

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-18-0688

Applicant: City of San Diego Attn: Roger Wammack

Location: Within Otay River watershed east of Hollister St. and between Main St. and Palm Ave, Otay Mesa/Nestor, San Diego, San Diego County (APN 628-051-02)

Project Description: Restoration of 0.39-acres of wetland habitat as mitigation for impacts resulting from previous emergency channel maintenance

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed development includes the creation/restoration of 0.39-acres of wetland habitat in the Otay Valley Regional Park, an area adjacent to the Otay River Channel that is currently highly degraded and not currently suitable for sustained wetland function. The 0.39-acres of wetland creation/restoration is being provided as mitigation for 0.13 acres of wetland impacts associated with two previously conducted channel maintenance activities within a City stormwater channel in the City's permit jurisdiction. While the channel maintenance is not a part of the subject CDP, the mitigation site is located within the Commission's retained jurisdiction, and thus requires Commission approval. The mitigation activities consist of grading portions of the site to levels that will restore wetland function, removal of existing non-native and invasive plants including the highly invasive giant reed

species *arundo durax* and revegetation of the site with a mix of native riparian and transition riparian vegetation types.

The project would mitigate the 0.13-acres of wetland impacts at a 3:1 ratio resulting in a total of 0.39-acres of mitigation. The mitigation would consist of the creation of 0.13 acres of new wetland habitat (for a no net loss of wetlands) and 0.26-acres of restoration and enhancement. Typically, the Commission only approves mitigation sites that are located within the Coastal Zone; however, in this case the proposed mitigation site is located partially within and partially outside the Coastal Zone. Specifically, the subject project includes 0.21-acres of restoration/enhancement within the Coastal Zone (CZ) and 0.18-acres (0.05-acres restoration, 0.13-acres creation) located outside the CZ boundary. That said; the subject mitigation site is a contiguous vegetated area where the portions of the site best suited for creation happen to be located just outside of the CZ. In addition, the proposed mitigation has been designed to optimize and significantly increase the ecological value of the site both inside and outside the CZ in the same watershed as the impact area. The Commission's ecologist has reviewed the mitigation plan, and determined that the proposed creation and restoration will adequately mitigate for the impacts associated with the channel maintenance. Therefore, while not located entirely within the CZ, given the particular set of circumstances in this case, the proposed mitigation site can be determined as consistent with the applicable sections of the Coastal Act.

Other concerns associated with the proposed development include finalization of the mitigation and monitoring plan, annual reports requirements, potential impacts to Least Bell's Vireo, management of construction phase debris and sediment removal and proper protection for the mitigation site in perpetuity. To address these concerns, **Special Condition No. 1** requires the applicant to submit the final mitigation and monitoring plan the Commission for its approval and specify that the annual reports generated as a part of this plan be submitted to the Commission annually for review by the Executive Director. **Special Condition Nos. 2 and 3** require Construction Phase BMPs and prohibit initial restoration activities from occurring in the nesting season. **Special Condition No. 4** requires the applicant to submit all other necessary permits and approvals to the Commission. Finally, **Special Condition No. 5** limits development on the mitigation site to mitigation activities, and **Special Condition No. 6** requires that a deed restriction be recorded against the property memorializing the findings and conditions of this permit, should the City ever choose to sell the mitigation site.

Commission staff recommends **approval** of coastal development permit application 6-18-0688 as conditioned.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-0688 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 permit 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 6-18-0688 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act 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. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Habitat Mitigation and Monitoring Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT,** the permittee shall submit to the Executive Director for review and written approval, a final wetland mitigation plan for all impacts authorized through City of San Diego Permit No. 2161345 that is in substantial conformance with the Conceptual Aquatic Resources Habitat Mitigation and Monitoring Plan prepared by Helix Environmental Planning, Inc. dated June 12, 2018, and at a minimum shall include:

- (a) The previously authorized impacts to wetland habitat, including the disturbed wetland area and freshwater marsh (0.13-acres of impact), shall be mitigated at a ratio of not less than three to one (3:1). The total wetlands required for creation/restoration shall not be less than 0.39-acres total, with at least 0.13-acres of mitigation being fulfilled as creation of newly constructed wetland habitat.
- (b) The permittee shall submit annual monitoring reports to the Executive Director for review and approval. The first annual report shall be submitted no later than January 1 following the first year in which the plants have been in the planted for an entire spring and summer. The site shall be maintained and monitored for a minimum of five years, or longer as needed to meet the success criteria.

