

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: AMENDMENT

Application No.: 6-86-699-A3

Applicant: Barczewski Family Trust

Agent: Paul Metcalf

Location: 13307 Caminito Mendiola, San Diego, San Diego County
APN 305-040-15, 16

Original Project Description: Tentative map totaling 37 lots, including 23 lots within the coastal zone; site preparation, 86,000 cubic yards of balanced grading.

Proposed Amendment: Removal of approximately 900 cubic yards of unpermitted fill and creation/restoration of up to 14.3 acres of wetlands and 0.37 acres of upland.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed development includes the removal of 900 cubic yards of unpermitted fill and the creation of up to 14.3-acres of wetlands on the subject site. Although the majority of the site is a developed residential subdivision, the property includes several parcels set aside as open space, and several areas historically used for agricultural purposes, including a dirt road used to access these parcels. In 2000, the applicant placed fill in this dirt roadway without benefit of a coastal development permit in order to elevate the road out of an existing flood area. The flood area is a tributary that naturally flows across the road and into McGonigle

Creek. The placement of the fill effectively dammed the tributary and created a 1-acre pond on an adjacent property. Since 2000, the ponded area has matured and become a high-quality wetland, potentially suitable for nesting of Least Bell's Vireo. However, as a result of a stipulated judgement and a restoration order, the pond must be drained and the tributary restored. It is estimated that the draining of the pond will result in the loss of the entire 1.05-acre pond and 0.69-acres of riparian vegetation surrounding the pond. In addition, the unpermitted fill that was placed on top of the roadway impacted 0.37-acres of sensitive upland and 0.04-acres of wetland habitat. As proposed, the applicant will be removing the unpermitted fill and mitigating for the impacts to wetlands through the creation of a 14.3-acre wetland restoration site on the property, on a vacant parcel currently designed for open space uses. As only 6.39 acres of mitigation is required to mitigate for the impacts associated with the project, excess habitat created by the applicant may in the future be utilized for other habitat-dependent purposes as consistent with the certified City of San Diego LCP.

Although the applicant is proposing to fully mitigate for impacts to wetlands, no mitigation for the impacts to upland habitat is proposed. There is currently sufficient room on the site to mitigate for the approximately 0.37-acres of sensitive upland habitat impacted by the placement of fill. Therefore, as conditioned, mitigation must be provided on-site at the ratios required by the LCP.

Special Condition No. 7 requires the applicant to submit a plan for the removal of the unpermitted fill consistent with the preliminary plan submitted. **Special Condition No. 8** requires a wetlands mitigation and monitoring plan that includes the creation/restoration of at least 6.39-acres of wetland habitat, **Special Condition No. 9** requires an upland habitat restoration and monitoring plan, **Special Condition No. 10** prohibits any construction activities including draining of the pond from occurring during the nesting season, **Special Condition No. 11** requires that an updated open space and conservation deed restriction be placed over the entire restoration area, and to address potential impacts to water quality, **Special Condition No. 12** requires a final Construction BMPs Plan including that any graded material exported offsite be exported to a location outside the coastal zone. Because the proposed project includes unpermitted development, **Special Condition No. 13** requires that all condition compliance items be submitted within 180 days of commission action. The project is located within the City's permit jurisdiction, and; therefore, the standard of review is the City's certified Local Coastal Program (LCP). As conditioned, all impacts to habitat will be fully mitigated consistent with the City of San Diego LCP.

Commission staff recommends **approval** of coastal development permit application 6-86-699-A3 as conditioned.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No.6-86-699-A3 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit amendment 6-86-699-A3 and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment No. 6-86-699-A3. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment no. 6-86-699-A3 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in ~~strikeout~~/underline format. This will result in one set of adopted special conditions.

1. [Special Condition No. 1 of CDP No. 6-86-699 remains unchanged and in effect]
2. [Special Condition No. 2 of CDP No. 6-86-699 remains unchanged and in effect]
3. [Special Condition No. 3 of CDP No. 6-86-699 remains unchanged and in effect]

4. [Special Condition No. 4 of CDP No. 6-86-699 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-86-699 remains unchanged and in effect]
6. [Special Condition No. 6 of CDP No. 6-86-699 remains unchanged and in effect]
7. **Removal of Unpermitted Fill.** WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT the permittee shall submit final fill removal and disposal plan to the Executive Director for review and approval and shall include the following specifications:

(a) All of the unpermitted fill associated with the access road is to be removed within two years of commencement of restoration of the wetland area and no later than within three years of Commission action (November 8, 2021).

(b) Best Management Practices (BMPs) designed to control erosion and prevent silt and sediment from entering the stream during grading and revegetation activities must be installed PRIOR to beginning any grading activity and must remain in place throughout fill removal activities. At a minimum a physical barrier consisting of silt fencing and/or bales of weed free rice-straw or waddles placed end to end shall be installed between the grading area and the stream, and should be placed at the edge of the intact riparian plant community.

(c) No fill material that is removed may be placed where could enter coastal waters. Any necessary stockpiles must be covered.

(d) Any pollutants (material other than clean dirt) found in the fill shall be properly disposed of at an approved disposal facility.

The plan shall include, at a minimum, the following components:

(e) A site plan showing all proposed locations for BMPs, stockpiling construction materials, debris, or waste during fill removal operations;

(f) A description of the manner by which the material will be removed from the construction site and identification of all debris disposal sites that will be used;

(g) A schedule for BMP installation, fill removal, grading and transport activities.

The permittee shall undertake development in accordance with the approved site and fill removal and disposal plans that have been approved by the Executive Director consistent with this condition. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved site plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Final Wetlands Mitigation Plans.** WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit to

the Executive Director for review and written approval, a final wetland mitigation plan for all impacts associated with the proposed project. The final mitigation plan shall be developed in consultation with the California Department of Fish and Wildlife and/or the U.S. Fish & Wildlife Service (“resources agencies”), be in substantial conformance with the mitigation plan drafted by Vincent N. Scheidt Biological Consultant and dated December, 2012, and at a minimum shall include:

- (a) Preparation of a detailed site plan of the riparian wetland impact area, clearly delineating all areas and types of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included.
- (b) Preparation of a baseline ecological assessment of the impact area(s) and any proposed mitigation sites prior to initiation of any activities. Such assessment shall be completed by a qualified biologist and at a minimum shall include quantified estimates of the biological resources and habitat types at each site, description of the functions of these resources and habitats and the associated values. Results of the ecological assessment of the wetland impact area shall form the basis of the goals, objectives, and performance standards for the mitigation project.
- (c) The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project. Each performance standard shall state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Every performance standard should be designed to ensure the long-term sustainability of the restored wetland.
- (d) All impacts to open water/freshwater marsh shall be mitigated at a ratio of not less than four to one (4:1). All impacts to riparian scrub shall be mitigated at a ratio not less than three to one (3:1). The total wetlands required for creation/restoration shall not be less than 6.39-acres total. That is, for each square foot of impact associated with the project, there shall be four new square feet of wetlands created. In addition, said mitigation shall only include upland habitat that will be suitable for conversion to wetlands. Final monitoring for success shall take place no sooner than three years after restoration is complete activities.

9. Upland Mitigation Plan. WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, a final detailed mitigation and monitoring plan for all impacts to upland sensitive biological resources. Said plan shall include the following:

- (a) Preparation of detailed site plans identifying all impacted upland habitat areas including the 0.37-acres of impacts to Southern Maritime Chaparral. Both temporary and permanent impacts shall be included in this calculation.

