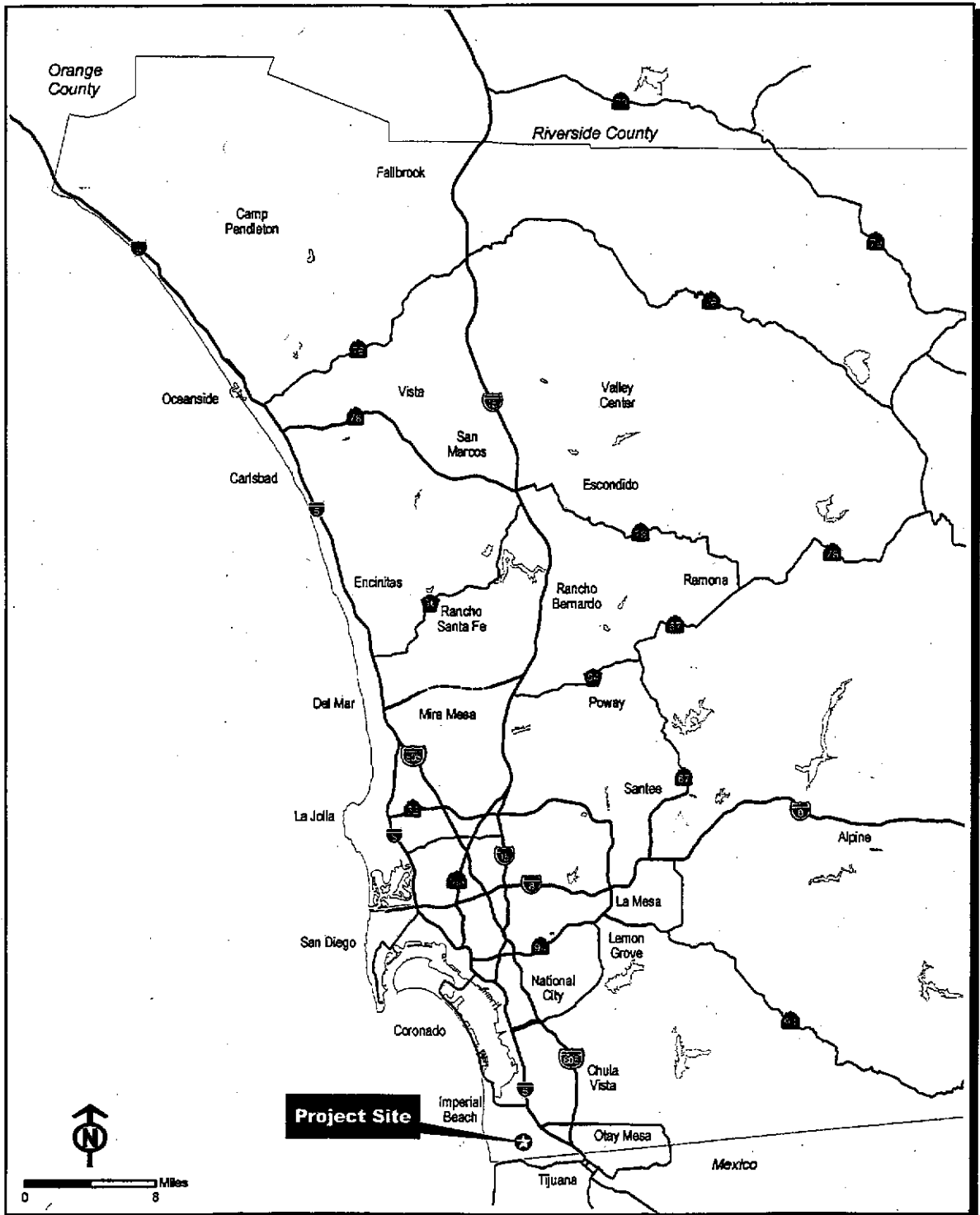

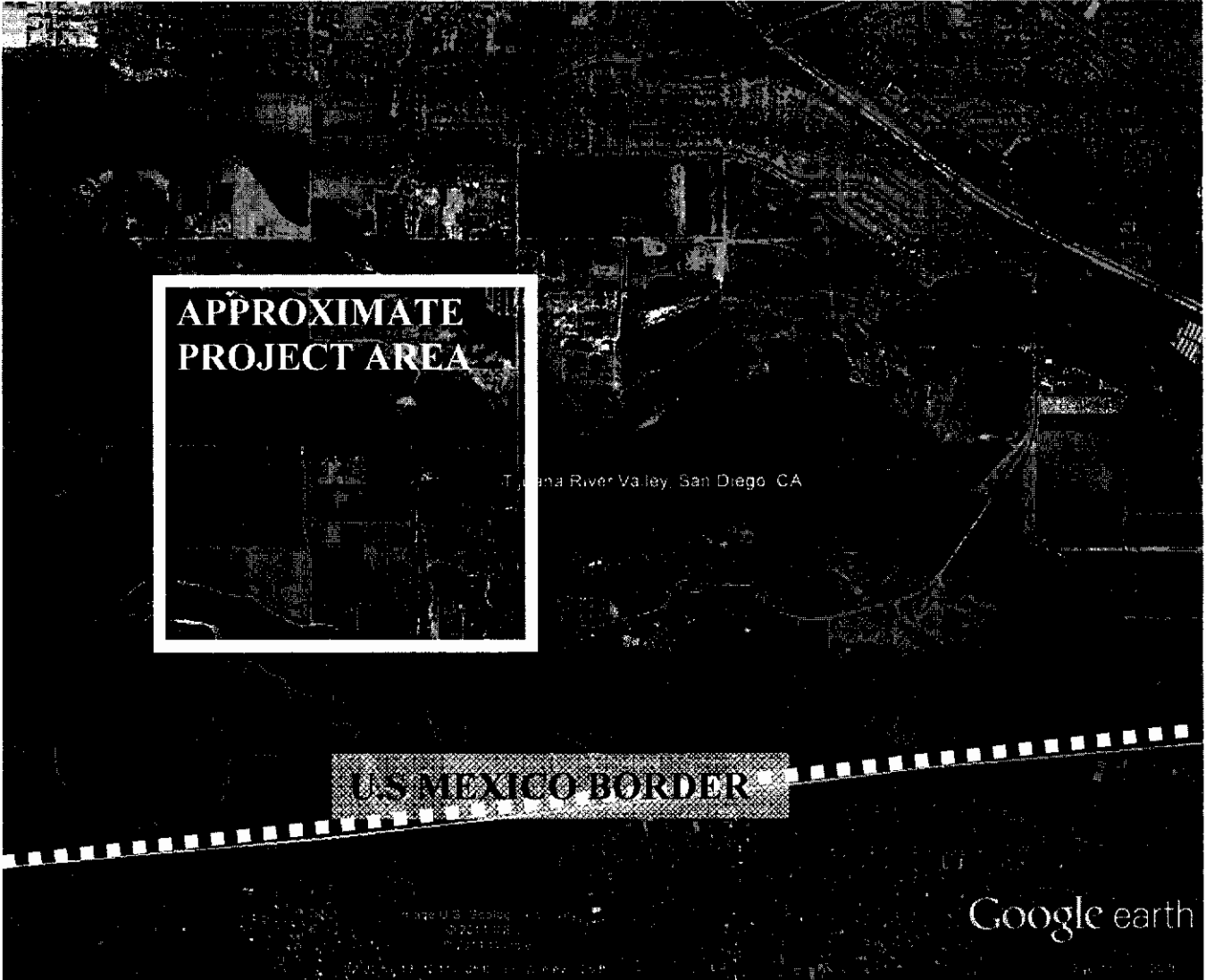


EXHIBIT NO. 1
APPLICATION NO.
A-6-TJN-11-084
Location Map

 California Coastal Commission




**APPROXIMATE
PROJECT AREA**

Tijuana River Valley, San Diego, CA

U.S. MEXICO BORDER

Google earth

EXHIBIT NO. 2
APPLICATION NO.
A-6-TJN-11-084
Close Up Location
Map
 California Coastal Commission

RECEIVED

NOV 8 2011

EDMUND G. BROWN JR., Governor

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: San Diegans for Open Government c/o Briggs Law Corporation

Mailing Address: 814 Morena Blvd., Suite 107

City: San Diego

Zip Code: 92110

Phone: (619) 497-0021

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of San Diego

2. Brief description of development being appealed:

Tijuana River Pilot and Smuggler's Gulch Channel Maintenance

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Pilot Channel- Located between Hollister Street and Monument Road within the Tijuana River Valley Community Planning area.

Smuggler's Gulch- North of Monument Road spanning to the Disney Crossing and continuing north with the Pilot Channel

4. Description of decision being appealed (check one.):

Approval; no special conditions

Approval with special conditions:

Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	<u>A-6-TJN-11-084</u>
DATE FILED:	<u>11/3/11</u>
DISTRICT:	<u>SAN Diego</u>

EXHIBIT NO. 3
APPLICATION NO.
A-6-TJN-11-084
Appeal Submittal
Page 1 of 4
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: October 18, 2011

7. Local government's file number (if any): City of San Diego's Project no. 230815

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

- a. Name and mailing address of permit applicant:
City of San Diego-Development Service Center
1222 First Avenue, MS 501
San Diego, CA 92101

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Please see attached list

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The Tijuana River Valley Plan was certified by the Coastal Commission as a Local Coastal Program in 1999. The land use plan for the Tijuana River Valley has been to "focus almost exclusively on long-term restoration, enhancement and preservation of the natural ecosystem."

In weighing the balance between flood control and preserving the natural ecosystem, the City of San Diego has not protected, preserved and restored natural coastal resources as required under the local coastal program. In particular, the City of San Diego has not adequately analyzed and mitigated biological impacts of the project, has not committed to maintain floodplains in a natural condition to the extent feasible, has not adequately mitigated for berming and channelization, and has not adequately analyzed and mitigated the water quality impacts of the project.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

On behalf of San Diegoans for Open Government
Signature on file

Signature of Appellant(s) or Authorized Agent

Date: November 2, 2011

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

MeKaela Gladden Briggs Law Corporation
to act as my/our representative and to bind me/us in all matters concerning this appeal

Signature on file

Signature of Appellant(s)

Date: Nov 2, 2011