Annual reports shall include a description of restoration activities that have occurred onsite; descriptions of vegetation composition, including the species richness and percent cover of plants species; weed species present and a description of eradication efforts; details concerning any erosion problems that may exist and efforts to address them; qualitative and quantitative monitoring data related to the achievement of performance criteria; and quarterly wildlife observations including listed species observations, problems, and remedial actions. After at least five years, or at the time when the mitigation appears to have met all of the success criteria described in the final Habitat Mitigation and Monitoring Plan, the applicant will submit a final monitoring report to the Executive Director for review and approval.

2. **Construction Requirements. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the permittee shall provide, for the Executive Director's review and written approval, A Final Construction Phase BMP Plan that includes the following:
 - (a) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, that shall be implemented prior to the onset of such activity;
 - (b) No construction materials, debris, or waste shall be placed or stored where it may enter the waterway;
 - (c) All trash and debris shall be disposed in the proper trash or recycling receptacle at the end of every construction day;
 - (d) Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from any waterway, and shall not be stored in contact with the soil over the length of the construction period;
 - (e) Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - (f) The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - (g) A pre-construction meeting shall be held for all personnel to review procedural and BMP/GHP guidelines, particularly those in relation to procedures required in the vicinity of special status plants or wildlife;
 - (h) All BMPs shall be maintained in a functional condition throughout the duration of the project; and
 - (i) 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.
3. **Timing of Construction.** To avoid potential impacts to least Bell's vireo nesting season, construction and restoration activities, including clearing of existing vegetation and grading, shall not be permitted from February 15 through August 31 of any year, unless approved by the Executive Director in writing after coordination with the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.
4. **Required Resources Agency Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the permittee shall provide to the Executive Director copies of all other required state and federal discretionary permits from the San Diego Regional Water Quality Control Board, California Department of Fish and

Wildlife, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers, or evidence that no permit or permission is required. The permittee shall inform the Executive Director of any changes to the project required by any resource agency permit. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

5. **Future Development.** This permit is only for the restoration activities described in coastal development permit Coastal Development Permit (CDP) No. 6-18-0688. Pursuant to California Code of Regulations (CCR), Title 14, Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP No. 6-18-0688. Accordingly, with the exception of restoration activities, no future development of the site is allowed. If any future development within the mitigation site is proposed, such development shall require an amendment to CDP No. 6-18-0688 from the Commission.
6. **Deed Restriction. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT,** the landowner shall execute and record against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. SITE HISTORY/PROJECT DESCRIPTION

Site History

In 2010 and again in 2016 the City of San Diego performed, as an emergency, the removal of sediment and vegetation within an existing earthen and concrete stormwater culvert (ref. City of San Diego Permit No. 2161345). The project in 2010 included the removal of sediment and vegetation from a 600 foot section of a concrete-lined channel located inland of Palm Avenue and southwest of San Diego Bay and resulted in impacts to 0.02-acres of freshwater marsh (FWM), 0.03-acres of southern willow scrub (SWS),

and 0.06-acres of disturbed wetland ([ref. Exhibit No. 4](#)). Emergency channel maintenance activities in 2016 included the removal of sediment and vegetation from a 65-foot earthen-bottom section directly adjacent to the location of work performed in 2010 and resulted in impacts to 0.02-acres of FWM ([ref. Exhibit No. 4](#)). The total impact to wetland habitat from the 2010 and 2016 efforts combined included 0.13-acres of wetland habitat. Although authorized as an emergency measure, the City acknowledged that 1) the emergency work would need to be followed-up with a regular coastal development permit 2) that the impacts would have to be mitigated at appropriate mitigation ratios, and; 3) that the follow-up coastal development permit would be appealable to the Coastal Commission. Since that time, the City has approved a follow-up Coastal Development Permit for the work authorized in 2010 and 2016, and included the identification of a mitigation site located on City-owned land and within the Otay River watershed adjacent to Hollister Quarry. The mitigation site, however, is within an area of deferred certification and; therefore, the restoration efforts require approval by the Coastal Commission. Therefore, the City is requesting the Commission approve, through the subject CDP application, the creation/restoration of 0.39-acres of wetland habitat in order to provide mitigation for the impacts described above. The City has suspended issuance of the appealable follow-up CDP for the emergency channel maintenance (No. 2161345) until the Commission authorizes the restoration proposed through this CDP application.