- (b) All impacts to upland habitat (temporary and permanent) shall be mitigated through restoration/enhancement onsite. If the mitigation is located within the Multiple Habitat Planning Area (MHPA) preserve, mitigation shall be provided at not less than a 1:1 ratio. If the mitigation is located outside the MHPA preservation, mitigation shall be provided at not less than a 2:1 ratio. In addition, a detailed site plan of the onsite mitigation areas shall be included.
- (c) A Restoration and Monitoring Plan shall be prepared by a qualified restoration ecologist and shall at a minimum include the following:
 - i. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration sites, including, as appropriate, a wetland delineation conducted according to the definitions in the City of San Diego's LCP, a description and map showing the areas and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration;
 - ii. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage;
 - iii. A description of planned site preparation and invasive plant removal;
 - iv. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used;
 - v. A plan for documenting and reporting the physical and biological "as built" condition of the mitigation sites within 30 days of completion of the initial restoration activities. This report shall briefly describe the field implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution. The "as built" assessment and report shall be completed by a qualified biologist;
 - vi. A plan for interim monitoring and maintenance, including:
 - A. A schedule;
 - B. Interim performance standards;
 - C. A description of field activities;
 - D. A monitoring period of not less than 5 years;
 - E. Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the "as-built" report. Each report shall be cumulative and shall summarize all previous results. Each report shall

document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria;

- vii. Final Success Criteria for each habitat type, including, as appropriate:
 - A. species diversity;
 - B. total ground cover of vegetation;
 - C. vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers “50/20” rule, enumeration, species with greater than a threshold of abundance, etc.);
 - D. wildlife usage;
 - E. hydrology; and
 - F. presence and abundance of sensitive species or other individual “target” species; and

- vii. The method by which “success” will be judged, including:
 - A. Type of comparison. Possibilities include comparing a census of the restoration sites to a fixed standard derived from literature or observations of natural habitats, comparing a census of the restoration sites to a sample from a reference site, comparing a sample from the restoration sites to a fixed standard, or comparing a sample from each of the restoration sites to a sample from a reference site;
 - B. Identification and description, including photographs, of any reference sites that will be used;
 - C. Test of similarity by determining whether the result of a census was above a predetermined threshold, with at least one- or two-sample t-test;
 - D. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size;
 - E. Detailed field methods;
 - F. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion;
 - G. Where a statistical test will be employed, a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference. Generally, sampling should be conducted with sufficient replication to provide 90% power with $\alpha=0.10$ to detect the maximum allowable difference. This analysis will require an estimate of the sample variance based on the literature or a preliminary sample of a reference site. Power analysis software is available commercially and on the world wide web (e.g., <http://www.stat.uiowa.edu/~rlenth/Power/index.html>);
 - H. A statement that final monitoring for success will occur after at least three years after restoration is complete.

10. **Sensitive Species/Timing.** To avoid potential impacts to breeding activities of the Last Bell's Vireo and other bird species associated with the adjacent sensitive open water, wetland and riparian habitats, draining of the pond will not be permitted between the dates of February 15th to August 31st of any year, unless approved in writing by the California Department of Fish and Wildlife and/or the U.S. Fish and Wildlife Service.

11. **Open Space Deed Restriction.**

(a) No development, as defined in Section 30106 of the Coastal Act, shall occur on parcel No. 305-060-20, except for:

(i) Restoration and maintenance of restored wetland habitat in accordance with Special Condition No. 8.

(b) **WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.

(c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall express that restoration and maintenance of restored wetland habitat in accordance with Special Condition No. 8 is allowed as an exception to Special Condition 5 of CDP No. 6-86-699, and that the recording supersedes solely those provisions of Recording No. 89-550434 that implement Special Condition 5.

(d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

12. **Construction BMPs Plan.** **WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, for review and approval of the Executive Director, a Construction Best Management Practices plan. The plan shall be in conformance with the following requirements:

(a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. To avoid disposal of construction materials, debris, or waste into the ocean, appropriate catch basins shall be installed prior to commencement of construction;

- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (d) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (e) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (f) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal may take place, unless the Executive Director determines that no amendment or new permit is legally required;
- (g) All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (h) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (i) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (j) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (k) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (l) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

The final Construction Best Management Practices plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

13. Condition Compliance. The permittee shall comply with all conditions of approval within 180 days of Commission approval of this Coastal Development Permit Amendment; however, on the permittee's demonstration of good cause, the Executive Director may extend the allowed time for compliance for one or more Special Conditions as expressly specified. Failure to comply without the Executive Director's extension of time may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. FINDINGS AND DECLARATIONS

A. PROJECT HISTORY/ AMENDMENT DESCRIPTION

Project History

The subject site was previously a part of a large-scale development approved by the Coastal Commission in 1987 authorizing a 37-lot residential subdivision (Rancho Del Sol), including 23 lots within the coastal zone (CDP No. 6-86-699). The project site is located within the Carmel Valley portion of the City of San Diego. The site is located south of State Route 56 and approximately four miles inland of Interstate-5 ([ref. Exhibit No. 1](#)). The site is located within the City of San Diego's Pacific Highlands Ranch Community and is designated as Open Space and MHPA within the Plan. The property is zoned AR-1-1 (Agriculture), RS-1-14 (Residential-Single Unit with a minimum lot size of 5,000 sq. ft.) and OC-1-1 (Open Space with limited private residential development. Portions of the property are within the City of San Diego Multiple Habitat Planning Area (MHPA).

The site was previously used for agricultural purposes, and has since been graded and developed with single family homes. The approved permit required that 12 lots on the southern and eastern portions of the site be preserved as open space through a deed restriction that originally prohibited all development on these lots. The now-developed residential lots were sold individually, while the applicant retained ownership of the open space lots. To allow agriculture uses to continue to occur within some of the open space lots, in March of 1989, the Commission approved CDP Amendment No. 6-86-699-A1, adding agriculture as an allowable use on the open space lots C, G, H, I and J ([ref. Exhibit No. 2](#)). Agricultural use on the lots was generally divided into two areas: the eastern portions of the lot(s) were developed with greenhouse and storage structures. The western lot(s) were used as a nursery growing ground and included a large stock of container plants such as palm trees and other ornamental plants. The two agricultural operation sites are connected by an unpaved road that has existed prior to issuance of CDP No. 6-86-699, and was largely maintained in its original condition as the only access to the nursery growing ground ([ref. Exhibit No. 4](#)).

However, a portion of this unpaved access road is crossed by a tributary to McGonigle Creek and was often subject to flooding during storm events. In 2000, the applicant imported and placed approximately 900 cubic yards of fill on the road without benefit of

a coastal development permit in order to elevate an approximately 150-foot section of the access road above the tributary. The applicant also installed two drainage culverts within the fill area; nevertheless, the placement of this fill resulted in a dam-like effect, and created an approximately 1-acre pond east of the access road on a neighboring property ([ref. Exhibit Nos. 3, 6](#)). The pond currently supports a number of biological resources including open water, southern riparian scrub and emergent freshwater marsh, and is classified as both State and Federal wetlands.

In 2001, the City issued a notice of violation to the applicant for the unpermitted placement of fill. In 2003, a stipulated judgment was reached between the City, State, and applicant, requiring that all required agency approvals be obtained to either restore the roadway to its preexisting condition, or authorize the as-graded conditions (ref. State Superior Court Stipulated Judgment - Case No. GIC 801949). In 2007, the Army Corps of Engineers (ACOE) issued a restoration order requiring that the off-site pond be drained (ref. Army Corps of Engineers (ACOE) Restoration Order No. SPL-2002-0667). The subject amendment request has been proposed to help meet the requirements of both the stipulated judgement and the restoration order.

