**CALIFORNIA COASTAL COMMISSION**
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# W13b

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## APPEAL STAFF REPORT
## SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Click here to go to the staff report addendum.

**LOCAL GOVERNMENT**: City of San Diego

**DECISION**: Approval with Conditions

**APPEAL NO.**: A-6-NOC-11-086

**APPLICANT**: City of San Diego Transportation & Storm Water Department

**PROJECT DESCRIPTION**: A 20 year master coastal development permit for clearing of sediment and vegetation and maintenance of storm water facilities to provide adequate flood control.

**PROJECT LOCATION**: Various drainages within Coastal Zone to include portions of Soledad Creek, Los Penasquitos Creek, Rose Creek, Tecolote Creek, Chollas Creek and the Tijuana River, San Diego, San Diego County.

**APPELLANTS**: Coastal Commissioners Brian Brennan and Mark Stone; Coastal Environmental Rights Foundation (CERF); San Diegans for Open Government.

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**STAFF NOTES:** While Commission staff understands the City's intent in trying to streamline the permitting process and take a programmatic approach to facilitate needed maintenance of necessary drainage facilities within the City, staff is unable to find that a 20 year permit for maintenance is consistent with the resource protection provisions of the certified LCP when impacts to sensitive biological resources and necessary mitigation measures/sites will not be specifically identified until after the CDP is approved and issued. This is a significant concern. As such, early on in development of this program, Commission staff participated in agency meetings and expressed to the City at that time that the idea of a long-term multi-year master coastal development permit was problematic for the Commission. Because the extent of the drainages in the City's permit jurisdiction within the Coastal Zone was minor compared to the overall extent within the City, Commission staff informed the City that it should not include the Coastal Zone within this program, but instead pursue individual coastal development permits once the projects, their impacts and necessary mitigation were identified.

**SUMMARY OF STAFF RECOMMENDATION**:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

Staff also recommends that the Commission **deny** the de novo permit. The proposed project will result in substantial impacts to sensitive biological resources over the 20 year life of the permit. While the City has documented the approximate extent of the direct impacts given a worst case scenario at this time, it is unclear and unlikely that those impacts would remain the same 20 years from now. In addition, even if the impacts could be found acceptable, mitigation sites for the impacts are not known at this time and will not be identified until after City approval of an individual project. Also, the permit lays out some of the parameters for mitigation, including the ratios, but does not require that mitigation for impacts to sensitive biological resources be mitigated in the Coastal Zone. The project will also result in water quality impacts. While the City's program does include BMP requirements during the project construction, there are minimal provisions to address impacts on downstream resources once the drainage area has been cleared. Based on review of the City's program, there is inadequate information and specificity included in its biological assessment to allow the Commission to find that site-specific impacts on sensitive coastal resources have been adequately reviewed and minimized and that adequate mitigation is provided for any impacts. Commission staff requested further information from the City to determine the exact impacts of the various flood control projects on a site-specific basis. The City asserted that it could not provide that information at this time. Therefore, staff recommends the Commission deny the application.

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**SUBSTANTIVE FILE DOCUMENTS**: City of San Diego certified Local Coastal Program; City of San Diego Master Storm Water System Maintenance Program dated October 2011; Master Strom Water System Maintenance Program Final Recirculated Program Environmental Impact Report (PEIR) dated October 2011; Appeal Forms.

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**I. Appellants Contend That**: The permit approved by the City is inconsistent with the certified local coastal program pertaining to protection of sensitive biological resources in that impacts to biological resources are not known at this time and impacts of channel maintenance on downstream resources and water quality have not been adequately addressed. Therefore, impacts to sensitive biological resources are being approved without first knowing the extent of the impacts. In failing to adequately analyze significant environmental impacts that will result from the project, the City has failed to comply with the Coastal Act and the certified LCP. As a result of this failure, the City approval does not identify or analyze mitigation measures and alternatives, resulting in significant unmitigated individual and cumulative impacts to sensitive coastal resources. While the City's process sets up a substantial conformance review process, the discretion for review of impacts or impact avoidance would be delegated to the City's Development

Services Department without the further review relative to whether or not the impacts and impact avoidance would be consistent with the certified LCP. The appellants also contend that the proposed annual prioritization process is flawed in that it could result in multiple drainages remaining unaltered for years, with habitat establishing, which may not have been anticipated in the original impact analysis. Therefore, the mitigation measures and protocols for this prioritization review must be carefully developed and that has not yet occurred as part of this permit action.

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**II. Local Government Action**. The project was approved by the City Planning Commission on May 13, 2010. On May 27, 2010 an appeal of the Planning Commission's decision was filed. On October 24, 2011, the City Council denied the appeal and approved the coastal development permit for the master drainage program with changes.

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**III. Appeal Procedures**. After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal such as that involved here unless the Commission determines that no substantial issue is raised by the appeal. 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 either immediately or at a subsequent meeting. 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, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, 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 of the Coastal Act.

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.

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## 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-NOC-11-086 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.***

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. ***A-6-NOC-11-086*** presents 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.

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## V. Findings and Declarations.

The Commission finds and declares as follows:

**1. <u>Project Description</u>**. As described by the City, the Master Storm Water System Maintenance Program is intended to guide the long-term maintenance of storm water facilities maintained by the City of San Diego's Transportation & Storm Water Department's Storm Water Division (SWD). The purpose of the project is to maintain storm water facilities to provide adequate flood control. The Master Program describes the maintenance techniques to be employed as well as the protocols to be followed to minimize the impacts to environmental resources.

The project approved by the City is for a 20-year master coastal development permit to allow channel clearing (removal of sediment and vegetation) and maintenance of storm water facilities, which includes natural, earthen and manmade drainages, in the City of San Diego to provide adequate flood flows. Most of the drainages covered by this permit are located outside of the Coastal Zone. However, the drainages within the Coastal Zone and addressed in the subject appeal include:

- Portion of Soledad Creek in Sorrento Valley;
- small portion of Los Penasquitos Creek in Sorrento Valley;
- small portion of Rose Creek in Pacific Beach;
- small portion of Tecolote Creek;
- small portion of Chollas and South Creek; and
- portion of the Tijuana River in the Tijuana River Valley.

The scope of work includes primarily the removal of accumulated vegetation and/or sediment to restore conveyance capacities. The work is typically done with mechanized equipment, but when access is unavailable, it will be done by hand. Impacts to sensitive resources and water quality would be minimized through a number of avoidance measures, construction methodologies and BMPs detailed in the Master Permit. Unavoidable impacts would be mitigated at the ratios included in the LCP.

The Master Permit includes a process by which individual storm water facility maintenance would be identified and prioritized annually through an evaluation process that considers the costs and benefits of maintenance of each facility in meeting flood control and water quality goals. Each year, an Annual Maintenance Priority List would be established for the upcoming fiscal year.

Once the priority list is established, the City will complete a series of studies, the goal of which is to determine the best way to maximize flood control while minimizing impacts on sensitive biological resources and water quality. These studies include individual biological, historical, hydrologic, water quality and noise assessments. Based on the results of these studies, the City will prepare an Individual Maintenance Plan (IMP) for each maintenance activity. The IMPs would identify the width of the facility to be cleared, maintenance methods and equipment to be used, access roads/paths, staging areas and schedules. The goal of the IMPs would be to minimize the amount of clearing in order to reduce impacts on sensitive biological resources while providing necessary flood control capacity.

Annual maintenance would then be authorized through a process known as Substantial Conformance Review (SCR). Under the SCR process, the City's Development Services Department (DSD) would evaluate the potential impacts associated with annual maintenance proposals and compare them with the impacts analyzed in the certified Program Environmental Impact Report (PEIR), and with the objectives, standards, guidelines, and conditions of the Coastal Development Permit. While the PEIR did analyze potential impacts, it was done on a programmatic basis. For example, impacts on sensitive biological resources were estimated for the entire project based on certain assumptions. The SCR process would utilize a comprehensive checklist included in the Master Program to confirm whether or not the proposed maintenance is consistent with the Master Program and PEIR. The checklist includes an itemized list of the mitigation measures in the PEIR and maintenance protocols included in the Master Program. In addition to the SCR checklist, the City would use the (IMPs) to assess the project. If DSD determines, based on the site-specific analysis and SCR checklist, that the proposed maintenance activities have been adequately addressed pursuant to the Master Program, PEIR and associated mitigation measures, maintenance protocols and required BMPs, then a Notice of Future Decision will be posted at the project site and mailed to property owners/residents within 300 ft. of the site and also to interested persons. The public then has 12 business days to file an appeal of the City staff's decision to the Planning Commission. The Planning Commission hearing will then be scheduled within 60 days and at that time, they will make a decision to affirm, reverse or modify the City staff's decision. If a maintenance activity is determined not to be in substantial conformance, then a new or amended permit would be required along with subsequent environmental review.

Concurrent with the City SCR process, information on the proposed project will be submitted to the appropriate State and Federal Resource Agencies for approval under the terms and conditions of their respective permits. The agencies will review the application and supporting documentation to determine consistency of the project with the specific terms of the permit issued by their agency. If any of the agencies determine that one or more of the maintenance activities are not consistent, then the City would have to work with the concerned agency to identify additional measures that would be necessary to bring the activities in compliance. The City will not begin work on any maintenance activity until they have approval of the State and Federal Resource Agencies with jurisdiction over the affected biological resources.

The master coastal development permit covers various drainages located within the City of San Diego's Coastal Zone. The standard of review is the certified City of San Diego Local Coastal Program and the public access policies of the Coastal Act.

**2. <u>Protection of Sensitive Biological Resources</u>**. The City's storm water system is distributed over 342 square miles. As such, the physical attributes vary with individual components of the storm water system. Within the Coastal Zone, the storm water facilities affected by the subject permit contain a large diversity of vegetation and wildlife. Wetland/riparian vegetation communities exist as do sensitive upland habitats

and many threatened and endangered bird and animal species. As such, the project has the potential to adversely impact these sensitive coastal resources.

The following are applicable LCP policies from the Tijuana River Valley Land Use Plan:

**Tijuana River Valley Land Use Plan- Specific Recommendations,**

**(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.

The following provisions of the certified LCP Land Development Code are applicable to the proposed project and state, in part:

**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.

(e) Wetland Buffer Areas in the Coastal Overlay Zone. Permitted uses in wetland buffer areas shall be limited to the following:

(1) Public Access paths;
(2) Fences;
(3) Restoration and enhancement activities; and
(4) Other improvements necessary to protect wetlands.

**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.

(b) Outside and inside the MHPA, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

[…]

(i) All development occurring in sensitive biological resources is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management.

**Section 143.0145 - Development Regulations for Special Flood Hazard Areas**

[…]

(3) Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:

(A) Essential public service projects, where no other feasible construction method or alternative project location exists;
(B) Flood control projects, where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety.
(C) Projects where the primary function is the improvement of fish and wildlife habitat.

[…]

(5) Development that involves channelization or other substantial alteration of rivers or streams is subject to the following requirements.

(A) All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into the project design and mitigation measures. These requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

(B) The channel shall be designed to ensure that the following occur:

(i) Stream scour is minimized;
(ii) Erosion protection is provided;
(iii) Water flow velocities are maintained as specified by the City Engineer;
(iv) There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
(v) Wildlife habitat and corridors are maintained;
(vi) Resource management criteria are implemented consistent with applicable land use plans; and
(vii) Groundwater recharge capability is maintained or improved.

(C) Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a nonconfined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.

(D) All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and maintenance and monitoring process shall be established to the satisfaction of the City Engineer.

(6) Development shall not significantly adversely affect existing sensitive biological resources on-site or off-site.

The appellants contend that the project will have impacts to sensitive biological resources, but that identification and quantification of these impacts are not known at this time and will only be specifically reviewed prior to work actually being performed. In addition, the appellants contend that the impacts of channel maintenance on downstream resources and water quality have not been adequately addressed. Thus, the City has approved a CDP for a series of significant development projects without appropriately analyzing expected impacts of the project and required mitigation measures and alternatives, resulting in significant unmitigated individual and cumulative impacts to sensitive coastal resources.

The City's storm water system is comprised of a number of different types of facilities designed to transport storm runoff through the metropolitan area. The storm water system includes a series of natural (earthen) and man-made (concrete, rip rap) channels which are used to convey storm water and urban runoff. Maintenance of channels primarily involves the removal of accumulated vegetation and/or sediment to restore conveyance capacities within a storm water facility. During high-flow storm events, vegetation may cause flooding by slowing the velocity of floodwater while sediment may diminish the conveyance capacity of the facility reducing the remaining freeboard able to handle flows.