Project Location and the Coastal Zone Boundary

The project site is located in the Otay River Valley east of Hollister Street, within the Otay Valley Regional Park as shown on the Location Map ([ref. Exhibit No. 1](#)). The site consists of an 8.86-acre gently sloping site adjacent to the Otay River channel which extends in a northeasterly-southwesterly direction across the project site. The majority of the project site is densely vegetated with shrubs, trees, annual grasses and wildflowers, with the exception of the northwest and the southeast portions which are mostly bare dirt with scattered vegetation. Approximately 2.2 acres of the parcel have been identified as areas suitable for wetland creation/restoration. Of the 2.2-acres, the City is currently proposing to restore 0.39-acres to fulfill its mitigation requirements for the previously performed channel maintenance. The site has a land use designation of Open Space and is zoned OS-F-1, which is an open space designation for purposes of flood plain protection. The mitigation work is proposed on the northwestern portion of the site, which is located entirely within the Flood Plain. While the entire parcel is located within the City's Coastal Overlay Zone, the Coastal Zone Boundary bisects the property as well as the mitigation site ([ref. Exhibit No. 3](#)). As proposed, 0.21-acres of the restoration work will occur inside the CZ and 0.18-acres will be located outside, but immediately adjacent to the Coastal Zone Boundary.

Project Description

As described above, the purpose of the subject proposal is to provide adequate mitigation for previously authorized channel maintenance activities which occurred within the City's jurisdiction. The channel maintenance activities resulted in the loss of a total of 0.13-acres of wetland habitats. To mitigate for these impacts the City is proposing a total

of 0.39-acres of mitigation (3:1 mitigation ratio), of which the City is proposing to create no less than 0.13-acres of new wetlands (to facilitate a no-net loss of wetland habitat). The other 0.26-acres of mitigation will be met with a combination of substantial restoration and enhancement activities.

While the City of San Diego does have a certified LCP, the subject site is located within an area of deferred certification (ADC), and therefore within the Commission's retained jurisdiction. One of the primary reasons the area was retained as deferred jurisdiction is because the majority of the area is located within the Otay River floodway or floodplain, and a determination of appropriate uses has not been made or a plan for adequate protection of the resources developed. As such, the standard of review for the project is the Coastal Act, with the City's LCP as guidance.

B. BIOLOGICAL RESOURCES

Coastal Act Section 30231 states:

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

Coastal Act Section 30233 states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines....

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which

would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

In addition, while not the standard of review, the City of San Diego's Land Development Code is a part of the City's certified LCP and contains provisions that address sensitive biological resources including the following:

Section 113.0103 Definitions

[...]

Sensitive biological resources means upland and/or wetlands areas that meet any one of the following criteria:

- (a) Lands that have been included in the City of San Diego Multiple Species Conservation Program Preserve;*
- (b) Wetlands;*
- (c) Lands outside the MHPA that contain Tier I Habitats, Tier II Habitats, Tiers IIIA Habitats, or Tier IIIB Habitats;*
- (d) Lands supporting species or subspecies listed as rare, endangered, or threatened under Section 670.2 or 670.5, Title 14, California Code of Regulation, or the Federal Endangered Species Act, Title 50, Code of Federal Regulations, Section 17.11 or 17.12, or candidate species under the California Code of Regulations;*
- (e) Lands containing habitats with Narrow Endemic Species as listed in the Biology Guidelines in the Land Development manual;*
- (f) Lands containing habitats of covered species as listed in the Biology Guidelines in the Land Development Manual.*

Section 143.0130 - Uses Allowed Within Environmentally Sensitive Lands

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

[...]

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

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

Section 143.0141 - Development Regulations for Sensitive Biological Resources

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

(a) State and federal law precludes adverse impacts to wetlands or listed noncovered species habitat. The applicant shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the development proposal. The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing. Grading or construction permits shall not be issued for any project that impacts wetlands or Listed non-covered species habitat until all necessary federal and state permits have been obtained.

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

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

[...]

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

The City’s LCP all contains a number of applicable LCP provisions within the City’s Biological Guidelines which state, in part:

Section III: Biological Impact Analysis and Mitigation Procedures

[...]