Amendment Description

The proposed development includes the removal of the unpermitted fill and culvert, draining the pond created by the unpermitted fill, and creation of up to 14.3-acres of wetland habitat on the portions of the site located adjacent to McGonigle Creek ([ref. Exhibit Nos. 3, 5](#)). No offsite development is required to drain the pond on the adjacent property; removal of the fill and other unpermitted development on the subject site is expected to result in the pond draining and the adjacent property returning to its previous condition. The applicant originally requested after-the-fact approval to place and retain the fill and the improvements associated with the elevated roadway, however, because the fill was placed within an area that contained both wetlands and sensitive upland habitat areas, placement of fill and other road improvements would not be consistent with the resource protection policies of the LCP. Therefore, after consultation with Commission staff, the applicant modified the project to include removal of the fill.

The 14.3-acre restoration efforts will mitigate for the impacts to environmentally sensitive lands associated with both the placement of unpermitted fill and the draining of the adjacent pond. The total impacts to habitat associated with the fill include 0.37-acres of impacts to upland habitat and 0.04-acres of wetlands. The total impacts associated with draining the pond include 1.05-acres of open water and 0.69-acres of riparian habitat. Thus, the project will incur a total of 0.37-acres to sensitive upland vegetation and 1.78-acres of wetlands. Again, the applicant is proposing the creation of up to 14.3-acres of wetlands on site. The applicant has indicated that any excess wetland area created may be used as a possible mitigation bank in the future. However, this component of the project is not a part of this review, and will require issuance of a separate Coastal Development Permit from the City of San Diego.

The applicant has requested temporary retention of the fill because the road is the only access to the proposed mitigation site. The applicant has indicated that removing the fill

now will make it difficult, if not impossible for the large trucks needed to help grade the wetland mitigation area to access the site. The applicant has agreed to remove the fill within two years of commencement of the restoration efforts.

Portions of the site have been used for agriculture, including a nursery and nursery growing grounds. However, the majority of this operation has ended. A few storage and nursery structures remain on the eastern portion of the site, and some remnant landscaping, including palm trees in container boxes, remain within the area proposed for restoration (ref. Exhibit No. 8). Vegetation on the site includes a mixed of native, ornamental and invasive upland and riparian vegetation. McGonigle Creek runs generally east to west along the southern portion of the site (ref. Exhibit No. 5). The tributary dammed by the unpermitted fill is located directly east of the subject site and is not on property owned by the applicant.

The property is located within the City of San Diego's permit jurisdiction. However, the development proposed affects the conditions of approval required by the Commission's issued permit, thus an amendment to the underlying Coastal Commission CDP is necessary. Because the property is located in an area that has a certified LCP, the standard of the review is the City's Local Coastal Program.

B. WETLANDS

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

Pacific Highland Ranch Community Plan

3.3.1 Urban Amenity Open Space Areas

The second basic component of the open space system is the urban amenity (Exhibit 3-4) which will total approximately 20 acres. It will complement the biologically-oriented expanses of the open space system by encouraging human use outside of the areas where the most valuable natural resources are restored and preserved. It will also link centers of activity via the trail system.

The purpose of the urban amenity is to provide:

- Protection and preservation of the watercourse, topography, natural drainages and remaining habitat.*
- Non-motorized links between various neighborhoods, public facilities and activity centers.*
- Definition to residential areas through the urban amenity's use as a project edge of development.*
- Open space and visual relief for residents.*
- Movement of smaller wildlife that has adapted to the urban environment.*

Section 3.5.1 Subarea RPO/ESL Analysis states:

Within the coastal zone, development within wetlands is limited to the following uses:

(1) aquaculture, wetlands-related scientific research and wetlands-related educational uses, (2) wetland restoration projects where the primary purpose is restoration of the habitat and (3) incidental public service projects. Development in wetlands for one of these uses shall be permitted only if 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. Where impacts to wetlands are unavoidable, mitigation for all wetland impacts within this Plan shall be at a minimum ratio of three (3) acres of mitigation for every one (1) acre of impact. All mitigation shall be in-kind and shall result in no net loss of habitat extent or function. Mitigation shall occur on-site where possible, within the subject watershed, or, in any case, within the coastal zone.

The City of San Diego's "Environmentally Sensitive Lands Municipal Code" defines wetlands as:

- 1. All areas persistently or periodically containing naturally occurring wetland vegetation communities characteristically dominated by hydrophytic vegetation, including but not limited to salt marsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodlands, riparian scrub, and vernal pools;*
- 2. Areas that have hydric soils or wetland hydrology and lack naturally occurring wetland vegetation communities because human activities have removed the historic wetland vegetation or catastrophic or recurring natural events or processes have acted to preclude the establishment of wetland vegetation as in the case of salt pannes and mudflats;*
- 3. Areas lacking wetland vegetation communities, hydric soils and wetland hydrology due to non-permitted filling of previously existing wetlands;*
- 4. Areas mapped as wetlands on Map No. C-713 as shown in Chapter 13, Article 2, Division 6 (Sensitive Coastal Overlay Zone).*

It is intended for this definition to differentiate for the purposes of delineating wetlands, between naturally occurring wetlands and wetlands intentionally created by human actions, from areas with wetlands characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of wetlands created for the purpose of providing wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, areas demonstrating wetland characteristics, which are artificially created are not considered wetlands by this definition. Taking into account regional precipitation cycles, all adopted scientific, regulator, and technological information available from the State and Federal resource agencies shall be used for guidance on the identification of hydrophytic vegetation, hydric soils and wetland hydrology.

Section 126.0708 (a) of the LCP states:

Findings for all Coastal Development Permits:

- (1) The proposed coastal development will not encroach upon any existing physical accessway 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;*
- (2) The proposed coastal development will not adversely affect environmentally sensitive lands; and*
- (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...*

Section 143.0130 - Uses Allowed Within Environmentally Sensitive Lands .

[...]

(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.*

The City's LCP also includes Biological Guidelines as a component of its certified Implementation Plan. This document contains relevant regulations and states:

Section II- Development Regulations

A - Environmentally Sensitive Lands (ESL) Regulations

1. Wetlands and Listed Species Habitat

[...]

c. Impacts to Wetlands and Buffer Limits Within the Coastal Overlay Zone

Within the Coastal Overlay Zone, both within and outside the MHPA, impacts to wetlands shall be avoided and only those uses identified in Section 143.0130(d) of the ESL shall be permitted which are limited to aquaculture, nature study projects or similar resource dependent uses, wetland restoration projects and incidental public service projects. Such impacts to wetlands shall occur only if they are unavoidable, the least environmentally-damaging feasible alternative, and adequate mitigation is provided.

Wetland buffers should be provided at a minimum 100 feet wide adjacent to all identified wetlands within the Coastal Overlay Zone (Section 143.0141(b)). The width of the buffer may be either increased or decreased as determined on a case-by-case basis, in consultation with the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers, taking into consideration the type and size of development, the sensitivity of the wetland resources to detrimental edge effects, natural feature such as topography, the functions and values of the wetland and the need for upland transitional habitat. Examples of functional buffers include areas of native or non-invasive landscaping, rock/boulder barriers, berms, walls, fencing, and similar features that reduce indirect impacts on the wetland. Measures to reduce adverse lighting and noise should also be addressed where appropriate. Section 1.4.3 Land Use Adjacency Guidelines of the City's MSCP Subarea Plan can be used to help determine appropriate measures for wetland buffers. A 100-foot minimum buffer area shall not be reduced when it serves the functions and values of slowing and absorbing flood waters for flood and erosion control, sediment filtration, water purification, and ground water recharge. Deviations from the Environmentally Sensitive Lands Regulations within the Coastal Overlay Zone shall be approved only after the decision maker makes an economically viable use determination and findings pursuant to Section 126.0708(e).