The drainages within the Coastal Zone affected by the proposed project are for the most part natural drainages. Within these drainages, there exist wetlands, sensitive uplands and various wildlife species. With the master permit approved by the City, the extent of impacts to sensitive biological resources is not known or identified until after the coastal development permit is approved. Then, once a drainage area has been identified as a priority, a detailed biological analysis would be performed, which would not be subject to review and consistency with the certified LCP through a separate permit process. Based on this analysis, impacts would be identified and appropriate mitigation measures developed. As cited above, the LCP requires that development shall not have significant adverse impacts on sensitive biological resources. Since the impacts would not be discovered until after the CDP approval, there cannot be substantial evidence to support the findings that the development shall not have significant adverse impacts on sensitive biological resources. Therefore, the City's approval is inconsistent with the above cited LCP provisions and the appellants have raised a substantial issue.

Also related to the issue of deferring the biological analysis is the annual prioritization process for maintenance work. Given the proposed evaluation process to determine the priority maintenance each year, it is possible that multiple drainages could remain off the priority list and thus, remain unaltered for several years, with vegetation and habitat establishing that might not have been anticipated when the permit was originally reviewed and approved. Factors other that environmental protection and flood capacity

could inappropriately be considered and result in deferred maintenance within the Coastal Zone resulting in unanticipated impacts (i.e., increased impacts at a later date).

Another of the appellants' contentions is that the locally approved permit fails to address impacts of the maintenance on downstream resources. By removing large amounts of vegetation in a natural channel, it can be expected that increased sedimentation may occur. In particular, Soledad Creek and the Tijuana River are identified as areas subject to this permit. Both of these drainages are upstream of and drain into sensitive biological resource areas. Soledad Creek is upstream of the Los Penasquitos Lagoon and the Tijuana River is upstream of the Tijuana Estuary, both containing significant sensitive biological resources that could be adversely impacted by increased sedimentation caused by the proposed maintenance activities. While the local permit does include measures to assure impacts on water quality are addressed during construction, there are minimal provisions to address this issue after the work has occurred. Just as during construction, detailed BMPs should be developed to assure post-construction erosion and sedimentation are minimized to reduce the potential for adverse impacts on sensitive downstream resources. Therefore, the appellants' contention that the City approval is inconsistent with the certified LCP, as it relates to protecting downstream resources, raises a substantial issue.

**3. Conclusion.** Based on the information cited above, it appears the City's approval of the master coastal development permit is inconsistent with resource protection policies of the City's certified LCP, thereby raising a substantial issue relative to the project's conformity with the certified LCP. Impacts to sensitive biological resources are approved without first knowing the extent of the impacts. While the City's process sets up a substantial conformance review process, the discretion for review of impacts or impact avoidance is delegated to the City's Development Services Department, without requiring issuance of an additional CDP to determine whether the individual projects are consistent with the certified LCP. Thus, if the Commission found no substantial issue, it would be giving up its jurisdiction to review the analysis of potential impacts or required mitigation for individual projects approved by this permit for at least 20 years. Once this permit is vested, other than to appeal the DSD's Substantial Conformance Review decision to the City's Planning Commission, there would be no mechanism or procedure to appeal the individual projects to the Coastal Commission. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the local government action with the City's certified Local Coastal Program.

**4. Substantial Issue Factors.** As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance and the decision creates a poor precedent with respect to the protection of sensitive biological resources. In addition, the coastal resources affected by the decision are significant.

## V. STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

**MOTION:** ***I move that the Commission approve Coastal Development Permit No. A-6-NOC-11-086 for the development proposed by the applicant.***

**STAFF RECOMMENDATION OF DENIAL:**

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

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not be in conformity with the adopted Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## VI. Findings and Declarations.

The Commission finds and declares as follows:

**1. Project Description.** The project description is described above under the substantial issue findings on Pages 4-6 of this report and is incorporated herein by reference.

**2. Protection of Sensitive Biological Resources/Water Quality**. The City's storm water system is distributed over 342 square miles. As such, the physical attributes vary with individual components of the storm water system. Within the Coastal Zone, the storm water facilities affected by the subject permit contain a large diversity of vegetation and wildlife. Wetland/riparian vegetation communities exist as do sensitive upland habitats and many animal species. As such, the project has the potential to adversely impact these sensitive coastal resources.

**a. Impacts to Sensitive Biological Resources.**

The following are applicable LCP policies from several of the Land Use Plans affected by the proposed project:

**Torrey Pines Community Plan – Local Coastal Program Policies**

**WETLANDS/ENVIRONMENTALLY SENSITIVE RESOURCES**

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, where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

1. Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
2. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
3. Restoration purposes.
4. Nature study, aquaculture or similar resource-dependent activities.

**Tijuana River Valley Land Use Plan- Specific Recommendations,**

**(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.

The following provisions of the certified LCP Land Development Code are applicable to the proposed project and state, in part:

**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.

(e) Wetland Buffer Areas in the Coastal Overlay Zone. Permitted uses in wetland buffer areas shall be limited to the following:

(1) Public Access paths;
(2) Fences;
(3) Restoration and enhancement activities; and
(4) Other improvements necessary to protect wetlands.

**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.

(b) Outside and inside the MHPA, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be

maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

[…]

(i) All development occurring in sensitive biological resources is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management.

The City's storm water system is comprised of a number of different types of facilities designed to transport storm runoff through the metropolitan area. The storm water system includes a series of natural (earthen) and man-made (concrete, rip rap) channels which are used to convey storm water and urban runoff. Maintenance of channels primarily involves the removal of accumulated vegetation and/or sediment to restore conveyance capacities within a storm water facility. During high-flow storm events, vegetation may cause flooding by slowing the velocity of floodwater while sediment may diminish the conveyance capacity of the facility reducing the remaining freeboard able to handle flows.

The drainages within the Coastal Zone affected by the proposed project are for the most part natural drainages. Within these drainages, there exist wetlands, sensitive uplands and various wildlife species. With the master permit approved by the City, impacts to sensitive biological resources will occur. However, the exact extent of impacts to sensitive biological resources is not known or identified until after the permit is approved. Then, once a drainage area has been identified as a priority, a detailed biological analysis would be performed. Based on this analysis, impacts would be identified and appropriate mitigation measures developed.

As part of the PEIR, the City did a "worst-case analysis" to identify impacts to sensitive biological resources resulting from the maintenance project. Based on this analysis, the PEIR estimates that a total of 10.6 acres of wetland and 9.2 acres of unvegetated natural flood channel impacts will occur in the Coastal Zone over the 20 year life of the permit. A similar breakdown for impacts in the Coastal Zone was not done for upland habitat impacts, so it is unclear how extensive the impacts to upland habitat will be. In addition,

while having this "worst-case analysis" is helpful to understand the scope of the project, it does not include all project impacts. Temporary impacts and impacts that result from implementation of water quality measures and mitigation are not included in these totals. In addition, while the program does include measures to help protect sensitive animal and bird species (including threatened and endangered species that occur in project limits) during maintenance activities, surveys of such species within the project limits have not been conducted and it is unknown what impacts the project will have on these species. Again, the exact extent of impacts to sensitive biological resources (including wetlands, uplands, birds and animals) will not be known until each of the particular maintenance projects are identified and prioritized. Depending on the various considerations, it may be many years in the future before particular projects within the Coastal Zone are prioritized. At that time, watershed, community and site conditions could be significantly different.

The project will have significant impacts on sensitive biological resources over the 20 year life of the permit. While the project could be a permitted use within wetlands as identified in the LCP provisions cited above as an incidental public service project, without more specific information on impacts to sensitive biological resources (including threatened and endangered bird and animal species), the Commission cannot find that the project is the least environmentally damaging alternative. In addition, it is unknown whether adequate mitigation has been provided for unavoidable impacts. Therefore, the Commission finds that a 20 year master coastal development permit is not consistent with the above cited provisions of the LCP and is denied.

**b. Proposed Mitigation.**

The following provisions of the certified LCP pertain to the proposed project and state, in part:

**Land Development Code Biological Guidelines**

**B.** 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.

[…]

**Wetland creation** is an activity that results in the formation of new wetlands in an upland area. An example is excavation of uplands adjacent to existing wetlands and the establishment of native wetland vegetation.

**Wetland restoration** is an activity that re-establishes the habitat functions of a former wetland. An example is the excavation of agricultural fill from historic wetlands and the re-establishment of native wetland vegetation.

**Wetland enhancement** is an activity that improves the self-sustaining habitat functions of an existing wetland. An example is removal of exotic species from existing riparian habitat.

Wetland enhancement and wetland acquisition focus on the preservation or the improvement of existing wetland habitat and function, and do not result in an increase in wetland area; therefore, a net loss of wetland may result. As such, acquisition and/or enhancement of existing wetlands may be considered as partial mitigation only, for any balance of the remaining mitigation requirement after restoration or creation if wetland acreage is provided at a minimum of a 1:1 ratio. For permanent wetland impacts that are unavoidable and minimized to the maximum extent feasible, mitigation shall consist of creation of new, in-kind habitat to the fullest extent possible and at the appropriate ratios. **In addition, unavoidable impacts to wetlands located within the Coastal Overlay Zone shall be mitigated on-site, if feasible. If on-site mitigation in not feasible, then mitigation shall occur within the same watershed. All mitigation for unavoidable wetland impacts within the Coastal Overlay Zone, shall occur within the Coastal Overlay Zone.** [emphasis added]

As noted in the project description, impacts to both wetlands and uplands will occur with the proposed maintenance project. In addition, to the concerns cited in the previous section where specific impacts to sensitive biological resources are not known, the proposed mitigation for impacts to wetlands is also a concern. Again, the proposal is for a 20 year permit whereby each year, certain projects will be identified and prioritized and at that time, site specific assessments will be conducted to determine project impacts. At the time that the Individual Maintenance Plans (IMPs) are developed each year, site specific projects will be identified, impacts to sensitive resources quantified and mitigation programs developed. However, just as cited in the previous section, mitigation for identified impacts (including performance standards and location) will not be known until after the Commission has already approved the permit. Thus, at this time, the Commission cannot find that, even if the impacts were clearly identified, that they have been adequately mitigated as the mitigation will not be identified until some time in the future.

In addition, relative to the City's program, there is no requirement that mitigation for wetland impacts occur within the Coastal Zone. The mitigation measures for the proposed maintenance project identify that when impacts to wetlands occur (and are found to be unavoidable and minimized), mitigation must be provided. The program further identifies that mitigation for wetland impacts must occur in one of two ways: (1) habitat creation, restoration, and/or enhancement, or (2) mitigation credits. In addition, the program identifies the ratios at which the various types of habitats must be mitigated. For example, Coastal saltmarsh impacts will be mitigated at a 4:1 ratio. This ratio and the mitigation ratios proposed for other habitat types is consistent with the requirements of the City's certified LCP.

However, the location of the proposed mitigation is a concern. As noted above, for impacts to wetlands within the Coastal Zone, mitigation must occur on site, if feasible. If not on site, then in the same watershed, but in all cases, the mitigation must occur within the Coastal Zone. Mitigation Measure 4.3.9 of the Final Recirculated Master Storm Water Maintenance Program PEIR states:

> Mitigation locations for wetland impacts shall be selected using the following order of preference, based on the best mitigation values that can be achieved.
>
> 1. Within impacted watershed, within City limits.
> 2. Within impacted watershed, outside City limits on City-owned or other publicly-owned land.
> 3. Outside impacted watershed, within City limits.
> 4. Outside impacted watershed, outside City limits on City-owned or other publicly-owned land.

There is no requirement that the mitigation occur first on-site or at all within the Coastal Zone, inconsistent with the provisions of the certified LCP cited above. In addition, there is no specific provision documenting when the mitigation should occur or specifying the

necessary performance criteria that needs to be met. While it is understood that such details would likely be addressed in the IMP, the Commission must have such details prior to authorization of the project in order to find that the unavoidable impacts to sensitive biological resources have been adequately mitigated.

Because identification of mitigation measures and locations are not known at this time, the Commission cannot find the proposed 20 year master permit consistent with the above cited resource protection measures of the certified LCP. Therefore, the Commission denies the project.

**c. <u>Protection of Water Quality/Downstream Resources</u>**.

As the proposed development will occur within various drainages, impacts on water quality can occur as a result of the proposed maintenance both on site and downstream.

The following provisions of Tijuana River Valley Land Use Plan are applicable and state, in part:

**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.

[…]

**(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.

In addition, the following provisions of the certified Land Development Code are applicable and state, in part:

**Section 143.0145 - Development Regulations for Special Flood Hazard Areas**

[…]

(3) Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:

(A) Essential public service projects, where no other feasible construction method or alternative project location exists;
(B) Flood control projects, where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety.
(C) Projects where the primary function is the improvement of fish and wildlife habitat.