B. Identification of the Mitigation Program

1. Mitigation Element

a. Mitigation for Wetlands Impacts

**TABLE 2A
WETLAND MITIGATION RATIOS
INCLUDING BIOLOGICALLY SUPERIOR DESIGN**

| HABITAT TYPE | MITIGATION RATIO |
|--|------------------|
| Coastal Wetlands: | |
| - Salt marsh | 4:1 |
| - Salt panne | 4:1 |
| Riparian Habitats: | |
| - Oak riparian forest | 3:1 |
| - Riparian forest or woodland | 3:1 |
| - Riparian scrub | 2:1 |
| - Riparian scrub in the Coastal Overlay Zone | 3:1 |
| Freshwater Marsh | 2:1 |
| Freshwater Marsh in the Coastal Overlay Zone | 4:1 |
| Natural Flood Channel | 2:1 |
| Disturbed Wetland | 2:1 |
| Vernal Pools | 2:1 to 4:1 |
| Marine Habitats | 2:1 |
| Eelgrass Beds | 2:1 |

Notes: Any impacts to wetlands must be mitigated “in-kind” and achieve a “no-net loss” of wetland function and values except as provided for in Section 3B (Economic Viability Option). Mitigation for vernal pools can range from 2:1 when no listed species are present, up to 4:1 when listed species with very limited distributions (e.g., *Pogogyne abramsii*) are present. [emphasis added]

[...]

Wetland enhancement and wetland acquisition focus on the preservation or the improvement of existing wetland habitat and function, and do not result in an

increase in wetland area; therefore, a net loss of wetland may result...All mitigation for unavoidable wetland impacts within the Coastal Overlay Zone shall occur within the Coastal Overlay Zone. [emphasis added]

The City of San Diego is proposing to create and restore a total of 0.39-acres of wetland habitat area to provide the mitigation necessary for channel maintenance that occurred in 2010 and 2016. The work conducted in 2010 included the removal of sediment and vegetation from a 600 foot section of a concrete-lined channel located inland of Palm Avenue and southwest of San Diego Bay and resulted in impacts to 0.02-acres of freshwater marsh (FWM), 0.03-acres of southern willow scrub (SWS), and 0.06-acres of disturbed wetland ([ref. Exhibit No. 4](#)). Emergency channel maintenance activities in 2016 included the removal of sediment and vegetation from a 65-foot earthen-bottom section of the same channel and resulted in impacts to 0.02-acres of FWM. The total impact to wetland habitat from the 2010 and 2016 efforts combined is 0.13-acres. While the impacts to wetlands associated with the channel maintenance is not formally before the Commission at this time, the subject CDP is to permit the mitigation for these impacts. The follow-up permit issued by the City for the channel maintenance is appealable to the Coastal Commission, therefore, the Commission's determination of the mitigation as consistent with the City's LCP and the Coastal Act is a necessary part of the review of the subject CDP application, and will also serve as confirmation that approval of the follow-up permit for the channel maintenance is consistent with the LCP.

As quoted above, the City's LCP and the Coastal Act limit the purposes of development in wetlands. In this case, the impacts to wetlands occurred as emergency channel maintenance and were necessary in order to protect the surrounding areas from flooding. This activity qualifies as an incidental public service purpose under both the Coastal Act and the City's LCP. That said; Section 30233 further requires that adequate mitigation measures are provided. For impacts to riparian wetland habitat (freshwater), the Commission typically requires mitigation to be provided at a 3:1 mitigation ratio, with at least one portion (1:1) to be provided as creation of new wetlands (ref. CDP/CD Nos. 6-97-11, 6-10-006, A-6-TJN-11-084, CD-0005-15). In addition, the Commission typically requires that if the mitigation cannot be fulfilled within the same site as the impacts, mitigation should occur within the Coastal Zone and ideally within the same watershed, to the extent feasible.

To this end, the City is proposing to create/restore the 0.13-acres of wetland impacts at a 3:1 mitigation ratio for a total of 0.39-acres of mitigation. The creation of 0.13 acres of new wetland habitat will be located within in area of the site where the current elevation to too high to support wetland habitat. Grading will lower the existing elevations by as much as 14 feet to be consistent with the elevation of the adjacent riverbed. As a result of previous grading and development activities, the existing low-flood channel of the river is currently confined to a straight alignment. The proposed grading will expand the area and allow the river to regain a more natural and meandering alignment. Thus, there will be no net loss of wetlands, and the grading will also increase hydrological and water quality functions.