Section III B.1.a – Mitigation for Wetlands Impacts

ESL requires 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 2a and/or Table 2b; mitigation should be based on the impacted type of wetland habitat and project design. Mitigation should prevent any net loss of wetland functions and values of the impacted wetland.

Table 2A of the City's Biological Guidelines determined wetland mitigation ratios and include the following:

Freshwater Marsh in the Coastal Overlay Zone 4:1
Riparian scrub in the Coastal Overlay Zone 3:1

As described above, the proposed development includes the draining of an existing one-acre pond that was unintentionally created when fill was placed by the applicant within a tributary of McGonigle Creek. The fill essentially created an earthen dam and the water that once crossed the road and drained to the creek was held in place at the edge of the elevated road. The placement of the fill impacted 0.04-acres of wetlands and created the pond. The pond has become established and provides high-quality wetlands as well as foraging area for a number of sensitive wildlife species. The pond and surrounding areas meet both the State and Federal definitions of wetlands and are protected by the City's LCP.

The draining of the pond will result in the loss of 1.74-acres of wetlands. The City's LCP limits allowable uses within wetlands to aquaculture, wetland restoration projects and incidental public service projects, and only 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. In this case the draining of pond does not fall into any one of these allowed uses. As such, draining the pond is not considered consistent with the City's LCP. However, the pond is located on a parcel not owned by the applicant. The adjacent property owner, Pardee Homes, does not support maintaining the created pond on its property. In addition, because the fill was added without a permit and within waters of the State, the City of San Diego also does not support continuation of the ponded wetland area. Finally, because the wetlands are within a watercourse that is considered to be waters of the United States, the Army Corps of Engineers issued a restoration order requiring that the tributary be restored to its natural state. Therefore, while protection of the existing wetlands would be consistent with the City's LCP, it would not be consistent with other State and Federal requirements, and therefore, must be drained.

1. Vegetation Communities.

Wetland habitat onsite consists of McGonigle Creek and surrounding riparian vegetation, and offsite, the created pond and the wetland habitat surrounding the pond. The vegetation located adjacent to McGonigle Creek will be restored and expanded as part of the proposed wetlands mitigation.

McGonigle Creek, a USGS "blue-line" stream, flows across the southern portion of the site in a southwesterly direction. The pond supports approximately 1.05 acres of open water, and the vegetation surrounding the pond includes approximately 0.69 acres of Southern Riparian Scrub. This habitat-type is dominated by mature willow trees, and includes Mule Fat, Cattails, and other riparian species.

In addition to vegetation communities, the mature willow trees that form a thicket next to the pond may support Least Bell's Vireo (*Vireo bellii pusillus*), a state-listed and federally-listed Endangered Species, as well as other obligate riparian songbirds. The

biological report completed for the project indicates that the habitat surrounding the pond is also likely suitable for vireo nesting and draining the pond during nesting season could result in impacts to Least Bell's Vireo. While no bird surveys were conducted to confirm this, to adequately protect any protected sensitive birds species, **Special Condition No. 10** requires that the draining and wetland restoration activities occur outside the nesting season, unless otherwise authorized by State or Federal Fish and Wildlife agencies.

2. Impacts.

The original placement of fill resulted in impacts to wetlands, and removal of the offsite pond will result in additional wetland impacts. As determined by the biological report, the placement of the fill impacted 0.04-acres of wetlands (Southern Riparian Scrub). The draining of the pond will result in impacts to 1.05 acres loss of open water and 0.69-acres of riparian vegetation (Southern Riparian Scrub). The City's LCP requires that impacts to wetlands shall first be avoided and then minimized to the maximum extent practicable. In this case, neither elimination nor minimization of the impacts associated with the created pond are feasible. As described above, the City of San Diego, the Army Corps of Engineers, and owner of the property on which the pond is located have, through various measures, required the pond be drained and the natural pre-graded (pre-fill) condition restored. In addition, for these same reasons, there is no alternative that will result in a reduction to wetland impacts. Regarding the impacts caused by the unpermitted fill, minimizing impacts is also not possible, as the impacts occurred when the fill was placed, almost 20 years ago. As such, the proposed impacts to wetlands are unavoidable.

3. Mitigation

The LCP requires that mitigation be provided for all unavoidable impacts to wetlands. In this case, impacts occurred both to open water (1.05-acres), or freshwater marsh as defined by the City's LCP, and to riparian scrub habitat (0.73). For impacts to freshwater marsh located in the coastal zone, the LCP requires mitigation to be provided at a 4:1. Additionally, the LCP requires a 3:1 mitigation ratio to riparian scrub. Thus, the total mitigation necessary for impacts to freshwater marsh is 4.2 acres (1.05 x 4) and the total mitigation necessary for impacts to riparian scrub is 2.19 acres (0.73 x 3). The overall mitigation required for all impacts to wetlands is 6.39 acres.

The proposed creation/restoration plan includes up to 14.3-acres of wetland habitat area. The mitigation is proposed on the western portion of the site and within the area previously used as nursery growing ground. The wetland creation area consists of a long, narrow, flat piece of land within the floodplain of McGonigle Creek ([ref. Exhibit No. 3, 5, 8](#)). This area currently supports mostly bare dirt and weedy species. However, a small, relict stand of Eucalyptus trees is present at the eastern end of the wetland creation area, as are a number of palms immediately adjacent to the McGonigle Creek floodway.

The proposed mitigation plan includes grading of the floodplain (entirely outside of the floodway) to remove old agricultural fill material and to lower elevations to the proper level to support wetlands habitat. This will be within approximately one vertical foot of the normal floodway elevation of McGonigle Creek and will require approximately

80,000 cubic yard of grading. Once the elevations have been restored to natural conditions, the wetland creation area will be planted with indigenous native species and subject to interim and long-term biological maintenance and monitoring. The draft wetlands creation plan includes the following stages:

- Remove all surface debris within the wetlands creation area, by hand.
- Remove all vegetation within the wetlands creation area, with the exception of any salvageable native species, which will be flagged off by the Project Biologist.
- Remove dirt from the site to create appropriate elevations (based on the site hydrology study) to support indigenous wetland species
- Grow site-collected indigenous native hydrophytes to plant over the entire area.
- Plant the site during the growing season to ensure healthy growth and development of the planted stock
- Fund a non-wasting endowment to pay for interim and long-term management and monitoring
- Implement Interim Management Plan for five years after planting
- Implement Long-term Management Plan at the end of the Interim Management Period, in perpetuity

As proposed, the applicant will create up to 14.3-acres of wetlands an almost 8-acre (7.91) excess of what would be required by the LCP. However, the applicant has indicated that the wetland creation site may be created in phases and may not include the entire 14.3-acres. As previously determined, the mitigation required by this permit, and to be found consistent with the LCP is 6.39-acres. To ensure this habitat is created, **Special Condition No. 8** requires the applicant to submit a final wetlands mitigation plan. The condition requires impacts to be mitigated consistent with the LCP and shall not be less than 6.39-acres. In addition, **Special Condition No. 11** requires the entire restoration site be placed under an updated open space restriction to ensure no development occurs, with the exception of restoration and maintenance activities, and requires the permit to be recorded as a deed restriction against the property to ensure that the open space is preserved in perpetuity.