[…]

(5) Development that involves channelization or other substantial alteration of rivers or streams is subject to the following requirements.

(A) All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into the project design and mitigation measures. These requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

(B) The channel shall be designed to ensure that the following occur:

(i) Stream scour is minimized;

(ii) Erosion protection is provided;
(iii) Water flow velocities are maintained as specified by the City Engineer;
(iv) There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
(v) Wildlife habitat and corridors are maintained;
(vi) Resource management criteria are implemented consistent with applicable land use plans; and
(vii) Groundwater recharge capability is maintained or improved.

(C) Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a nonconfined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.

(D) All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and maintenance and monitoring process shall be established to the satisfaction of the City Engineer.

(6) Development shall not significantly adversely affect existing sensitive biological resources on-site or off-site.

The drainages proposed for maintenance within the Coastal Zone with this program are spread out through the City. While some of the drainages are relatively minor in size and scope of resources, the Tijuana River and Soledad and Los Penasquitos Creeks both contain significant sensitive resources. In addition, they are also upstream of and drain directly to significant resource areas (Tijuana Estuary and Los Penasquitos Lagoon). Thus, maintenance work in the upstream channels could have impacts on the downstream sensitive resources of these natural habitat areas.

The proposed maintenance project will occur for the most part within natural drainage areas. These natural drainages contain both sediments and vegetation and can function as a natural filtering mechanism of pollutants. According to the PEIR, the ability of plants and sediments to capture pollutants varies, depending on the flow characteristics of each facility. Surface flows range from dry weather or low flow to wet weather or high flow conditions. The removal of vegetation as a result of maintenance may decrease the capacity of storm water facilities to retain pollutants and result in greater quantities of sediments and pollutants to reach downstream sensitive resources. In addition, once maintenance is complete, it is likely that flow velocities will increase which can result in erosion and downstream sedimentation.

The City is proposing a number of maintenance protocols to reduce the potential for downstream water quality impacts resulting from proposed channel maintenance. The proposed protocols include the installation of BMPs such as silt fences, fiber rolls, gravel bags, temporary sediment basins and stabilized maintenance access points. For the most part, these BMPs address water quality concerns during the maintenance project itself. However, there are few provisions to address water quality concerns after the maintenance is completed and vegetation and/or sediment have been removed. The program does cite that under some circumstances, check dams or other comparable mechanisms will be installed to help reduce flow velocities and removed when no longer required. No other BMPs or measures are included to assure that after implementation of channel maintenance, downstream sensitive resources will not be impacted by increased flow velocities and sedimentation.

There is a requirement in the program that the City inspect earthen-bottom storm water facilities within 30 days of the first 2-year storm event following maintenance and if substantial erosion has occurred, implement erosion control measures. While this is a good idea, it does not assure protection of downstream resources as significant erosion and sedimentation could occur depending on the size and timing of the first storm that occurs after implementation of the channel maintenance. In addition, waiting up to 30 days to inspect a channel for erosion may be problematic as it is possible that multiple storms could occur in this time frame and by the time the channel is inspected, significant erosion could have already occurred.

Based on the above, the Commission finds that the proposed maintenance project will result in adverse impacts on sensitive biological resources, inconsistent with the above cited provisions of the LCP. Therefore, the project is denied.

**3. Public Access.** Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." Portions of the proposed project will occur seaward of the first through public road and the sea. Coastal Act Sections 30210 through 30213, as well as Sections 30220 and 30221 specifically protect public access and recreation, and state:

> **Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.
>
> **Section 30211:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects…

**Section 30213:** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. …

**Section 30220:** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

**Section 30221:** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The proposed maintenance project will occur within a number of areas within the City's Coastal Zone. Specifically, the maintenance will occur in the following:

- Portion of Soledad Creek in Sorrento Valley;
- small portion of Los Penasquitos Creek in Sorrento Valley;
- small portion of Rose Creek in Pacific Beach;
- small portion of Tecolote Creek;
- small portion of Chollas and South Creeks; and
- portion of the Tijuana River in the Tijuana River Valley.

Each of the maintenance areas are located with drainages where very limited, if any, public access is available or desirable. However, most of the drainages proposed for maintenance already include access to the facilities. Such accesses include rights-of-way, utility roads, ramps, footpaths, etc. Many of these access points are available and used by the public to hike, walk dogs, bicycle, etc. While maintenance activities are occurring, it may be that portions or all of the access ways will be blocked by equipment and/or stockpiles of vegetation and sediment removed from the drainages. However, generally, the maintenance activities in any particular area will not be very long and as such, any closures of access would be temporary and not significant.

**4. Local Coastal Planning.** As noted, the project is located within several areas of City of San Diego, which has a certified LCP. Based on the preceding discussion in this report, the Commission finds that the proposed development is not consistent with all applicable provisions of the certified LCP which would result in adverse impacts to sensitive coastal resources. The Commission also finds, that based on the above, the proposed development would prejudice the ability of the City of San Diego to continue to implements its local coastal program by establishing an adverse precedent for how the City's program and resource protection measures are administered.

**5. California Environment Quality Act (CEQA).** Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section

21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is not consistent with the policies of the City's LCP relating to protection of sensitive biological resources and water quality. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Specifically, the no project alternative and applying for individual permits for the various facilities once a project has been identified, impacts quantified and properly mitigated would be a feasible alternative. Another alternative may be for the City to pursue a public works plan. Therefore, the Commission finds that the proposed project is inconsistent with applicable CEQA requirements.

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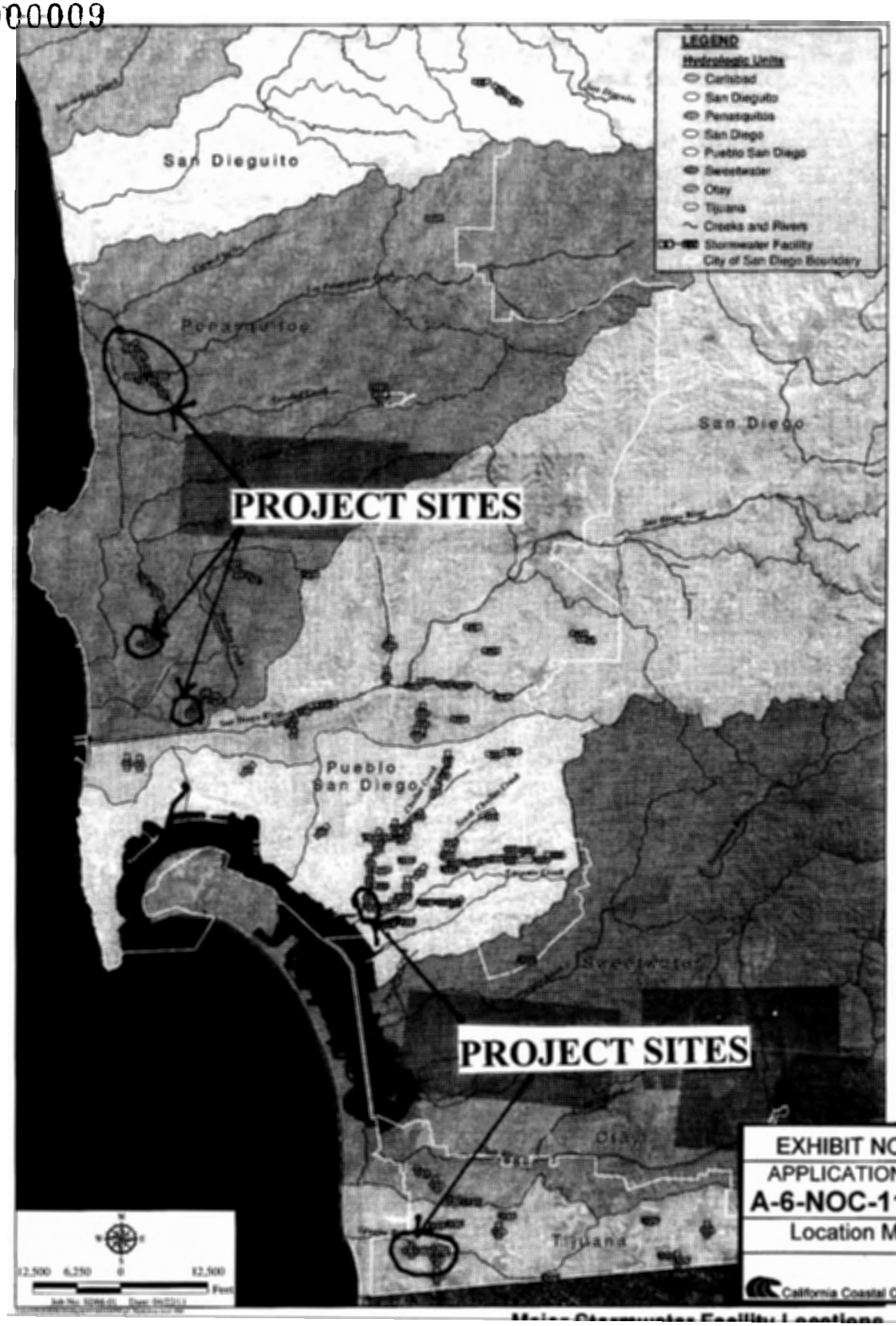


EXHIBIT NO. 1
APPLICATION NO.
A-6-NOC-11-086
Location Map
California Coastal Commission

**Major Stormwater Facility Locations**

CITY OF SAN DIEGO MASTER STORMWATER SYSTEM MAINTENANCE PROGRAM

Figure 1

**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

# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

## SECTION I. Appellant(s)

Name: Coastal Environmental Rights Foundation; San Diegans for Open Government

Mailing Address: 1140 South Coast Highway 101

City: Encinitas Zip Code: 92024 Phone: 760-942-8505

## SECTION II: Decision Being Appealed

1. Name of local/port government:

City of San Diego, Development Services Dept.; Storm Water Department

2. Brief description of development being appealed:

Master Storm Water Systems Maintenance Project (MSWSMP) Project No 42891

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

City of San Diego: Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Areas. Districts All.

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.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-6-NOC-11-086

DATE FILED: 11/21/11

DISTRICT: San Diego

EXHIBIT NO. 2
APPLICATION NO.
A-6-NOC-11-086
Appeals
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 24, 2011

7. Local government's file number (if any): CDP No. 714232 and SDP No. 714233

## 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:

San Diego Development Services Department
City of San Diego
Storm Water Department
2781 Caminto Chollas
San Diego, CA 92105

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) San Diego Audubon Society
Jim Peugh
4891 Pacific Highway, Suite 112
San Diego, CA 92110

(2) Friends of Rose Canyon
Deborah Knight
P.O. Box 221051
San Diego, CA 92192

(3) San Diego Canyonlands
Eric Bowlby, Executive Director
3552 Bancroft Street
San Diego, CA 92104

(4) California Native Plant Society, San Diego Chapter
Carrie Schneider
P.O. Box 121390

(5) Sierra Club, San Diego Chapter
Pamela Epstein
8304 Clairmont Mesa Blvd., Ste 101
San Diego, CA 92111

(6) San Diego Coastkeeper
Jill Witkowski - Legal Director
Gabriel Solmer - Policy Director
2825 Dewey Rd, Suite 200
San Diego, CA 92106

(7) City of San Diego Wetlands Advisory Board
Carry Lowe, Chairman
c/o James Arnhart
Public Works -- Engineering and Capital Projects
600 B Street, MS 908A
San Diego, CA 92101
(619) 533-5275

(8) Carmen J. Borg
Laurel Impett
Deborah Keeth
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

(9) Chollas Restoration, Enhancement and Conservancy
John Stump, President
4133 Poplar
City Heights, CA 92105

(10) Cal-Sorrento Ltd
Steven C. Higgins
10951 Sorrento Valley Rd.
San Diego, CA 92121

(11) San Diego State University
Stanley Maloy, Dean, College of Sciences
5500 Campanile Drive
San Diego, CA 92182

(12) Chiara Clemente
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340

(13) Therese Bradford
Meris Bantilan-Smith
Army Corps of Engineers Los Angeles District
Regulatory Division, Carlsbad Field Office
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

(14)California Department of Fish and Game, South Coast Region,
Habitat Conservation Planning - South
4949 Viewridge Avenue
San Diego. CA 92123
Ms. Kelly Fisher, E-mail: kfisher@dfq.ca.qov

(15) Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011
Mr. Jim Bartel; E-mail: jim bartel@fws.qov

## 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.

On October 24, 2011, the San Diego City Council voted to reject an environmental appeal and approve with amendments the long-term (with no codified sunset) Master Storm Water System Maintenance Program (MSWSMP) PEIR for storm channel maintenance within the City of San Diego.