The restoration/enhancement portion of the mitigation will be located within the areas of the mitigation site that already support wetland function, but because of the current vegetation type, are considered to be highly degraded (0.26-acres) ([ref. Exhibit No. 5](#)). The restoration/enhancement component of the project will include some grading (up to 24 inches) and removal of the existing vegetation which is currently dominated by invasive giant reed *Arundo donax* (arundo). *Arundo* is a highly invasive type of vegetation that directly impacts the river through trapping sediment and altering channel morphology, and provides no native habitat value. The density of the vegetation prevents birds from nesting and foraging and the *Arundo* stalks are highly flammable once dried. Essentially, when a wetland area is dominated by *Arundo*, it loses its core habitat functions, while altering the surrounding environment. Moreover, the waterway provides a conduit for the further spread of this noxious species, which would be curtailed by the *Arundo* removal. The proposed restoration efforts will include removal of the *Arundo*, its roots and any trapped sediment. The site will then be revegetated with more appropriate and native riparian habitat. The lower elevation areas will be planted with high-quality wetland vegetation characteristic of riparian scrub including California bulrush, mule fat, Gooding's and arroyo willows and salt grass, among others. The portions of the site that are slightly higher elevation will be planted with vegetation characteristic of transitional riparian scrub habitat and include mule fat, milkweed, willow, cottonwood and sycamore among others ([ref. Exhibit No. 6](#)).

The City is proposing a maintenance program which will include weed control, watering, erosion control, removal of trash, and any remedial measures (including re-seeding and/or re-planting) deemed necessary for the success of the mitigation. Watering the site will occur via hand watering during the first 120-day establishment period and will be applied liberally to develop deep root growth and encourage germination. Following the 120-day establishment period, water will only be applied as needed. Monitoring will occur annually for five years, or until all the success criteria are met, whichever is longer.

As previously discussed, the mitigation site is bisected by the Coastal Zone Boundary, which in this case, does not correspond to an ecological boundary, such as the watershed. The mitigation proposed includes 0.21-acres of restoration/enhancement in the Coastal Zone (CZ), 0.05-acres of restoration/enhancement just outside of the CZ boundary, and 0.13-acres of creation also located just outside the CZ boundary. Typically, the Commission does not support mitigation located outside the Coastal Zone, and especially not when the 1:1 no net loss component is located outside the CZ. However, in this case the location is acceptable because the mitigation site is a contiguous vegetated area where the portions of the site best suited for creation happen to be located just outside of the CZ. The proposed mitigation has been designed to optimize and significantly increase the ecological value of the site both inside and outside the CZ in the same watershed as the impact area. The Commission's ecologist has reviewed the mitigation plan, and determined that the proposed creation and restoration will adequately mitigate for the impacts associated with the channel maintenance. Therefore, while not located entirely within the CZ, given the particular set of circumstances in this case, the proposed mitigation site can be determined as consistent with the applicable sections of the Coastal Act.

The City submitted a Least Bell's Vireo (LBVI) survey for the site which indicated that a total of two pairs and nine (9) single males were detected within or adjacent to the project site, with five (5) of these single males located within the project site. Least Bell's vireo are listed as endangered under the California Endangered Species Act (CESA) and under the federal Endangered Species Act. The bird breeds in the summer and prefers to forage and nest within riparian scrub vegetation. The proposed restoration activities could, if they were to occur during nesting season, cause the birds to flush or abandon their nests. To prevent any such impacts, **Special Condition No. 3** requires that restoration activities shall not be permitted from February 15 through August 31 of any year, or until the young have fledged, unless approved by the Executive Director in writing after coordination with the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.

Finally, because the proposed grading includes the removal of up to 14 feet of sediment, **Special Condition No. 2** requires the applicant to incorporate appropriate construction phase BMPs for any machinery, construction debris, as well as erosion control and proper sediment/removed vegetation disposal.