The applicant has indicated that the excess mitigation lands (should they be created) may be sold for purchase as a mitigation bank. However, the permitting of any such use of the created wetlands is not a part of this amendment and will require a separate CDP to be issued by the City of San Diego.

The estimated impacts to wetlands determined by the biological survey presumes a total loss of all wetland habitat within the pond and surrounding area. The applicant has suggested that the area currently covered by the pond may support some amount of viable wetland habitat area even after the pond is drained, and thus, there may be ultimately be less than 1.74 acres of wetland impacts. Therefore, the applicant has requested that less than 6.39 acres of mitigation be required. The Commission's ecologist has reviewed project, and agrees that once the fill is removed and tributary is allowed to flow as it previously did, some of the wetland vegetation may remain and/or reestablish. However, it is not possible to predict exactly how much wetland vegetation, if any, will remain. If a

portion of the site remains as high-quality, functioning wetlands habitat in the years after the pond is drained, the applicant may submit a request to amend the subject permit to re-evaluate the extent of impacts associated with the proposed project, and determine if a reduction in the required mitigation could be found consistent with the City's LCP.

In conclusion, the project will result in impacts to wetland habitat inconsistent with the City's LCP. However, due to the land ownership issues, the stipulated judgment, and the Army Corps restoration order, the impacts to wetlands cannot be fully avoided and thus must be mitigated through creation of new wetland habitat onsite at the proper ratios. As conditioned, the proposed development will be consistent with the applicable sections of the City's LCP.

C. UPLANDS

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

Section 3.5.1 of the Pacific Highlands Ranch Community Plan states:

An inventory of biologically sensitive lands, as described in the MSCP Subarea Plan, was conducted by Natural Resource Consultants for the Pacific Highlands Ranch Subarea Plan. Maps of the steep slopes, floodplains, archaeological sites and wetlands were prepared and used to define the opportunities and constraints within the subarea. Considering the goals of the NCFUA Framework Plan, the various SR-56 alignments, and the opportunities and constraints of the site, the development footprint was created. Avoiding and minimizing impacts to environmentally sensitive lands dictated the ultimate design of the Pacific Highlands Ranch community. Specifically, the Plan addresses the City's resource preservation goals by clustering development away from the most sensitive resources.

The development plan for Pacific Highlands Ranch meets the intent of the interim RPO. It will preserve sensitive resources in the manner prescribed by RPO and the pending ESL Ordinance.

Section 143.0110(c) is subject to the following regulations.

(a) Environmentally sensitive lands that are outside of the allowable development area on a premises shall be left in a natural state and used only for those passive activities allowed as a condition of permit approval...

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.

[...]

(g) Outside the MHPA, development of lands that are designated as open space in the applicable land use plan and zones OR-1-1 is permitted only if necessary to achieve the allowable development area, in accordance with Section 131.0250(a)

(h) Outside the MHPA, encroachment into sensitive biological resources is not limited, except as set forth in Section 143.0141 (b) and (g)

(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. Mitigation may include the following, as appropriate to the nature and extent of the impact.

(1) Acquisition or dedication of another site that can serve to mitigation the project impacts, with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site.

(2) Preservation or dedication of on-site biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted site.

(3) In circumstances where the area of impact is small, monetary payment of compensation into a fund in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February, 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preserve areas.

(j) Grading during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego MSCP Subarea Plan.

(k) Sensitive biological resources that are outside of the allowable development area on a premises, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land

is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.

As previously described, the applicant placed approximately 900 cubic yards of fill within a tributary of McGonigle Creek. The fill was placed in order to elevate a 150-foot long portion of an existing access road that was often subject to flooding. The forensic biological report completed for the project indicates that the fill was placed in an area that once contained approximately 0.37-acres of Southern Maritime Chaparral. Southern Maritime Chaparral is considered by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife as “sensitive” or “special status” habitat, and is therefore protected by the City’s LCP.

There are two primary portions of the City’s certified LCP that address the protection of sensitive habitat at this location. These include the Pacific Highlands Ranch Community Plan (the Land Use Plan component) and the City’s Land Development Code (Implementation Plan component). The Land Development Code includes the City’s Environmentally Sensitive Lands (ESL) regulations and Biological Guidelines.

The City’s LCP differs from the Coastal Act in that it does not include environmentally sensitive habitat area (ESHA) as a defined term. Instead the City utilizes the term “Sensitive Biological Resources” in the Environmentally Sensitive Lands (ESL) regulations. The LCP defines sensitive biological resources as:

...those lands included with the Multiple Habitat Planning Area (MHPA) as identified in the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan (City of San Diego 1995), and other lands outside the MHPA that contain wetlands; vegetation communities classified as Tier I, Tier II, IIIA, or IIIB; habitat for rare, endangered or threatened species, or narrow endemic species.

Southern Maritime Chaparral is considered a Tier I Habitat and is therefore considered to be a “Sensitive Biological Resource” protected by the City’s LCP. The definition of a Tier I Habitat includes the following:

Tier I habitat include the upland habitats that are considered to be rare within the City of San Diego. These habitats have suffered substantial historic losses on top of naturally narrow distribution patterns, such as in the case of southern foredunes and Torrey pine woodlands. Tier I habitats were once common, as was the case of native grasslands, but other historic land conversion has resulted in precipitous declines that threaten the continued persistence of the habitats in the region.

The Pacific Highland Ranch Community Plan includes language that avoiding and minimizing impacts to environmentally sensitive lands dictated the ultimate design of the

plan. Additionally, the plan states that sensitive resources will be preserved within the Plan area. However, the City's Biological Guidelines do not prohibit impacts to Southern Maritime Chaparral.

As background, the City of San Diego created a Multiple Species Conservation Plan (MSCP) in the mid-90's, in response to the state's Natural Communities Conservation Plan (NCCP) legislation. Based on the MSCP requirement to preserve the best habitats, along with connecting habitats to provide corridors for wildlife movement, the City created the Multi-Habitat Preserve Area (MHPA). However, the MSCP/MHPA was never incorporated into the City's LCP, although it is referenced in the newer certified LUPs of the City and in portions of the certified IP, including the Environmentally Sensitive Lands regulations and the Biology Guidelines. Because the program itself is not certified as part of the LCP, it is not a legal standard of review for CDPs. However, the MSCP provisions are typically relied upon by the City for most City actions.

That said, the Biological Guidelines, which are a part of the certified LCP also do not prohibit impacts to Southern Maritime Chaparral. Instead, provisions require a case-by-case review to ensure impacts are limited and adequate mitigation provided.

In this case, the loss of habitat occurred almost 20 years ago and there is no opportunity to reduce or eliminate the impacts. Therefore, in order for such impacts to be found consistent with the City's LCP, adequate mitigation must be provided.

The City's certified Biological Guidelines require specific mitigation values for unavoidable impacts to sensitive biological resources. These guidelines differentiate between impacts that occur inside and outside the MHPA. The guidelines also require different mitigation ratios based on whether the mitigation site is located within or outside the MHPA preserve. In this case, the impacts are located outside the MHPA, and thus, the Biological Guidelines require impacts to Southern maritime chaparral to be mitigated at 1:1 mitigation ratio if the mitigation is provided on lands located within MHPA preserve, or a 2:1 mitigation ratio if the mitigation is located outside the preserve.