CERF and San Diegans for Open Government contend the MSWMSP and PEIR are contrary to CEQA Programmatic Review Policies; the LID Alternative requires further consideration; programmatic review without site-specific project-level review is inappropriate and contrary to CEQA, the PEIR's site-specific analysis is inadequate; future individual technical assessments fail to indicate severity of water quality impacts; the Water Quality Impact Assessment is fatally flawed, the Emergency Maintenance CDP issuances are an abuse of the emergency provisions in the Municipal Code; and the City-issued CDP has no expiration date -- work will continue in perpetuity.

The approved MSWSMP (applicable Citywide) violates the City's biological guidelines, local LCPs, and the Coastal Act. In failing to adequately analyze significant environmental impacts that will result from the MSWSMP to, among other things, water quality and biological resources in the Coastal zone the City has failed to comply with CEQA, the Coastal Act, and local LCPs. Moreover, as a result of this failure, the City has failed to appropriately analyze mitigation measures and alternatives, resulting in significant unmitigated individual and cumulative impacts to sensitive coastal resources.

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.

*Signature on file* Programs Director, CERF

Signature of Appellant(s) or Authorized Agent

Date: November 21, 2011

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

**Section VI. Agent Authorization**

I/We hereby authorize Marco Gonzalez and Livia Borak of Coast Law Group, LLP to act as my/our representative and to bind me/us in all matters concerning this appeal.

*Signature on file* Programs Director, CERF

Signature of Appellant(s)

Date: November 21, 2011

**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.

*Signature on file*

Signature of Appellant(s) or Authorized Agent

Date: November 21, 2011

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

**Section VI. Agent Authorization**

I/We hereby authorize Marco Gonzalez and Livia Borak of Coast Law Group, LLP
Cory J. Briggs and Mekaela M. 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: November 21, 2011
Ian Trowbridge, President of San Diegans for Open Government

COASTAL
ENVIRONMENTAL
RIGHTS
FOUNDATION

May 12, 2010

Myra Herrmann
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue
MS 501
San Diego, CA 92101

**Via Electronic Mail**
DSDEAS@sandiego.gov

**Re: Draft PEIR for Master Storm Water System Maintenance Program (MSWSMP)**
**Project No. 42891**

Dear Ms. Hermmann,

Please accept the following comments on behalf of Coastal Environmental Rights Foundation (CERF).

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, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF hereby also supports San Diego Coastkeeper's comments in the August 24th, 2009 letter submitted by Livia Borak ("SD Coastkeeper Letter") and San Diego Audubon's comments in the August 23rd, 2009 letter submitted by Jim Peugh ("SD Audubon Letter"). Additionally, CERF supports comments submitted by San Diego Canyonlands in opposition to the PEIR. CERF also supports San Diego Coastkeeper's comments re: CWA section 404 dredge and fill permit, submitted prior to the closure of that comment period. CERF representatives have worked extensively with members of these organizations and City staff in efforts to improve the CEQA compliance and environmental protections in the MSWSMP PEIR.

Following our review of the PEIR, comment letters, and City responses to comments, CERF finds that PEIR inconsistencies with CEQA, expressed environmental concerns, and project alternatives have not been sufficiently addressed.

The PEIR lacks the necessary specificity, and postpones adequate review of impacts and appropriate mitigation under CEQA. The project objectives remain artificially constrained and misleading (the assumption is that flood control for public safety and protection of property is the primary objective, but the MSWSMP has been defined as the objective without documentation of lack of maintenance as the primary cause of flooding and has predetermined that cleaning the storm water system is the best solution.) By pre-ordaining the method of flood control as storm water system facility maintenance, the City subverts its CEQA-mandated duty to regulate activities affecting the environment by giving prime consideration to *preventing* environmental damage. CERF finds the City's response to comments to this effect inadequate and an unlawful interpretation of CEQA.

It is CERF's position that this PEIR is a misuse of this form of environmental review due to the lack of sufficient alternatives analysis, identification of impacts and mitigation measures. By creating a quasi-optional needs analysis and environmental review program, thereby limiting specificity in future consistency determinations for projects, the public is left with no measure for agency

accountability. Additionally, adoption of this MSWSMP disincentivizes adoption of less environmentally damaging, and potentially more long-term fiscally responsible, flood control alternatives.

The loss of the benefits of the existing vegetation has not been adequately analyzed, and therefore cannot be measurably compared against projected benefits of the Project. Benefits such as natural pollutant adsorption provide a great and unquantified measure of improvement to receiving water quality, and removal of this benefit amounts to increased illegal discharges into those receiving waters directly attributable to the Project. An example of these current and potential water quality benefits that will be lost by vegetation removal can be found in the attached documents authored by Ian Cain following his student research at San Diego State University. Mr. Cain's findings indicate significant removal of pollutants via various native species, a benefit that will be lost with widescale aquatic vegetation removal.

Ultimately, this PEIR remains inadequate as an environmental analysis tool due to the "plan to make a plan" approach taken by the City, and the lack of specificity in the PEIR to ensure that future Consistency Determination is enforceable and meaningful. The seemingly intentional vagueness is contrary to the very purpose of the PEIR as an analysis tool under CEQA.

Further, the MSWSMP is an ill-conceived maintenance program – not meant to "maintain" the integrity of the City's storm water system, which functions not only as a conveyance system, but also as natural hydrologic units. Implementation of the MSWSMP will only serve to degrade in-stream and receiving water quality, in violation of the Water Code and Clean Water Act. In conjunction with the PEIR, the MSWSMP serves as an affront to the City's previous and ongoing efforts to lead the County in environmental stewardship–especially with respect to storm water.

CERF therefore urges the Planning Commission not to approve the Project and to remand the MSWSMP and PEIR for adequate planning and CEQA review. We know the City is capable of much more than the current documents demonstrate.

Thank you for your consideration of CERF's comments.

Sincerely,

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

*Signature on file*

SARA S. HONADLE
Programs Director

Encl.

Native Plants as a Means to Improving Water Quality in Southern California's Wetlands

Ian Cain

With increased urban development, and increased subsequent urban run off, many pollutants are ending up in the stream and pond systems of Southern California wetlands. While expensive mechanical and chemical filtration and removal systems are available, many groups of plants, such as *Schoenoplectus*, intake pollutants and filter the water with no cost and only as much effort as spreading seed and/or planting. This paper will seek to find the best native species for particular groups of pollutants, such as organochlorates or heavy metals, and integrate the information in plans for the restoration of wetlands, and the improvement of existing ones. A case study of the Famosa Slough will be used to show a successful restoration plan integrating various "water scrubbing" native plants. Figure 1. will summarize purely numerical and quantitative findings.

One of the most commonly occurring genera that can decrease water pollution is *Schoenoplectus*. Four species of *Schoenoplectus* occur in Southern California of which *S. californicus* is most abundant. Knox et al. (2006) did a study in South Carolina using a water filtration system which included *S. californicus* which resulted in the removal from 60-80% of Cu, Zn, and Pb. However, retention of these metals in the soil was low, which could lead to leaching into groundwater sources.

Further research by Sundberg et al (2006), confirms that detritus of not only *S. californicus* but also *Typha angustifolia*, another Southern California resident, adsorbs poorly in respect to Hg, As, and Se. These toxic elements could then be returned to the water system and harm aquatic life in the immediate vicinity of the detritus before it has a chance to decrease in concentration by homogenizing in the entire water system. Villar et al. (1999) did a study which found the rhizomes of this species contained the highest levels of various heavy metals that were tested for. This re-enforces the need for sediment analysis while rhizome structure decays into the sediment.

A study in Argentina by Miglioranza et al. (2004) found that *S. californicus* accumulated 30.2-45.7 ng/g dry weight of DDT and Chlordane. They also found that hydrophobic molecules under the class of organochlorates were preferentially less accumulated by plant stems. All of these extractions still have the problem of eventual removal of the toxins from the system as a whole. Loser et al. (2007) found that releasing sulfuric acid producing bacteria into the sediment bed, after plants have been removed, can concentrate metals in the sediment. These metals should then be washed out and disposed of after roughly 2.5 days.

The experimental use of *S. americanus*, when compared to *S. californicus*, is very low. It seems to do reasonably well with a sudden increase in saline water, and is able to efficiently remove excess nitrogen as long as environmental conditions are not extremely poor. Similarly research on *S. acutus* has been minimal, with it performing better overall in lower temperatures than some species.

The other common genus in southern California water systems is *Typha*. *Typha angustifolia* was found by Demirezen et al. (2004) to remove Cadmium, Copper, Chromium, Lead, Nickel, and Zinc. These metals were accumulated more in roots, and Nickel and Lead were accumulated more quickly in sediments than in the water column. Further research by Panich-Pat et al. (2004) found *T. angustifolia* to be highly effective in the removal of Lead mostly in the root structure, and found that higher levels of Lead did not seem to retard plant growth. This species however is fairly rare both in California and San Diego County.

Worldwide, *Typha latifolia* is the more common species of *Typha*, and two studies related the two in growth conditions that should be considered in strategies for pollution removal. Matsui et al. (2006) found that *T. angustifolia* grew more biomass by 39% in hypoxic conditions, while *T. latifolia* had no difference between normal and hypoxic conditions. Tanaka et al (2004) found that in most conditions throughout the US *T. angustifolia* will overtake the initial growth of *T. latifolia*. This means if *T. latifolia* is being used to more efficiently remove one type of pollutant, such as Lead, while *T. angustifolia* is being used to remove another, such as Arsenic, in the same system extra steps will need to be taken. These include separating the two populations to reduce direct competition and annual monitoring of population dynamics to ensure that *T. angustifolia* is not taking over, and that the removal of what pollutant *T. latifolia* is being used to remove, is maintaining a consistent level. In San Diego county, populations of *T. angustifolia* have not been found during the Plant Atlas program (2007) while seventeen populations of *T. latifolia* have been found. Since this is a more established population, in areas where the removal efficiency of a pollutant is more or less the same between the two species, *T. latifolia* should be used in San Diego County.

Azaizeh et al. (2006) found that *Typha latifolia* was able to reduce Selenium levels by 75% after 4 months, and is a good stabilizer of Selenium levels overall. Amaya-Chavez et al. (2006) studied the removal abilities of *T. latifolia* on MethylParathion and found it to be effective in the removal of this organophosphate. Somewhat unexpectedly, Zaimoglu (2006) found that *Typha latifolia* in conjunction with two other species native to Turkey was highly effective in the removal of Fecalcoliform bacteria. This warrants further study if this species is able to remove these bacteria from southern California waters. Goulet et al. (2005) found that *T. latifolia* is effective in the removal of Aluminum in total, however is not as effective per individual as other species, primarily *Lemna minor*. Doucette et al. (2005) found that *T. latifolia* was effective in the removal of Sulfonate and somewhat less effective in removing diisopropanolamine. Bromide is used for tracer experiments in water systems, and Xu et al. (2004) found that bromide was effectively removed by *T. latifolia*, however it should be used only with great caution for chlorine effectively blocks bromide absorption in many species including *T. latifolia*. Blute et al. (2004) found *T. latifolia* to be effective in the removal of Arsenic in both As(III) and As(V) forms, with As(V) being more heavily absorbed. Furthermore, he found that the arsenic was bound to iron plaques on the roots and was not likely to be re-deposited by detritus into the sediment. A study was done by Alvarez et al. (2006) that found that 31% of initial detritus mass of *Typha latifolia* stays in the system after one year. This means that clean up of sediment and detritus matter would have to be done quickly and routinely to reduce the chance of contaminate going into the entire water system.

While *Typha latifolia* is the dominate form world wide, *Typha domingensis* is more than twice as prevalent in San Diego County, 44 populations opposed to 17, according to specimens collected for the Plant Atlas (2007). Research done by Hadad et al. (2006) shows that *T. domingensis* is effective in the removal of Chromium, Nickel, and Zinc. Carvalho et al. (2001) found that aqueous Selenium below 100pmm was removed to some extent by *T. domingensis*, however above 100pmm of Se, plant growth was inhibited. Debusk et al. (1996) found that *T. domingensis* is able to remove Cadmium and Lead but not as effectively as *Lemna minor*, another Southern California resident.

*Lemna minor* was found to be effective in removing Cadmium and Lead by the afore mentioned researcher. Furthermore, these metals are bound in sulfides which are relatively immobile and in a less toxic form. Upadhyay et al. (2007) found *L. minor* able to remove Chromium, Cobalt, and Nickel as well, however *L. minor* was debilitated by these metals, along with Cadmium, Lead, and Cobalt. Sweidan et al. (2006) confirms some of these metals along with Zinc, and generic phenols. Specific levels of removal can be found in Figure 1. *Phragmites australis* was found in several afore mentioned papers to remove Bromide and Fecalcoliform bacteria, as well as being highly effective in the removal of Selenium and TNT. Lee et al (2007) found unfortunately that other metals, Nickel and Copper, were not taken up by *P. australis*.