In conclusion, while not located entirely within the Coastal Zone, the proposed mitigation can be found to be adequate mitigation for the impacts that occurred during channel maintenance activities in 2010 and 2016. The mitigation plan proposes an adequate amount of mitigation land, including at least 1:1 ratio of creation to assure there is no net loss of wetland habitat, provides maintenance activities and long-term monitoring, to assure that the wetland vegetation obtains appropriate ecological function and can therefore be found to be consistent with the applicable policies of the Coastal Act. To ensure continued consistency, **Special Condition No. 1** requires the applicant to submit a Final Mitigation and Monitoring Plan, consistent with the conceptual plan previously provided but revised to include the requirement that the City submit the annual reports to the Commission's Executive Director for review and approval. **Special Condition No. 4** requires the applicant to submit evidence that the City has received all necessary permits from other government agencies, including those that review wildlife and habitat impacts such as USFWS, to ensure that the project has been thoroughly vetted with regards to impacts and that other governmental action doesn't conflict with the Commission's actions. Finally, the site will be protected through the City's Open Space zoning, and **Special Condition No. 5** prohibits future development other than restoration activities on the site. Should the City ever choose to sell the mitigation land, **Special Condition No. 6** requires the applicant to execute and record against the parcel governed by this permit a deed restriction indicating that the subject property is subject to terms and conditions that restrict the use and enjoyment of that property; and the Special Conditions of this permit are additional conditions and restrictions on the use and enjoyment of the site.

C. DEVELOPMENT IN THE FLOODPLAIN

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

As stated above, Section 30236 of the Coastal Act limits the types of development that can occur in the floodplain to water supply projects, flood control and where the primary function is the improvement of fish and wildlife habitat. FEMA maps indicate that the portion of the site that will be developed as the mitigation site is located entirely within the floodway. FEMA defines a “floodway” as the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Currently the mitigation site is comprised of a mix habitat types including the Otay River, a large stand of highly-invasive giant reed, and bare ground. The development proposed will include removal of the invasive giant reed and grade down the higher-elevation areas to facilitate expansion of native wetland areas surrounding the river. As previously discussed, the portion of the site dominated by *Arundo* is considered to be severely degraded and has very little habitat value. It is anticipated that once the site is graded and native habitat reestablished, the value of the habitat will dramatically increase. Therefore, while the proposed grading can be defined as development within a floodplain, the primary function of the proposed development is to improve wildlife habitat and is; therefore, consistent with Section 30236 of the Coastal Act as proposed.

D. 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. While the City of San Diego does have a certified LCP, the subject site is located within an area of deferred certification, and therefore within the Commission’s retained jurisdiction. Therefore, the standard of review for the project is the Coastal Act, with the City’s LCP as guidance.

As described in Section “B” above, the City’s LCP requires that mitigation requirements for impacts to wetlands located in the coastal zone include at least a 1:1 creation/substantial restoration component to ensure no net loss of wetlands. In this case the mitigation proposed includes at least 1:1 mitigation (0.13-acres) as creation and is therefore consistent with the LCP. The LCP also requires that impacts to sensitive habitats located in within the City’s Sensitive Coastal Overlay Zone, mitigation for those impacts also occur within the Sensitive Coastal Overlay Zone. In this case, while the parcel is bisected by the Coastal Zone, the parcel, in it’s entirety, is within the City’s Sensitive Coastal Overlay Zone. The project is therefore consistent with applicable LCP requirements and will not prejudice the City’s ability to finalize its Local Coastal Program for this region of the City.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of San Diego is the lead agency for purposes of CEQA review for the proposed project, and the Coastal Commission is a responsible agency. The City prepared and certified a Program Environmental Impact Report (PEIR) for the project. Section 13096 of Commission regulations (Cal. Code of Regs., tit. 14) require approval of a coastal development permit to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures including water quality BMPs and habitat mitigation will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. The proposed project, as conditioned, is consistent with the policies of the City's LCP relating to protection of sensitive biological resources and water quality. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. City of San Diego certified Local Coastal Program
2. Hollister Quarry Mitigation Site – Conceptual Aquatic Resources Habitat Mitigation and Monitoring Plan prepared by Helix Environmental Planning, Inc., and dated June 12, 2018.
3. Least Bell’s Vireo Survey Report prepared by Helix Environmental Planning, Inc., and dated August 17, 2017.
4. Hollister Quarry Mitigation Site – Archaeological Resources Report Form prepared by Helix Environmental Planning, Inc., and dated April, 2018.
5. Phase I Environmental Assessment Hollister Quarry Mitigation Site Report prepared by Helix Environmental Planning, Inc., and dated March 22, 2018
6. City of San Diego Substantial Conformance Review No. 211346
7. City of San Diego Coastal Development Permit No. 2161345
8. Coastal Commission Notice of Final Action 6-OMN-18-1097
9. Email from Christin Rothman at the City of San Diego indicating that the City will not utilize Coastal Development Permit No. 2161345 until the Coastal Commission issues CDP Permit No. 6-18-0688 authorizing proposed mitigation located at the Hollister Quarry Mitigation Site