The applicant originally proposed mitigation for the impacts to Maritime Chaparral at a 1:1 mitigation ratio to be fulfilled through purchase of land at an offsite mitigation bank. However, the applicant has indicated that purchase at that mitigation bank is no longer feasible and no replacement mitigation bank has been identified by the applicant to date. Therefore, the proposed development does not identify any mitigation for the impacts to maritime chaparral and therefore cannot be found consistent with the certified LCP as proposed.

To address this deficiency, **Special Condition No. 9** requires the applicant provide an updated mitigation and monitoring plan for the 0.37-acres of impacts to the southern maritime chaparral to be provided for onsite. As stated above, the LCP would require 2:1 mitigation ratio if the mitigation was located outside the MHPA preserve and 1:1 if located within. The subject site has a number of areas that would be suitable for Maritime Chaparral restoration; the majority of the site is located within the MHPA preserve. As such, **Special Condition No. 9** specifies that if the onsite mitigation is

provided within portions of the lot that are a part of the MHPA preserve than a 1:1 mitigation ratio will be required.

However, there are portions of the site that could be suitable for maritime chaparral that are not located within the MHPA preserve and may be preferable to the applicant. Therefore, **Special Condition No. 9** further requires that should the applicant choose a mitigation site outside the MHPA preserve, mitigation will need to be provided at the required 2:1 mitigation ratio. In either case, mitigation must be provided on-site, at the ratios required by the LCP. To ensure the mitigation is carried out, and long term success of the mitigation is ensured, **Special Condition No. 9** further requires the mitigation plan include a detailed long-term monitoring program, including specific performance criteria developed by the Commission's ecologist. Finally, **Special Condition No. 11** requires the entire trail site be placed under an open space restriction to ensure no development occurs, with the exception of restoration activities, and requires the permit to be recorded as a deed restriction against the property to ensure that the open space is preserved in perpetuity.

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with relevant sections of the City's LUP and will provide adequate protection to sensitive upland habitat.

D. WATER QUALITY

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

Section 142.0201 Purpose of Drainage Regulations

The purpose of this division is to regulate the development of, and impacts to, drainage facilities, to limit water quality impacts from development, to minimize hazards due to flooding while minimizing the need for construction of flood control facilities, to minimize impacts to environmentally sensitive lands, to implement the provisions of federal and state regulations, and to protect the public health, safety, and welfare.

Section 142.0210 Construction Standards

All storm water runoff control, drainage, and flood control facilities shall be constructed in accordance with standards established in the Land Development Manual, the Standard Specifications for Public Works, and any City-adopted supplements.

Section 142.0220 Storm Water Runoff Control

(a) All development shall comply with Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).

(b) All development shall be conducted to prevent erosion and stop sediment and pollutants from leaving the property to the maximum extent practicable. The property owner is responsible to implement and maintain temporary and permanent erosion, sedimentation, and water pollution control measures to the satisfaction of the City Manager, whether or not such measures are a part of approved plans. The property owner shall install, monitor, maintain, and revise these measures, as appropriate, to ensure their effectiveness. Controls shall include the following measures that address the development's potential erosion, sedimentation, and water pollution impacts.

- (1) Erosion prevention.*
- (2) Sediment control.*
- (3) Phased grading.*

Section 43.0307 Reduction of Pollutants in Storm Water

Any person engaged in activities which may result in Pollutants entering the Storm Water Conveyance System shall, to the MEP, undertake all measures to reduce the risk of Non-Storm Water or Pollutant discharges. The following requirements shall apply:

(a) Best Management Practices Implementation: Every person undertaking any activity or use of a Premises which may cause or contribute to Storm Water pollution or contamination, Illegal Discharges, or Non-Storm Water Discharges shall comply with BMP guidelines or pollution control requirements as may be established by the Enforcement Official. BMP shall be maintained routinely throughout the life of the activity. Such BMP include, but are not limited to, the following:

(1) Controlling Pollutants From Parking Lots: Any owner or operator of vehicle parking lots that are located in areas potentially exposed to Storm Water shall be required to conduct regular sweepings and other effective measures to control Pollutant runoff.

(b) Storm Water Pollution Prevention Plan: The Enforcement Official may require any business and operations of other land uses in the City that are engaged in activities which may result in Pollutant discharges to develop and implement a Storm Water Pollution Prevention Plan, which must include, but is not limited to, an Employee Training Program.

(c) Coordination with Hazardous Materials Release Response Plans and Inventory: Any activity subject to the Hazardous Materials Release Response Plan, Chapter 6.95 of the California Health and Safety Code, shall include in that Plan provisions for compliance with this Division, including the prohibitions on Non-Storm Water Discharges and Illegal Discharges, and the requirement to reduce release of Pollutants to the MEP.

(d) New Developments and Redevelopments. All new development and redevelopment activities shall comply with Chapter 14, Article 2, Division 1 (Grading Regulations) and Chapter 14, Article 2, Division 2 (Storm Water Runoff Control and Drainage Regulations) of this Municipal Code.

(e) Compliance with General Storm Water NPDES Permits. Each discharger, subject to any General Storm Water NPDES permit shall comply with BAT, BCT, and all requirements of such permit. Those activities that have General Storm Water NPDES Permits shall submit their monitoring data and analytical evaluation/assessment to the City at the same time their reports are submitted to the Regional Water Quality Control Board.

Removal of the unpermitted fill and restoration activities will require vegetation clearing, grading and debris removal activities that could result in a temporary increase in erosion affecting the quality of storm water runoff. Specifically, the project includes grading over 80,900 cubic yards of fill. This includes both the 900 cubic yards of unpermitted fill used to elevated the access road as well as the approximately 80,000 cubic yards of grading necessary to remove significant amounts of soil adjacent to McGonigle Creek and create an area which will facilitate the creation of viable wetland habitat. To ensure no impacts to water quality occur, **Special Condition No. 12** has been included and requires the applicant to submit a final construction phase BMP plan, to be reviewed and approved by the Executive Director. In addition, the applicant has not yet identified how much of the graded material will be kept onsite or how much fill will be exported, and no specific site for disposal of any exported fill has been proposed by the applicant. Therefore, to ensure that any excess grading material is appropriately disposed of **Special Condition No. 12** further requires that any project-driven spoil export be deposited in a legal site outside of the coastal zone or a permitted site within the coastal zone.

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with relevant sections of the City's LUP and will provide adequate protection to marine resources and water quality.

E. UNPERMITTED DEVELOPMENT

Violations of the Coastal Act exist on the subject property including, but not limited to, the placement of approximately 900 cubic yards of fill in a sensitive habitat area that contained both ESHA and wetlands.

To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition #13** requires that the applicant satisfy all conditions of this permit amendment within 180 days of Commission action or within such additional time as the Executive Director may grant for good cause. In addition, because the fill is unpermitted and the applicant is willing to remove the fill in order to resolve any potential violation, **Special Condition #1** requires that the fill be removed within two years of commencement of restoration and within three years of Commission action. This time frame is longer than is typically required by the Commission; however, in this case the large amount of time is

necessary as the roadway where the fill has been placed is needed to gain access to the restoration area. Once restoration has been completed, and within three years of Commission action, the unpermitted fill is required to be removed.