Another common genus, but with far more species is *Juncus*. Deng et al. (2004) found *Juncus effusis* to remove Cadmium, Copper, Lead, and Zinc. Bouldin et al. (2006) found *J. effusus* to be effective in removing Atrazine, and able to remove Lambda-Cyhalothrin. Buddhawong et al. (2005) found *J. effusus* able to remove Arsenic by 25% and Zinc by 30% in the sediment system, and completely gone in the water column. This group with its vast diversity compared to *Typha* and *Schoenoplectus*, is perhaps the reason little research has been done on various species, along with the unfamiliarity with the group among some researchers. *Carex* is another example. The ability of peat from *Carex* by Ringqvist et al. (2002) was found to be adsorbent in removing Copper and Zinc, mainly in high pH solutions. Other than this, no species to toxin specific research on *Carex* was found. The summary of these papers and data are in Figure 1.

The Famosa Slough is a restored wetland which originally was the southern tip of what is now called Mission Bay. It is home to many seasonal bird species which use it for a resting point and a fishery with occasional nesting. Figure 2. is a map of the site generated by the Friends of Famosa Slough, a community group who aids management and improvement of the site. Water quality is checked regularly for general parameters such as pH, dissolved $O_2$, and salinity. Given that it is in the middle of an urban area, with a high school built atop a former dumping ground, contaminates flow into the water system from runoff and leaching. The slough is split into a channel side and the slough side. The slough side is fed runoff water primarily by a concrete drainage ditch at the far southern end. This is filled with both *Typha domingensis* and *Schoenoplectus californicus*. Three artificial treatment ponds are just to the north of the ditch which are filled with both afore mentioned species as well as light growth of *S. americanus*. A nearby condominium complex has a drain that feeds into the slough which has been isolated as of 2005 and a new treatment pond built with the same water scrubbing species. Through out the west side of the slough *Typha domingensis* and *Lemna minor* occur in various clusters. The channel side of the slough has large populations of *S. californicus, T. domingensis*, and *Juncus acutus* running much of its length.

This model has done well to maintain conditions at the slough. Runoff into the area continues and no die off's of bird, fish, or plant populations have occurred since management of the site began in 1992. The only degradation to water quality has been from periodic algae blooms. This problem was solved by cutting a channel into the northern section of the slough side to improve flow and flush out algae blooms that have since occurred, which have been reduced in both size and frequency.

For a site that is to be restored, the following steps should be taken. First; an inventory, preferably by a taxonomist or an expert trained by one, of all species of the cattail, duckweed, rush, and sedge families, Typhaceae, Lemnaceae, Juncaceae, and Cyperaceae respectively. Second; training various people who are either part of the managing entity or a frequent and reliable volunteer, in the correct identification of each of the inventoried species. Third; testing of water quality at least in all known entry points to the system, such as a river or gutter to identify what if any toxins exist. Fourth; if required, planting additional species that are known to filter such toxins at point sources or in the area affected. Fifth; continued monitoring to ensure the toxin levels decline. These re-vegetated areas will need to be thinned out on occasion so that new seedlings do not crowd the area and reduce flow. Last; after new populations are established the sediment under these plants will have to be tested and possibly periodically removed to completely eliminate the pollutants from the system.

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Figure 1

| | Cattails | | | Duckweeds | Grasses | Rushes | | Sedges | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Typha | | | Lemna | Phragmites | Juncus | | Carex | Schoenoplectus | | |
| | angustifolia | domingensis | latifolia | minor | australis | acutus | effusus | | acutus | americanus | californicus |
| Aluminum | * | * | E | * | * | * | * | * | * | * | * |
| Arsenic | P | * | E | * | * | * | 25%(n4) | * | * | * | P |
| Bromide | * | * | E | * | P(n1) | * | * | * | * | * | * |
| Cadmium | P | P | P | 2-4mg/m/day | * | * | P | * | * | * | * |
| Chromium | P | E | 45%(n2) | 13-33% | * | * | * | * | * | * | * |
| Cobalt | * | * | * | P | * | * | * | * | * | * | * |
| Copper | P | P | P | 15-33% | * | * | P | P(n5) | * | * | 60-80% |
| Lead | E | P | P | 3-8mg/m/day | * | * | P | * | * | * | 60-80% |
| Manganese | P | * | * | * | * | * | * | * | * | * | * |
| Mercury | P | * | * | * | * | * | * | * | * | * | P |
| Nickel | P | E | * | P | * | * | * | * | * | * | * |
| Selenium | P | P(n3) | 75% | * | Below detection | * | * | * | P | * | P |
| Zinc | P | E | P | * | * | * | 30%(n4) | P(n5) | * | P | 60-80% |
| OrganicChlorates | * | * | * | * | * | * | P(6)25.4%(7) | * | * | * | 30.2-45.7 ng/g(1) |
| OrganicNitrates | * | * | E(3)P(5) | * | 98%(3) | * | * | * | * | * | * |
| OrganicPhospates | * | * | E(2)E(4) | * | * | * | * | * | * | * | * |
| Phenols | * | * | * | 24-37% | * | * | * | * | * | * | * |
| Fecalcoliform | * | * | P | * | P | P | * | * | * | * | * |

| | |
|---|---|
| E | Effective |
| P | Reduction Present |
| 1 | DDT&Clordane(Dry Weight Solids) |
| 2 | MethylParathion |
| 3 | TNT |
| 4 | Sulfolane |
| 5 | Diisopropanolamine |
| 6 | Atrazine |
| 7 | Lambda-Cyhalothrin |
| n1 | Stopped by Chlorine presence |
| n2 | Only roots used in experiment |
| n3 | Not effective above 100ppm |
| n4 | % for sediment, full removal in water |
| n5 | Generic Carex peat was used |

By: Ian Cain

0

**CALIFORNIA COASTAL COMMISSION**
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Mark Stone
Mailing Address: Board of Supervisors
701 Ocean Street, Romm 500
Santa Cruz, Ca 95060
Phone Number: 831-454-2200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: 20 year master permit for clearing of sediment and vegetation and maintenance of various drainages to provide adequate flood control.
3. Development's location (street address, assessor's parcel no., cross street, etc:) Various drainages within the Coastal Zone.
4. Description of decision being appealed:
   a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
   c. 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.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-NOC-11-086

DATE FILED: 11/21/11

DISTRICT: San Diego

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

a. ☐ Planning Director/Zoning Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of Supervisors

d. ☐ Other

Date of local government's decision: 10/24/11

Local government's file number (if any): CDP 714232

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

City of San Diego Transportation & Storm Water Department
2781 Caminito Chollas
San Diego, Ca 92105
Attn: Anne Jarque

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.

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

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.)

See Attachment "A" dated 11/21/11

Note: The above description 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.

SECTION V. Certification

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

Signed: Signature on file
Appellant or Agent

Date: 11/21/11

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

**Attachment A**
**San Diego Storm Water System Maintenance Program**
**November 21, 2011**

The project approved by the City is for a 20 year master permit to allow channel clearing (removal of sediment and vegetation) and maintenance of storm water facilities, which includes natural, earthen and manmade drainages, in the City of San Diego to provide adequate flood flows. Most of the drainages covered by this permit are located outside of the Coastal Zone. However, within the Coastal Zone, the drainages include:

- portion of Soledad Creek in Sorrento Valley
- small portion of Los Penasquitos Creek
- small portion of Rose Creek
- small portion of Tecolote Creek
- small portion of Chollas Creek
- portion of the Tijuana River

The scope of work includes primarily the removal of accumulated vegetation and/or sediment to restore conveyance capacities. The work is typically done with mechanized equipment, but when access is unavailable, it will be done by hand. Impacts to sensitive resources and water quality would be minimized through a number of avoidance measures, construction methodologies and BMPs detailed in the Master Permit. Unavoidable impacts would be mitigated at the ratios included in the LCP.

The master permit sets up a process where each year, the list of drainages are examined and prioritized. Then, from this list, further examinations will occur including site specific hydrology studies to establish a priority list for that year. The maintenance would then be authorized through a substantial conformance review process where the City Development Services Department (DSD) would review the project along with an individual hydrology assessment, water quality assessment, noise assessment and biology analysis. If they determine that it meets the requirements of the Master Permit, then they authorize the project. Noticed interested persons would have the opportunity to appeal the DSD decision to the City's Planning Commission who would then determine if the project is consistent with the Master Permit. If the Planning finds it is not, then a separate coastal development permit would be required.

The following provisions of the certified LCP Land Development Code are applicable and state, in part:

**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.

(e) Wetland Buffer Areas in the Coastal Overlay Zone. Permitted uses in wetland buffer areas shall be limited to the following:

(1) Public Access paths;
(2) Fences;
(3) Restoration and enhancement activities; and
(4) Other improvements necessary to protect wetlands.

**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.

(b) Outside and inside the MHPA, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone the applicant shall provide

a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

[...]

(i) All development occurring in sensitive biological resources is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. the funds and acquire or maintain habitat preservation areas....

**Section 143.0145 - Development Regulations for Special Flood Hazard Areas**

[...]

(3) Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:

(A) Essential public service projects, where no other feasible construction method or alternative project location exists; and
(B) Flood control projects, where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety.
(C) Projects where the primary function is the improvement of fish and wildlife habitat.

[...]

(5) Development that involves channelization or other substantial alteration of rivers or streams is subject to the following requirements.

(A) All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into

the project design and mitigation measures. These requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

(B) The channel shall be designed to ensure that the following occur:

(i) Stream scour is minimized;
(ii) Erosion protection is provided;
(iii) Water flow velocities are maintained as specified by the City Engineer;
(iv) There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
(v) Wildlife habitat and corridors are maintained;
(vi) Resource management criteria are implemented consistent with applicable land use plans; and
(vii) Groundwater recharge capability is maintained or improved.

(C) Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a nonconfined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.

(D) All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and a maintenance and monitoring process shall be established to the satisfaction of the City Engineer.

(6) Development shall not significantly adversely affect existing sensitive biological resources on-site or off-site.

The proposed master coastal development permit raises several concerns with respect to consistency with the certified LCP. The first issue relates to impacts to biological resources. With the master permit, the extent of impacts to sensitive biological resources is not known or identified until the permit is approved. Then, once a drainage area has been identified as a priority, a detailed biological analysis would be performed. Based on this analysis, impacts would be identified and appropriate mitigation measures developed. As cited above, the LCP requires that development shall not have significant adverse impacts on sensitive biological resources. However, impacts are not known at this time, so such a finding cannot be made. With the permit in place, impacts to sensitive biological resources are assumed, but then mitigated. Several of the drainages subject to this permit contain substantial areas of sensitive biological resources.

While the City's process sets up a substantial conformance review process, the discretion is delegated to the City's Development Services Department. Thus, the Commission would be giving up jurisdiction for 20 years. Once this permit is finalized, other than to appeal the DSD's Substantial Conformance Review decision to the City's Planning Commission, there is no procedure to appeal the individual projects to the Coastal Commission.

Another significant issue is that the permit fails to address impacts of the maintenance on downstream resources. By removing large amounts of vegetation in a natural channel, it can be expected that sedimentation may occur. While the permit does a good job of addressing this issue during construction, it is silent on this issue after the work has occurred.

A third issue relates to the annual prioritization process for maintenance work. Such a process could result in multiple drainages remaining unaltered for several years with vegetation and habitat establishing that might not have been anticipated. As such, the mitigation measures and protocols for this prioritization review need to be carefully developed.

**CALIFORNIA COASTAL COMMISSION**
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Brian Brennan
Mailing Address: 45 Fremont Street
Suite 2000
San Francisco, Ca 94105
Phone Number: 415-904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: 20 year master permit for clearing of sediment and vegetation and maintenance of various drainages to provide adequate flood control.
3. Development's location (street address, assessor's parcel no., cross street, etc:) Various drainages within the Coastal Zone.
4. Description of decision being appealed:
   a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
   c. 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.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-NOC-11-086

DATE FILED: 11/21/11

DISTRICT: San Diego

RECEIVED
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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

a. ☐ Planning Director/Zoning Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of Supervisors

d. ☐ Other

Date of local government's decision: 10/24/11

Local government's file number (if any): CDP 714232

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

City of San Diego Transportation & Storm Water Department
2781 Caminito Chollas
San Diego, Ca 92105
Attn: Anne Jarque

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.

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

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.)

See Attachment "A" dated 11/21/11

Note: The above description 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.