Although development has taken place prior to the submission of this amendment request, consideration of the request by the Commission has been based solely upon the certified City of San Diego LCP. Commission action upon the permit amendment does not constitute a waiver of any legal action with regard to the alleged violations of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit. Commission approval of this application pursuant to the staff recommendation will bring the unpermitted development into conformance with coastal development permit requirements once the permit has been fully executed and the terms and conditions of the permit complied with by the applicant.

F. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The project site is located within the City of San Diego, which has a certified Local Coastal Program. However, the proposed project requires amending the special conditions of Commission issued CDP No. 6-86-699 which was approved prior to certification of the City's LCP, and those revisions must be approved by the Commission directly. Since the City now has a certified LCP, the standard of review is the certified LCP. The subject site is zoned AR-1-1 (Agriculture), RS-1-14 (Residential-Single Unit with a minimum lot size of 5,000 sq. ft.) and OC-1-1 (Open Space with limited private residential development in the certified LCP). The proposed habitat restoration is located on the portion of the site designated as open space, and wetland restoration can be found consistent with this designation. Therefore, as conditioned, the proposed project can be found consistent with all of the zoning and planning designations of the City of San Diego. Thus, approval of the project will not prejudice the ability of the City of San Diego to continue to implement its certified LCP.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego found that

the project could have significant environmental effect and processed a Mitigated Negative Declaration (MND) for the project. The City found that the project, as revised by the MND, avoided or mitigated the all potentially significant environmental effects.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Measures, including conditions addressing impacts to sensitive upland habitat, wetlands and water quality will mitigate for all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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Appendix A – Conditions of Approval

A. Conditions of CDP No. 6-86-699

1. Runoff Control. Prior to the transmittal of a coastal development permit for this project, the applicant shall submit a runoff control plan designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the developed site over the undeveloped site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). Runoff control shall be accomplished by such means as on-site detention/desilting basins. Energy dissipating measures at the terminus of outflow drains shall be constructed. The runoff control plan including supporting calculations shall be submitted to and approved in writing by the Executive Director.
2. Grading and Erosion Control. Prior to transmittal of the coastal development permit, the applicant shall submit to the Executive Director, final grading and erosion control plans which incorporate the following:
 - a. From November 15 to March 31 of each year, grading may only occur in increments as determined by the City Engineer and in conformance with the policy 3(c) on page 8 of the City of San Diego “Revisions to the North City Local Coastal Program Segment” dated May 31, 1985.
 - b. All permanent run-off and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.
 - c. The applicant shall submit a temporary erosion control plan including temporary sediment basins installed in conjunction with initial grading operations and maintained through the development process as necessary.
 - d. All areas disturbed but not completed during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.
3. Lagoon Enhancement Fund. Prior to transmittal of a coastal development permit for this project, the applicant shall enter into an agreement, suitable in form and content to the Executive Director, binding the applicant and all successors in interest to participate in a lagoon enhancement fund to aid in the restoration of Los Penasquitos Lagoon. Said agreement shall consist of an irrevocable letter of credit, an escrow account or similar account in an amount equal to \$.005 per square foot of site surface area affected by grading plus \$.03 per square foot for impervious surfaces created by the development.

Any funds shall be executed in a manner that allows use of the funds by the Coastal Conservancy, the Wildlife Conservation Board, the Department of Fish and Game or the City of San Diego. No such use of funds shall occur unless and until the Executive Director certified that the funds are proposed for a bona fide Los Penasquitos enhancement activity. Examples of “bona fide enhancement” activities

shall include, but not be limited to, the development of a lagoon restoration plan, the preparation of background technical studies for the development plan, the implementation of the plan and stewardship and management following implementation of the plan.

4. Revised Slope Analysis. Prior to the transmittal of the coastal development permit for the subject proposal, the applicant shall submit a revised slope analysis of the subject property for the review and approval on writing by the Executive Director. Said slope analysis shall indicate all slopes in excess of 25% above grade, and particular attention shall be paid to those slope areas located between Open Space Areas "B" and "D," and those sloped located between Open Space Areas "D" and "E."

5. Open Space Deed Restriction. Prior to the transmittal of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type in the area shown on the attached Exhibit "4" and generally described as those areas identified as Open Space Areas A through G, including steep slopes in excess of 25% gradient located on the knoll situated between Open Space Areas D and E, without the written approval of the California Coastal Commission or its successor in interest.

The easement area may exclude portions of Lot 37 which comprises areas less than 25% grade and any areas required to access the flatter portions of the lot, but not to exceed 10% of the total steep slope area on Lot 37. The recording document shall include legal descriptions of both the applicant's entire parcel and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

6. Potential Assessment District. Prior to the transmittal of the coastal development permit, the applicant shall record a deed restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of real property. The deed restriction shall provide that the applicant shall not oppose the formation of any assessment district for purposes of providing for the permanent maintenance and conservation of stream channels and related habitat areas for that portion of the stream watershed lying in the Coastal Zone. The recording document shall be in form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

7. Route 56/Carmel Valley Road Alignment. No approval for the future alignment of State Route 56/Carmel Valley Road is granted as part of this permit. Any future alignment of Route 56 or Carmel Valley Road should be designed to eliminate

impacts to the Carmel Valley Creek floodplain, other wetlands and riparian resources, and the Sensitive Coastal Resource Area to be mapped as part of the City of San Diego LCP Implementation Program. The proposed realignment of these access routes shall require separate coastal development permits.

B. Conditions of CDP No. 6-86-699-A1

5. Open Space Deed Restriction. Prior to the transmittal of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type in the area shown on the attached Exhibit "4" and generally described as those areas identified as Open Space Areas A through G, including steep slopes in excess of 25% gradient located on the knoll situated between Open Space Areas D and E, without the written approval of the California Coastal Commission or its successor in interest.

The easement area may exclude portions of Lot 37 which comprises areas less than 25% grade and any areas required to access the flatter portions of the lot, but not to exceed 10% of the total steep slope area on Lot 37. The recording document shall include legal descriptions of both the applicant's entire parcel and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

Note: This conditions was amended on March 7, 1989 to include the following words:

Allow an equestrian trail along the northern boundary of open space area F and agricultural uses within open space areas C, G, H, I and J.

C. Conditions of CDP No. 6-86-699-A2

NONE

D. Conditions of CDP No. 6-86-699-A3

7. **Removal of Unpermitted Fill.** WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT the permittee shall submit final fill removal and disposal plan to the Executive Director for review and approval and shall include the following specifications:

(a) All of the unpermitted fill associated with the access road is to be removed within two years of commencement of restoration of the wetland area and no later than within three years of Commission action (November 8, 2021).

(b) Best Management Practices (BMPs) designed to control erosion and prevent silt and sediment from entering the stream during grading and revegetation activities

must be installed PRIOR to beginning any grading activity and must remain in place throughout fill removal activities. At a minimum a physical barrier consisting of silt fencing and/or bales of weed free rice-straw or waddles placed end to end shall be installed between the grading area and the stream, and should be placed at the edge of the intact riparian plant community.

(c) No fill material that is removed may be placed where could enter coastal waters. Any necessary stockpiles must be covered.

(d) Any pollutants (material other than clean dirt) found in the fill shall be properly disposed of at an approved disposal facility.

The plan shall include, at a minimum, the following components:

(e) A site plan showing all proposed locations for BMPs, stockpiling construction materials, debris, or waste during fill removal operations;

(f) A description of the manner by which the material will be removed from the construction site and identification of all debris disposal sites that will be used;

(g) A schedule for BMP installation, fill removal, grading and transport activities.