SECTION V. Certification

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

Signed: *Signature on file*
Appellant or Agent

Date: 11/18/2011

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

**Attachment A**
**San Diego Storm Water System Maintenance Program**
**November 21, 2011**

The project approved by the City is for a 20 year master permit to allow channel clearing (removal of sediment and vegetation) and maintenance of storm water facilities, which includes natural, earthen and manmade drainages, in the City of San Diego to provide adequate flood flows. Most of the drainages covered by this permit are located outside of the Coastal Zone. However, within the Coastal Zone, the drainages include:

- portion of Soledad Creek in Sorrento Valley
- small portion of Los Penasquitos Creek
- small portion of Rose Creek
- small portion of Tecolote Creek
- small portion of Chollas Creek
- portion of the Tijuana River

The scope of work includes primarily the removal of accumulated vegetation and/or sediment to restore conveyance capacities. The work is typically done with mechanized equipment, but when access is unavailable, it will be done by hand. Impacts to sensitive resources and water quality would be minimized through a number of avoidance measures, construction methodologies and BMPs detailed in the Master Permit. Unavoidable impacts would be mitigated at the ratios included in the LCP.

The master permit sets up a process where each year, the list of drainages are examined and prioritized. Then, from this list, further examinations will occur including site specific hydrology studies to establish a priority list for that year. The maintenance would then be authorized through a substantial conformance review process where the City Development Services Department (DSD) would review the project along with an individual hydrology assessment, water quality assessment, noise assessment and biology analysis. If they determine that it meets the requirements of the Master Permit, then they authorize the project. Noticed interested persons would have the opportunity to appeal the DSD decision to the City's Planning Commission who would then determine if the project is consistent with the Master Permit. If the Planning finds it is not, then a separate coastal development permit would be required.

The following provisions of the certified LCP Land Development Code are applicable and state, in part:

**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.

(e) Wetland Buffer Areas in the Coastal Overlay Zone. Permitted uses in wetland buffer areas shall be limited to the following:

(1) Public Access paths;
(2) Fences;
(3) Restoration and enhancement activities; and
(4) Other improvements necessary to protect wetlands.

**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.

(b) Outside and inside the MHPA, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone the applicant shall provide

a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

[...]

(i) All development occurring in sensitive biological resources is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. the funds and acquire or maintain habitat preservation areas....

**Section 143.0145 - Development Regulations for Special Flood Hazard Areas**

[...]

(3) Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:

(A) Essential public service projects, where no other feasible construction method or alternative project location exists; and
(B) Flood control projects, where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety.
(C) Projects where the primary function is the improvement of fish and wildlife habitat.

[...]

(5) Development that involves channelization or other substantial alteration of rivers or streams is subject to the following requirements.

(A) All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into

the project design and mitigation measures. These requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

(B) The channel shall be designed to ensure that the following occur:

(i) Stream scour is minimized;
(ii) Erosion protection is provided;
(iii) Water flow velocities are maintained as specified by the City Engineer;
(iv) There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
(v) Wildlife habitat and corridors are maintained;
(vi) Resource management criteria are implemented consistent with applicable land use plans; and
(vii) Groundwater recharge capability is maintained or improved.

(C) Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a nonconfined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.

(D) All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and a maintenance and monitoring process shall be established to the satisfaction of the City Engineer.

(6) Development shall not significantly adversely affect existing sensitive biological resources on-site or off-site.

The proposed master coastal development permit raises several concerns with respect to consistency with the certified LCP. The first issue relates to impacts to biological resources. With the master permit, the extent of impacts to sensitive biological resources is not known or identified until the permit is approved. Then, once a drainage area has been identified as a priority, a detailed biological analysis would be performed. Based on this analysis, impacts would be identified and appropriate mitigation measures developed. As cited above, the LCP requires that development shall not have significant adverse impacts on sensitive biological resources. However, impacts are not known at this time, so such a finding cannot be made. With the permit in place, impacts to sensitive biological resources are assumed, but then mitigated. Several of the drainages subject to this permit contain substantial areas of sensitive biological resources.

While the City's process sets up a substantial conformance review process, the discretion is delegated to the City's Development Services Department. Thus, the Commission would be giving up jurisdiction for 20 years. Once this permit is finalized, other than to appeal the DSD's Substantial Conformance Review decision to the City's Planning Commission, there is no procedure to appeal the individual projects to the Coastal Commission.

Another significant issue is that the permit fails to address impacts of the maintenance on downstream resources. By removing large amounts of vegetation in a natural channel, it can be expected that sedimentation may occur. While the permit does a good job of addressing this issue during construction, it is silent on this issue after the work has occurred.

A third issue relates to the annual prioritization process for maintenance work. Such a process could result in multiple drainages remaining unaltered for several years with vegetation and habitat establishing that might not have been anticipated. As such, the mitigation measures and protocols for this prioritization review need to be carefully developed.

# COASTAL DEVELOPMENT PERMIT
# NOTICE OF FINAL ACTION

California Coastal Commission, San Diego Area Office
7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402
Phone (619) 767-2370

DATE: October 26, 2011

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

**PROJECT NAME - NUMBER:** MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM - PTS 42891, PROGRAM ENVIRONMENTAL IMPACT REPORT

**PROJECT DESCRIPTION:** The proposed Master Storm Water System Maintenance Program (Master Program) is intended to guide the long-term maintenance of storm water facilities maintained by the City of San Diego's Transportation and Storm Water Department's Storm Water Division (SWD). The purpose of the project is to maintain storm water facilities to provide adequate flood control. The Master Program describes the maintenance techniques to be employed as well as the protocols to be followed to minimize the impacts to environmental resources. The primary objectives of the Master Program include:

*Fulfill the mandate of Section 26.1 of the San Diego City Charter to provide essential public works and public health services by maintaining the storm water conveyance system for the purpose of reducing flood risk;

*Develop a comprehensive program that will govern the future maintenance of the City's storm water system in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life, in accordance with Council Policy 800-04;

*Ensure implementation of Best Management Practices (BMPs) and maintenance protocols during maintenance activities to avoid and/or minimize effects on environmental resources; and

*Create an integrated comprehensive review process for annual maintenance activities that will facilitate authorizations from local, state and federal regulatory agencies.

The City's storm water system is comprised of a number of different types of facilities designed to transport storm runoff through the metropolitan area. The storm water system includes a series of natural (earthen) and man-made (concrete, rip rap) channels which are used to convey storm water and urban runoff.

Maintenance of channels primarily involves the removal of accumulated vegetation and/or sediment to restore conveyance capacities within a storm water facility. During high-flow storm events, vegetation may cause flooding by slowing the velocity of floodwater while sediment may diminish the conveyance capacity of the facility reducing the remaining freeboard able to handle flows. Vegetation and sediment are most frequently removed by mechanized equipment operating within the facility. When access is unavailable to accommodate the equipment, maintenance would be done using hand tools and removed

by manual labor. Maintenance within a channel identified in the Master Program may occur as often as once every three years, depending on the rate of accumulation of vegetation and/or sediment. Typically, mechanized maintenance within a relatively small storm water facility could be completed within a few days or a couple of months or longer and wider segments. Non-mechanical maintenance (use of hand tools) within a facility typically takes longer than mechanized maintenance activities, but is also dependent on the size of the labor crew. Depending on the location and proximity to sensitive resources, maintenance would generally be scheduled from September 16th through February 14th, which is outside the sensitive bird breeding season. Activities could also be further limited by the rainy season which begins October 1st and ends May 1st.

The Master Program includes a process by which individual storm water facility maintenance would be identified and prioritized annually through an evaluation process that considers the costs and benefits of maintenance of each facility in meeting flood control and water quality goals. Each year, SWD will prepare an Annual Maintenance Assessment List to identify storm water facilities which may require maintenance. Based on further evaluation of those storm water facilities, including site-specific hydrology studies, SWD will establish an Annual Maintenance Priority List for the upcoming fiscal year.

Annual maintenance would be authorized through a process known as Substantial Conformance Review (SCR). Under the SCR process, the City's Development Services Department (DSD) would evaluate the potential impacts associated with annual maintenance proposals and compare them with the impacts analyzed in the certified Program Environmental Impact Report (PEIR), and with the objectives, standards, guidelines, and conditions of the Site Development Permit/ Coastal Development Permit (SDP/CDP).

The SCR process would utilize a comprehensive checklist included in the Master Program to confirm whether or not the proposed maintenance is consistent with the Master Program and PEIR. The checklist includes an itemized list of the mitigation measures in the PEIR and maintenance protocols included in the Master Program. In addition to the SCR checklist, Individual Maintenance Plans (IMPs) would be prepared for each proposed maintenance activity, and would be accompanied by the following studies as appropriate: Individual Hydrology/Hydraulic Assessment (IHHA), Individual Water Quality Assessment (IWQA), Individual Noise Assessment (INA), Individual Biological Assessment (IBA), and an Individual Historical Assessment (IHA).

If DSD determines, based on the site-specific IHHA, IBA, IHA, IWQA, and SCR checklist that the proposed maintenance activities have been adequately addressed pursuant to the Master Program, the PEIR and associated mitigation measures, the maintenance protocols and required BMPs may then authorize the proposed annual maintenance activities. If a maintenance activity is determined not to be in substantial conformance, then a new or amended permit would be required along with subsequent environmental review in accordance with CEQA Sections 15162-15164 and 15168.

**LOCATION:** Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Planning areas.

**APPLICANT'S NAME:** City of San Diego Transportation and Storm Water Department

**FINAL ACTION:** APPROVED WITH CONDITIONS

**ACTION BY:** City Council

**ACTION DATE:** October 24, 2011

**CONDITIONS OF APPROVAL:** See attached Permit.

**FINDINGS:** See attached Resolution.

__ Not appealable to the Coastal Commission

X Appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission only after a decision by the City Council (or Planning Commission for Process 2 and 3 Coastal Development Permits) and within ten (10) working days following Coastal Commission receipt of this Notice, as to the date the Commission's appeal period will conclude.

**CITY CONTACT:** Patricia Grabski
Development Services Department
1222 First Avenue, MS 302
San Diego, CA 92101-4153
Phone/e-mail: (619) 446-5277/pgrabski@sandiego.gov

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

**WHEN RECORDED MAIL TO**
**CITY CLERK**
**MAIL STATION 2A**



SPACE ABOVE THIS LINE FOR RECORDER'S USE

Internal Order No. 21000287

COASTAL DEVELOPMENT PERMIT NO. 714232
SITE DEVELOPMENT PERMIT NO. 714233
**MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM**
**PROJECT NO. 42981 (MMRP)**
CITY COUNCIL

This Coastal Development Permit No. 714232 and Site Development Permit No. 714233 is granted by the City Council of the City of San Diego to the City of San Diego Transportation and Storm Water Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0501 and 126.0701. The approximate 32 miles of natural and man-made (concrete/earthen) channels, detention basins and storm drain outfalls are located with the City's 342.4-square mile metropolitan area, and within the City's public right-of-way or storm water easements dedicated to the City of San Diego and maintained by the City of San Diego's Transportation and Storm Water Department. These storm water facilities are also located within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial Zones and within the Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Planning areas within the City of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner/ Permittee for cleaning and long term maintenance of storm water facilities and subject to the Master Storm Water System Maintenance Program (October, 2011) and Program Environmental Impact Report SCH No. 2004101032; Project No. 42891, [Exhibit "A"] dated October 24, 2011, and on file in the Development Services Department.

This Permit provides the City of San Diego Transportation and Storm Water Department the authority to:

a. Fulfill the mandate of Section 26.1 of the San Diego City Charter to provide essential public works and public health services by maintaining the storm water conveyance system for the purpose of reducing flood risk;

b. Implement a comprehensive program that will govern the future maintenance of the City's storm water system in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life, in accordance with Council Policy 800-04;

c. Ensure implementation of Best Management Practices (BMPs) and maintenance protocols during maintenance activities to avoid and/or minimize effects on environmental resources; and

d. Implement a comprehensive review process for annual maintenance activities; and

e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for the subject storm water facilities in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**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. This permit must be utilized by November 4, 2014.

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. This Permit shall expire in twenty years.

4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

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. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

9. 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.

10. 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" conditions(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.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

11. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

12. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Program Environmental Impact Report (PEIR) No. 42891/SCH No. 2004101032, shall be noted on the maintenance plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

13. The Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in PEIR No. 42891/SCH No. 2004101032, satisfactory to the Development Services Department and the City Engineer. Prior to the issuance of the "Notice to Proceed" with maintenance, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Biological Resources; Historical Resources; Water Quality; Land Use Policies and Paleontological Resources.

13. The Permittee shall comply with Exhibit "A", the Master Storm Water System Maintenance Program satisfactory to the Development Services Department.