The permittee shall undertake development in accordance with the approved site and fill removal and disposal plans that have been approved by the Executive Director consistent with this condition. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved site plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Final Wetlands Mitigation Plans. WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit to the Executive Director for review and written approval, a final wetland mitigation plan for all impacts associated with the proposed project. The final mitigation plan shall be developed in consultation with the California Department of Fish and Wildlife and/or the U.S. Fish & Wildlife Service (“resources agencies”), be in substantial conformance with the mitigation plan drafted by Vincent N. Scheidt Biological Consultant and dated December, 2012, and at a minimum shall include:

(e) Preparation of a detailed site plan of the riparian wetland impact area, clearly delineating all areas and types of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included.

(f) Preparation of a baseline ecological assessment of the impact area(s) and any proposed mitigation sites prior to initiation of any activities. Such assessment shall be completed by a qualified biologist and at a minimum shall include quantified estimates of the biological resources and habitat types at each site, description of the functions of these resources and habitats and the associated

values. Results of the ecological assessment of the wetland impact area shall form the basis of the goals, objectives, and performance standards for the mitigation project.

- (g) The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project. Each performance standard shall state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Every performance standard should be designed to ensure the long-term sustainability of the restored wetland.
- (h) All impacts to open water/freshwater marsh shall be mitigated at a ratio of not less than four to one (4:1). All impacts to riparian scrub shall be mitigated at a ratio not less than three to one (3:1). The total wetlands required for creation/restoration shall not be less than 6.39-acres total. That is, for each square foot of impact associated with the project, there shall be four new square feet of wetlands created. In addition, said mitigation shall only include upland habitat that will be suitable for conversion to wetlands. Final monitoring for success shall take place no sooner than three years after restoration is complete activities.

9. Upland Mitigation Plan. WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, a final detailed mitigation and monitoring plan for all impacts to upland sensitive biological resources. Said plan shall include the following:

- (d) Preparation of detailed site plans identifying all impacted upland habitat areas including the 0.37-acres of impacts to Southern Maritime Chaparral. Both temporary and permanent impacts shall be included in this calculation.
- (e) All impacts to upland habitat (temporary and permanent) shall be mitigated through restoration/enhancement onsite. If the mitigation is located within the Multiple Habitat Planning Area (MHPA) preserve, mitigation shall be provided at not less than a 1:1 ratio. If the mitigation is located outside the MHPA preservation, mitigation shall be provided at not less than a 2:1 ratio. In addition, a detailed site plan of the onsite mitigation areas shall be included.
- (f) A Restoration and Monitoring Plan shall be prepared by a qualified restoration ecologist and shall at a minimum include the following:
 - i. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration sites, including, as appropriate, a wetland delineation conducted according to the definitions in the City of San Diego's LCP, a description and map showing the areas and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration;

- ii. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage;
- iii. A description of planned site preparation and invasive plant removal;
- iv. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used;
- v. A plan for documenting and reporting the physical and biological “as built” condition of the mitigation sites within 30 days of completion of the initial restoration activities. This report shall briefly describe the field implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution. The “as built” assessment and report shall be completed by a qualified biologist;
- vi. A plan for interim monitoring and maintenance, including:
 - A. A schedule;
 - B. Interim performance standards;
 - C. A description of field activities;
 - D. A monitoring period of not less than 5 years;
 - E. Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria;
- vii. Final Success Criteria for each habitat type, including, as appropriate:
 - A. species diversity;
 - B. total ground cover of vegetation;
 - C. vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers “50/20” rule, enumeration, species with greater than a threshold of abundance, etc.);
 - D. wildlife usage;
 - E. hydrology; and
 - F. presence and abundance of sensitive species or other individual “target” species; and
- vii. The method by which “success” will be judged, including:

- A. Type of comparison. Possibilities include comparing a census of the restoration sites to a fixed standard derived from literature or observations of natural habitats, comparing a census of the restoration sites to a sample from a reference site, comparing a sample from the restoration sites to a fixed standard, or comparing a sample from each of the restoration sites to a sample from a reference site;
- B. Identification and description, including photographs, of any reference sites that will be used;
- C. Test of similarity by determining whether the result of a census was above a predetermined threshold, with at least one- or two-sample t-test;
- D. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size;
- E. Detailed field methods;
- F. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion;
- G. Where a statistical test will be employed, a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference. Generally, sampling should be conducted with sufficient replication to provide 90% power with $\alpha=0.10$ to detect the maximum allowable difference. This analysis will require an estimate of the sample variance based on the literature or a preliminary sample of a reference site. Power analysis software is available commercially and on the world wide web (e.g., <http://www.stat.uiowa.edu/~rlenth/Power/index.html>);
- H. A statement that final monitoring for success will occur after at least three years after restoration is complete.

10. **Sensitive Species/Timing.** To avoid potential impacts to breeding activities of the Last Bell's Vireo and other bird species associated with the adjacent sensitive open water, wetland and riparian habitats, draining of the pond will not be permitted between the dates of February 15th to August 31st of any year, unless approved in writing by the California Department of Fish and Wildlife and/or the U.S. Fish and Wildlife Service.

11. **Open Space Deed Restriction.**

(a) No development, as defined in Section 30106 of the Coastal Act, shall occur on parcel No. 305-060-20, except for:

(i) Restoration and maintenance of restored wetland habitat in accordance with Special Condition No. 8.

(b) **WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic

depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.

(c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall express that restoration and maintenance of restored wetland habitat in accordance with Special Condition No. 8 is allowed as an exception to Special Condition 5 of CDP No. 6-86-699, and that the recording supersedes solely those provisions of Recording No. 89-550434 that implement Special Condition 5.

(d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

12. **Construction BMPs Plan.** WITHIN 180 DAYS OF APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for review and approval of the Executive Director, a Construction Best Management Practices plan. The plan shall be in conformance with the following requirements:

- (m) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. To avoid disposal of construction materials, debris, or waste into the ocean, appropriate catch basins shall be installed prior to commencement of construction;
- (n) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (o) Construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (p) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (q) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (r) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal may take place, unless the Executive Director determines that no amendment or new permit is legally required;
- (s) All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;

- (t) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (u) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (v) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (w) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (x) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

The final Construction Best Management Practices plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

13. Condition Compliance. The permittee shall comply with all conditions of approval within 180 days of Commission approval of this Coastal Development Permit Amendment; however, on the permittee's demonstration of good cause, the Executive Director may extend the allowed time for compliance for one or more Special Conditions as expressly specified. Failure to comply without the Executive Director's extension of time may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Appendix B – Substantive File Documents

- City of San Diego Local Coastal Program;
- Coastal Development Permit 6-86-699, 6-86-699-A1;
- City of San Diego Site Development Permit No. 560724;
- Mitigated Negative Declaration No. 157399;
- Army Corps of Engineers (ACOE) Restoration Order No. SPL-2002-0667;
- Superior Court Stipulated Judgment - Case No. GIC801949;
- Superior Court Judgment – Case No. GIC837801
- Floodplain and Hydrology Study prepared by Lyle Engineering and dated June, 2010;
- Water Quality and Technical Report prepared by Lyle Engineering and dated May, 2008;
- Wetland Creation Grading Floodplain Study prepared by Lyle Engineering and dated June, 2018
- Forensic Biological Report prepared by Vincent N. Scheidt and dated Marsh 26, 2014;
- Wetlands Creation Plan prepared by Vincent N. Scheidt and dated December, 2012;
- Jurisdictional Wetlands Report prepared by Vincent N. Scheidt and dated February, 2013;