14. Prior to the Development Services Department approval of any work, other than emergency actions, the Permittee shall submit an application for a Substantial Conformance Review to the Development Services Department for proposed site specific work consistent with Exhibit "A", the Master Storm Water System Maintenance Program.

**INFORMATION ONLY:**

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development 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 §66020.

APPROVED by the City Council of the City of San Diego on October 24, 2011.

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION DENYING THE APPEAL AND MODIFYING THE PLANNING COMMISSION'S DECISION BY APPROVING MODIFIED COASTAL DEVELOPMENT PERMIT NO. 714232 AND MODIFIED SITE DEVELOPMENT PERMIT NO. 714233 FOR THE MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM PROJECT NO. 42891.

WHEREAS, the City of San Diego Transportation and Storm Water Department (T&SWD), Owner/Permittee, filed an application with the City of San Diego for a permit to clean and maintain existing storm water facilities as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 714232 and Site Development Permit No. 714233; and

WHEREAS, the project site is defined as located within the City's 342.4 square mile metropolitan area and within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial zones and the Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Planning areas as described in the original Master Storm Water System Maintenance Program (Master Program) (March 2010); and

WHEREAS, on May 13, 2010, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 714232 and Site Development Permit No. 714233 and pursuant to Resolution No. 4586-PC voted to approve the Project; and

WHEREAS, an appeal of the Planning Commission's decision was submitted jointly by San Diego Coastkeeper, Coastal Environmental Rights Foundation, San Diego Audubon Society, Friends of Rose Canyon, San Diego Chapter of the Sierra Club, San Diego Canyonlands, and the California Native Plant Society; and

WHEREAS, in response to comments from, and meetings with, appellants during the public review period for the original PEIR and following the appeal of the Planning Commission decision, the T&SWD incorporated a number of modifications to the Master Program originally approved by the Planning Commission, which the T&SWD considers a good faith effort to respond to appellants' concerns and recommends that the City Council approve as modified; and

WHEREAS, the modifications included, among other things: (1) reducing the number of storm water facilities included in the Master Program by removing many of the storm water facilities within open space, the number of miles was reduced from 50 to 32 miles and 113 rather than 160 facilities; (2) adding measures to further reduce impacts to biology and water quality; (3) identifying specific areas to be used for staging, stockpiling and storage for each facility to be

maintained; (4) estimating biological impacts based on disturbance generally being limited to the channel bottom plus two feet on either side rather than the full channel, as assumed in the original PEIR; (5) clarifying the Master Program objectives; (6) providing increased opportunities for public input through pro-active notification and presentations at City Council and Community Planning Chair committee meetings; adopting the City's Substantial Conformance Review process rather than the originally proposed Consistency Determination process; and (7) refining Master Program protocols to improve specificity and enforceability; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on October 24, 2011, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of San Diego that it modifies the Planning Commission decision and adopts the following modified findings with respect to Coastal Development Permit No. 714232 and Site Development Permit No. 714233:

FINDINGS:

**Site Development Permit - Section 126.0504**

**A. Findings for all Site Development Permits**

**1. The proposed development will not adversely affect the applicable land use plan.**

The 32 miles of storm water facilities to be maintained by T&SWD are designed to convey storm water flows in order to protect the life and safety of its citizens and to control flooding. These facilities also convey urban runoff from development, protect water quality, and support natural resources. The long-term performance of storm water facilities is dependent upon ongoing and proper maintenance. To maintain the effectiveness of storm water facilities, the T&SWD has prepared the Master Program. The purpose of the Master Program is to permit and implement a comprehensive, annual approach to the maintenance of existing storm water facilities.

The Master Program maintenance activities are subject to the City's General Plan (March 2008), the Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Plans. The applicable environmental goals, objectives and guidelines identified in the General Plan and the applicable community plans can be generally characterized as follows: (1) maintain natural drainages; (2) minimize disturbance to natural habitat and the wildlife it supports; (3) protect water quality; and (4) create and maintain recreation opportunities

associated with natural drainages. In order to assess the relationship of storm water maintenance to the environmental goals, objectives and guidelines of the General Plan and applicable Community Plans, the following discussion is based on the Master Program's four over-arching goals and objectives.

Maintain Natural Drainages

Maintenance activities would not alter the configuration of the natural drainage courses included in the Master Program. While the Master Program does provide for removal of accumulated sediment and overgrown vegetation that interfere with conveyance of floodwater, it would not allow any physical modifications of the underlying drainage. Furthermore, the removal of riparian vegetation would not significantly impact the character of the natural drainages. In general, mature trees, spaced at least 50 feet apart, would be allowed to remain in place during maintenance. Given the fact that typical riparian tree canopy widths have a radius of 10-20 feet, this would allow the appearance of a continuous tree canopy following maintenance, which would retain the visual character of these drainages. The dominant understory vegetation would be expected to re-establish within six to 12 months of maintenance. Thus, the affect of removing this understory vegetation would be temporary in nature, and would not adversely affect the implementation of the land use policies intended to maintain natural drainages.

Minimize Disturbance to Natural Habitat and the Wildlife It Support

Maintenance activities would disturb wetland vegetation found within the storm water facilities and the wildlife it supports. Due to the impedance to flood water associated with wetland habitat, achieving the primary goal of the Master Program to control flooding, maintenance is expected to remove portions of wetland vegetation located within storm water facilities included in the Master Program. However, protocols in the Master Program, combined with biological mitigation required by Recirculated Program Environmental Impact Report (PEIR) No. 42891/SCH No. 2004101032 and the associated Mitigation Monitoring and Reporting Program (MMRP) would minimize impacts to natural habitat and wildlife in several ways.

First, individual hydrologic and hydraulic assessments (IHHA's) would be completed prior to maintenance to identify the minimum amount of vegetation that needs to be removed and still result in effective storm water conveyance. In most cases, it is anticipated that removal of vegetation on the banks of storm water facilities would not be necessary to effectively convey flood water. As indicated earlier, trees spaced a minimum of 50 feet apart on the bottom of storm water facilities would remain after maintenance. The retention of mature trees and the ability of understory vegetation to naturally re-establish within a short period of time will help achieve the goal of minimizing impacts to natural habitat and wildlife. Lastly, impacts to wetland habitat would be mitigated by enhancing, restoring and/or creating wetland habitat. Whenever feasible, this mitigation would occur within the same watershed as the impact. This mitigation would further minimize the net impact of maintenance on natural habitat and associated wildlife. Thus, the proposed Master Program would achieve the land use policies intended to minimize disturbance to natural habitat.

Protect Water Quality

Maintenance of storm water facilities could adversely affect water quality by reducing the ability of sediment and vegetation within those facilities to remove and retain urban pollutants from surface water. The removal of sediment and/or vegetation in the course of maintenance would diminish the pollutant removal function of these components until they naturally re-establish between maintenance events. On the other hand, maintenance can improve water quality by eliminating the pollutants that have accumulated in a channel. Removal of the pollutants retained in sediment and plants would avoid the potential for them to be transported downstream during high runoff flows. Maintenance would also improve water quality by removing illegally dumped materials such as trash, appliances, furniture, shopping carts, and tires. The Master Program requires Best Management Practices (BMPs) and an analysis of net benefits or impacts to water quality that may result from maintenance activity. If adverse impacts are found, mitigation will be required in accordance with the PEIR and associated MMRP. Therefore, the Master Program would not adversely affect the land use policies intended to protect water quality.

Create and Maintain Recreation Opportunities Associated With Natural Drainages

The Master Program would not interfere with the scenic, natural or cultural resources within resource-based parks. Drainages within resource-based parks are not bordered by development which requires flood protection. Thus, these areas are not included in the Master Program. The Master Program would not alter the natural landforms and would not result in the loss of open space. The configuration and continuity of the drainage system would be unchanged by maintenance activities. No filling or reconfiguration of the storm water facilities would occur as part of the Master Program. Therefore, the Master Program would not adversely affect the land use policies intended to maintain and create recreation opportunities associated with drainages.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.**

The purpose of the Master Program is to assure that the storm water facilities managed by T&SWD minimize the risk of flooding on adjacent property. The Master Program describes the maintenance techniques to be employed as well as the protocols to be followed to minimize the impacts to environmental resources. The primary objectives of the Master Program are:

- Fulfill the mandate of Section 26.1 of the San Diego City Charter to provide essential public works and public health services by maintaining the storm water conveyance system for the purpose of reducing flood risk;

- Develop a comprehensive program that will govern the future maintenance of the City's storm water system in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life in accordance with Council Policy 800-04;

- Ensure implementation of Best Management Practices (BMPs) and maintenance protocols during maintenance activities to avoid and/or minimize effects to environmental resources, and incorporate the analysis of the operational and pollution prevention benefits of each proposed project; and

- Create an integrated comprehensive review process for annual maintenance activities that will facilitate authorizations from local, state and federal regulatory agencies.

Maintenance of concrete-lined and earthen channels, storm drain outlets/inlets, and detention basins may include the removal of vegetation (cover), sedimentation, and trash/debris that attract vagrants, high concentrations of pollutants, and other vector-controlled insects/mammals such as mosquitoes and rats. On an annual basis, the T&SWD receives numerous documented telephone calls and several damage claims against the City from property owners and businesses adjacent to unmaintained channels that are directly affected by associated storm event flooding, vectors, odors, and vagrancy nuisances.

Implementation of the Master Program will protect and promote the public's health, safety, and welfare by providing the means to eliminate detrimental health and safety concerns that result from improperly maintained storm water facilities.

**3. The proposed development will comply with the applicable regulations of the Land Development Code.**

The Master Program is subject to the City's Environmentally Sensitive Lands (ESL) regulations (Section 143.0101 et seq. of the Land Development Code (LDC) because maintenance would occur within sensitive biological and historical resources, wetlands and floodplains. The Master Program is requesting deviations to the Land Development Code (LDC) to impact sensitive biological and historical resources and to not maintain a 100-foot buffer around all wetlands.

For projects occurring within the Coastal Overly Zone impacts are allowed for incidental public service projects, such as maintenance of storm water facilities. As an incidental public service project, the maintenance activities proposed complies with the City's Biology Guidelines where unavoidable impacts include those necessary to allow reasonable use of a parcel entirely constrained by wetlands; roads where the only access to the developable portion of the site results in impacts to wetlands, and essential public facilities where no feasible alternative exists. Furthermore, within the Coastal Overlay Zone impacts to wetlands shall be limited to only those uses identified in Section 143.0130 (d) for the ESL which is limited to aquaculture, nature study project or similar resource dependent uses, wetland restoration and incidental public service projects. The ESL regulations for development occurring within the Coastal Overly Zone also require that a 100-foot buffer be maintained around all wetlands, as appropriate, to protect the functions and values of the wetlands. This project will comply with all applicable regulations of the Land Development Code with the approval of a deviation to enter within the 100-foot wetland buffer to perform maintenance.

**B. Supplemental Findings--Environmentally Sensitive Lands**

**1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.**

Implementation of the Master Plan will ensure that the design and siting of future storm water maintenance activities will minimize, to the extent possible, disturbance to environmentally sensitive lands. On an annual basis, the T&SWD will identify specific maintenance activities to be undertaken the next fiscal year. A detailed hydrology and hydraulic study will be conducted for each storm water facility to determine the minimum amount of vegetation and sediment removal needed to achieve the desired flood conveyance capacity. Once this is determined, an Individual Maintenance Plan (IMP) will be prepared to define the limits, approach to maintenance and appropriate protocols to control impacts of the maintenance on biological resources, historic resources and/or water quality. Based on the IMP, biology, historic, and noise studies would be conducted to determine what mitigation would be required by the Mitigation Monitoring and Reporting Program to offset impacts associated with the proposed maintenance.

These activities would then be subject to a Substantial Conformance Review (SCR) process to assure that the applicable Master Plan protocols and MMRP mitigation measures are incorporated into each individual maintenance activity. The "SCR Package" would include an Individual Maintenance Plan (IMP); Individual Biological Assessment (IBA); Individual Historical Assessment (IHA); Individual Hydrologic and Hydraulic Assessment (IHHA); and an Individual Noise Assessment (INA). An SCR package would be prepared for each storm water facility prior to maintenance to evaluate the current capacity and the condition and extent of sensitive resources within the facility, and maintenance activity details such as method(s) and equipment to be used, maintenance requirements, and schedule. The SCR Package would be evaluated by designated City departments as well as state and federal agencies to confirm that the proposed maintenance activities would be consistent with the Master Program and that environmental impacts would be mitigated pursuant to the MMRP.

**2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;**

The Master Program only allows maintenance of storm water facilities. It does not allow for expansion or modification of the underlying drainages. Therefore, the proposed maintenance activities will not alter the natural landform or geology. The Master Program also establishes a series of protocols to be carried out during maintenance activities to minimize impacts related to soil and erosion. Therefore, the maintenance activities will not result in undue geologic or erosional forces.

Implementation of the Master Program would also reduce flood hazards within the affected areas by removing sedimentation often carrying pollutants that have either dropped within the channel bottoms from surface run-off and/or wetland vegetation which interferes with the efficient conveyance of storm. Furthermore, removal of vegetation, under the Master Program, may also

prevent fire hazards to residents and businesses adjacent to channels that could be prone to fire hazards because of the fire load (vegetation).

**3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.**

Maintenance activities will take place within storm water facilities which have been maintained in the past. The Master Plan specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to biologically sensitive lands, the Master Program includes a series of protocols specifically designed to minimize the impact of maintenance on environmentally sensitive lands within as well as adjacent to maintenance activities. A series of water quality protocols are included in the Master Program to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality. Biology protocols will require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHHAs are required by the Master Plan to identify the minimum amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water.

Although significant historic resources are not expected to be encountered during maintenance, the MMRP requires monitoring whenever the PEIR identifies a moderate to high potential for buried historic resources to occur within proposed maintenance areas. This monitoring will assure that any significant resources present within or adjacent to maintenance will be detected and mitigation carried out to retain valuable information associated with historic resources.

**4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.**

The PEIR's analysis of the consistency of the Master Program with the MSCP Subarea Plan (Table 4.1-3) concluded that maintenance would be consistent with the various general planning policies as well as adjacency guidelines. With respect to general MSCP policies, it is concluded that the maintenance activities would be consistent for the following reasons:

- The natural configuration of the storm water facilities would not be modified other than to remove accumulated sediment and vegetation would be expected to reestablish between maintenance intervals.
- Except for short-term erosion control, maintenance would not introduce new berming, rip rap, channelization or similar features within natural drainages.
- Access routes will use existing roadways or be designed to minimize disturbance within MHPA areas.
- Maintenance activities would be of limited durations and would occur during daylight hours when wildlife movement is limited.
- Wherever possible, maintenance activities would avoid breeding seasons for sensitive bird species. Where avoidance during the breeding season is not possible, noise reductions measures would be incorporated into the maintenance activities.
- The Master Program contains maintenance protocols which prohibit the use of invasive plants in revegetation efforts as well as measures to limit the spread of existing invasive

species into downstream areas during maintenance. In addition, invasive species would be removed during maintenance

**5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.**

Storm water facility maintenance will not contribute to erosion of public beaches or impact the supply of beach sand. Although maintenance often involves the removal of sediment, the sediment is comprised of silt and clay material rather than sand. Thus, the removal of sediment would not deprive local beaches of a sand source. Lastly, the velocity of storm water in areas which require routine maintenance are by nature non-erosive which contributes to the fact that sediment from surrounding sources tends to accumulate in these areas.

**6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.**

The biological mitigation measures included in the Recirculated PEIR and accompanying MMRP are specifically designed to provide adequate compensation for impacts resulting from storm water facility maintenance. In particular, the mitigation ratios required by the PEIR and MMRP are consistent with the requirements of the City's Biological Guidelines and mitigation traditionally imposed by state and federal agencies with regulatory authority over the biological resources potentially impacted by maintenance. The adequacy of mitigation measures for biological resources will be reviewed by state and federal resource agencies as well as DSD staff to assure that the proposed mitigation is sufficient to reduce maintenance impacts to below a level of significance.

On an annual basis, the City will determine the amount of vegetation impacts based on the final IMPs. Based on these calculations, the City will define and implement compensation actions in accordance with the mitigation measures identified in the PEIR. The mitigation program will also be reviewed by the State and Federal regulatory agencies to assure that adequate compensation is carried out.

With respect to historical resources, the monitoring and subsequent data recovery required by the PEIR and MMRP will be specifically designed to mitigate for significant historic resources encountered during maintenance.

**C. Supplemental Findings--Environmentally Sensitive Lands Deviations**

**1. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands.**

The PEIR includes a specific discussion of alternatives to minimize the flood risk to adjacent life and property including: widening existing channels, constructing berms and walls on top of the existing banks and implementing measures outside of the storm water facilities to reduce the amount of runoff entering the facilities. After evaluating each of these alternatives, the PEIR

concluded that none of these alternatives were feasible. In general these alternatives were considered infeasible due the cost and/or difficulties associated with acquiring and using adjacent private property.

The Master Program requires a rigorous effort to reduce biological impacts associated with maintenance. As discussed earlier, the Master Program requires detailed hydrology and hydraulic studies are performed before maintenance plans are prepared to make sure that the minimum amount of vegetation is removed to achieve flood control objectives. Mature trees spaced more than 50 feet apart are required to be retained during maintenance.

In addition, the PEIR identifies a broad range of mitigation measures intended to reduce potential impacts to biological and/or historic resources associated with storm water facilities. No other feasible mitigation measures were identified during public review or testimony which would be more effective than those included in the MMRP.

**2. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making.**

Within the Coastal Overlay Zone deviations from the ESL regulations are requested. Deviations to the 100 foot buffer around all wetlands and to impact sensitive biological and historical resources are requested. The proposed deviations are unavoidable because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean and maintain them could potentially impact sensitive biological and historical resources.

**A. Coastal Development Permit - Section 126.0708**

**1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.**

Maintenance activities would occur within existing drainage courses which are not considered coastal access ways. Furthermore, access routes required to transport maintenance equipment into the storm water facilities would not impede coastal access nor would they impede coastal views.

**2. The proposed coastal development will not adversely affect environmentally sensitive lands.**

Maintenance activities will take place within storm water facilities located within the coastal zone which have been maintained in the past. The Master Plan specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to biologically sensitive lands, the Master Program includes a series of maintenance protocols specifically designed to minimize the impact of maintenance on environmentally sensitive lands within the coastal zone. A series of water quality protocols are included in the

Master Program to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality within the coastal zone. Biology protocols will require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHHAs are required by the Master Plan to identify the minimum amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water.

Although significant historic resources are not expected to be encountered during maintenance within the coastal zone, the MMRP requires monitoring whenever the PEIR identifies a moderate to high potential for buried historic resources to occur within proposed maintenance areas. This monitoring will assure that any significant resources present within or adjacent to maintenance will be detected and mitigation carried out to retain valuable information associated with historic resources.

**3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.**

The maintenance activities associated with the Master Program would conform to the Local Coastal Program (LCP) and Implementation Program. The City's Land Development Code provides part of the City's LCP for development in the Coastal Overlay Zone. For the reasons stated on page 5, this project would comply with the applicable regulations of the Land Development Code. The policies and recommendations that make up the City's adopted Local Coastal Programs (LCPs) are also included and incorporated into the goals, objectives, and recommendations of the community plans and/or other area planning documents for the areas within the Master Program.

The community plans which incorporate the LCP set forth a number of conservation policies which are related to storm water maintenance. The applicable environmental goals, objectives and guidelines can be generally characterized as follows: (1) maintain natural drainages; (2) minimize disturbance to natural habitat and the wildlife it supports; (3) protect water quality; and (4) create and maintain recreation opportunities associated with natural drainages.

Maintenance activities would not alter the configuration of the natural drainage courses included in the Master Program. The Master Program does not allow any physical modifications of the underlying drainage.

While maintenance activities would disturb wetland vegetation found within the storm water facilities and the wildlife it supports, protocols in the Master Program, combined with biological mitigation required by the MMRP, would minimize impacts to natural habitat and wildlife.

Maintenance protocols and mitigation measures would be implemented in accordance with the Master Program and PEIR to prevent significant degradation of water quality related to maintenance. Furthermore, removal of the pollutants retained in sediment and plants would improve local water quality and prevent these pollutants from being transported downstream during high flow events.

Lastly, the Master Program would not interfere with the scenic, natural or cultural resources within resource-based parks. The Master Program would not alter the natural landforms and would not result in the loss of open space. No filling or reconfiguration of the storm water facilities would occur as part of the Master Program. Therefore, the Master Program would not adversely affect the land use policies intended to maintain and create recreation opportunities.

**4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.**

The cleaning and maintenance activities of the Master Program would occur within existing storm water facilities. These facilities are not considered to be for public access or public recreational uses, therefore the Master Program is in conformance with the policies of California Coastal Act.

**B. Supplemental Findings--Environmentally Sensitive Lands within the Coastal Overlay Zone**

**1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the applicant's property.**

While storm water facilities are permitted as incidental public services projects, under the ESL regulations encroachment into the 100-foot wetland buffer is not allowed without an approval of a deviation. As use of the facilities to effectively convey storm water requires routine maintenance, the T&SWD would be denied the only economically viable use of the facilities if it were not allowed entry into the wetland buffer area for cleaning and maintenance. Therefore, the applicant's only economically viable use of the property is to use the facilities for storm water conveyance due to current easements restricting the use and the presence within wetland areas.

**2. Application of the Environmentally Sensitive Lands Regulations would interfere with the applicant's reasonable investment-backed expectations.**

The strict application of the ESL regulations would not allow for maintenance of existing storm water facilities because they are located within wetlands and could potentially impact sensitive biological and historical resources within the Coastal Overlay Zone. Since the City has made the investment of constructing storm water facilities strict application of ESL would prelude cleaning and maintenance and would therefore, interfere with their reasonable investment-back expectations, as well as protecting life and property from flooding.

Additionally as a General Fund department, the Transportation and Stormwater Department of the City of San Diego has paid tax-payer's dollars in claims against the City by residents and

business owners for the loss of property and damage caused by flooding. This has been correlated to lack of frequent maintenance activities (dredging and excavation) for affected channels whose conveyance capacities are diminished by the accumulated material that settles within the channel.

**3. The use proposed by the applicant is consistent with the applicable zoning.**

The project is located within the City's 342.4 square mile metropolitan area and within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial zones. Incidental public service projects, such as storm water facilities, are permitted uses in all zones and therefore the proposed use by the applicant is consistent with the applicable zoning.

**4. The use and project design, siting, and size are the minimum necessary to provide the applicant with an economically viable use of the premises.**

The 32 miles of storm water facilities to be maintained by T&SWD are designed to convey storm water flows in order to protect the life and safety of its citizens and to control flooding. These facilities also convey urban runoff from development, protect water quality, and support natural resources. This project was revised to include maintenance of 32 rather than 50 miles of channels and 113 rather than 160 facilities in order to design the project to the minimum channels and facilities that would reasonably need maintenance for the life of the project. The sites are existing storm channels and facilities. No enlargement of facilities or new facilities are proposed by the project. Based on IHHA's, vegetation removal will be limited to that necessary to achieve desired conveyance of storm water and specific limits have been established such that vegetation will not be removed from the sides of channels that are over 20 feet wide. The long-term performance and economic viability of these storm water facilities is dependent upon ongoing and proper maintenance. Implementation of the Master Program will aid in maintaining the economic viability and effectiveness of storm water facilities.

**5. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested.**

The Master Plan is the least damaging alternative and specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to impacts to biologically sensitive lands, the Master Program includes a series of maintenance protocols specifically designed to minimize the impacts to them as well as adjacent to maintenance activities. A series of water quality protocols are included in the Master Program to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality. Biology protocols will require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHHAs are required by the Master Plan to identify the minimum amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water.

Although significant historic resources are not expected to be encountered during maintenance, the MMRP requires monitoring whenever the PEIR identifies a moderate to high potential for

City Clerk

By_____
Deputy City Clerk

Approved: _____
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

buried historic resources to occur within proposed maintenance areas. This monitoring will assure that any significant resources present within or adjacent to maintenance will be detected and mitigation carried out to retain valuable information associated with historic resources.

A deviation related to the requirement for a 100-foot buffer around biological resources in the coastal zone is appropriate because maintenance does not constitute the type of development warranting a buffer. Furthermore, the storm water facilities are typically located in highly urbanized areas where adjacent development precludes 100-foot buffers.

The project is consistent with the provisions of the certified Local Coastal Program. According to the LUP's utilities, such as storm water facilities are allowed. A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them impacts sensitive biological resources. Therefore, with the exception of the deviations the project is consistent with all provisions of the certified Local Coastal Program.

The above findings are supported by the minutes, maps, and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the appeal of the San Diego Coastkeeper, Coastal Environmental Rights Foundation, San Diego Audubon Society, Friends of Rose Canyon, San Diego Chapter of the Sierra Club, San Diego Canyonlands, and the California Native Plant Society is denied; the decision of the Planning Commission is modified; and modified Coastal Development Permit No. 426369 is granted to the City of San Diego Storm Water Department, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Nina M. Fain
Deputy City Attorney

NMF:jls
9/23/2011
Or.Dept: SWD
R-2012-131
PL#2010-00871

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND