

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-19-1007

Applicant: City of San Diego

Agent: Julie Adam

Location: 11480 N Torrey Pines Rd, University Community, San Diego, San Diego County (APN: 310-010-09)

Project Description: Abandon in place approx. 100 feet of existing 18-in. diameter below grade concrete pipe and storm water outfall and construct approx. 360 feet of new 42-inch below grade concrete pipe with new outfall, headwall, and energy dissipater within the Torrey Pines Municipal Golf Course and adjacent coastal canyon.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

An existing 18-inch diameter below-grade concrete pipe storm drain system constructed prior to the Coastal Act runs west under the Torrey Pines Municipal Golf Course and discharges northwest of the 18th hole of the North Course into a coastal canyon above Black's Beach. The pipe drains an approximately 38-acre area on the east side of the golf course, encompassing the golf course parking lot, the Lodge at Torrey Pines Hotel, the Hilton Hotel, a Scripps medical structure, and a segment of North Torrey Pines Road (the golf course itself is served by its own storm water system). The City of San Diego states that the existing pipe is undersized relative to its drainage area, with a maximum capacity of 25 cubic feet per second (cfs) compared to maximum flows of 118 cfs arising during a 100-year storm. This under-capacity, coupled with the outfall's

placement approximately 25 feet above the canyon floor, has caused substantial erosion of the coastal canyon in the proximity of the outfall. The outfall itself has become undermined, with its headwall and previous safety fence around the perimeter of the canyon collapsing to the bottom, and the canyon walls eroding to a near-vertical grade precluding natural vegetation from growing there while altering the habitat along the canyon bottom to displace upland vegetation and wetland arising from the above-average runoff volume pooling in an eroded depression.

In response, the City of San Diego proposes to abandon the final 100 feet of existing 18-inch concrete pipe between the existing outfall and the westernmost cleanout so as to construct a new 360-foot long branch of 42-inch wide below-grade concrete pipe that would extend northwest, parallel to the north rim of the coastal canyon, to a new cleanout, where it will continue southwest to discharge in a new outfall with a headwall and rip rap energy dissipater located inside the same coastal canyon. Most of the abandoned pipe segment would be removed and the remainder capped and filled. Construction would take approximately five months, including mobilization and demobilization of staging within the golf course.

The City's proposal raises Coastal Act issues regarding the project's potential to adversely affect marine and terrestrial biological resources, geology, and water quality. The key issue raised by the project is the potential for adverse impacts to environmentally sensitive habitat areas (ESHA). Construction of the new 360-foot concrete pipe segment and removal of the existing pipe will require excavating extensive trenches in the golf course and coastal canyon due to the elevation changes involved, as well as grading a portion of the canyon's northern vegetated slope to install the new outfall's headwall and rip rap energy dissipater. The approximately 0.09-acre portion of the coastal canyon that the City is proposing to excavate and grade to construct the outfall is mostly vegetated and undisturbed, with several special status plants and wildlife documented in the City's Biological Technical Report and confirmed by the Commission's staff ecologist, Dr. Laurie Koteen, as being ESHA.

The City conducted an extensive alternatives analysis that studied alternative projects to divert runoff to other outfalls, capture and infiltrate the runoff, or repair and enhance the existing outfall, among others, all of which were found to be infeasible. The Commission's water quality and engineering specialists have reviewed the alternatives analysis and agree that the proposed new outfall is the only feasible alternative to address the runoff at the site.

Section 30240 of the Coastal Act permits only resource-dependent uses and development in ESHA, and a storm drain outfall, though it supplements important infrastructure, does not constitute a resource-dependent use. As a result, Section 30240 directs denial of the proposed project. However, the existing pipeline is currently causing adverse impacts to ESHA. Because the pipe is undersized, discharges are undermining the canyon walls, causing block falls impacting native vegetation. Pooling from the existing outfall has created an artificially nourished wetland in place of the natural canyon vegetation. Thus, given these ongoing impacts to ESHA, after review of the proposed project, the Commission's ecologist determined that, on balance, the proposed project is expected to be an improvement over the existing conditions. If the

Commission were to deny the proposed project, the existing undersized outfall would be left in its current condition indefinitely. The discharge from the outfall would continue to erode the canyon bottom and alter the composition of the adjacent ESHA habitat from its natural state. The existing pipeline is over sixty years old; given the age of the outfall and the difficulty of maintenance due to elevation and current condition of the canyon walls, the risk of failure will only increase in the future. All the while, the near vertical canyon walls will not be able to naturally restore to more gradual slopes capable of supporting vegetation, and the canyon bottom will continue to accumulate water and displace upland habitat with wetland vegetation.

The proposed project is necessary in order to safely abandon the existing outfall and prevent its continued undermining of the coastal canyon walls, removal of habitat area, and alteration of the habitat composition along the canyon bottom and the ESHA therein. The consequences of leaving the existing outfall in place would be inconsistent with Coastal Act policies established to protect sensitive habitat areas. If approved, these risks would be avoided, and the current outfall's ESHA would be protected, as affirmatively required by the Coastal Act. Section 30240 also compels the Coastal Commission that ESHA "shall be protected against any significant disruption of habitat values," which the proposed new outfall would accomplish. However, due to the placement of the new pipe in a different habitat area, the project can only be found consistent with the Coastal Act through the "conflict resolution" provision in Section 30007.5). Conflict resolution would create a superior result: the overall amount of ESHA in the area would be enhanced and erosion reduced.

Because the proposed project would still involve substantial work adjacent to and within coastal canyons and the sensitive habitat within, Commission staff recommends the following special conditions. **Special Condition No. 1** would require final project plans showing the location and size of all work to abandon the existing outfall and install the new segment, as well as staging and storage plans siting all construction activity outside of the coastal canyon except for necessary installation or abandonment work. Because the work involves construction activity near and in a coastal canyon that drains to the ocean, **Special Condition Nos. 2 and 3** require the submittal of final construction BMP and permanent BMP plans, respectively, to show the water quality protections that the approved project will employ to minimize runoff and pollutants from flowing into the canyon and ocean. Because the project site is a coastal canyon drainage that has a history of erosion necessitating the proposed development, **Special Condition No. 4** requires the applicant to accept the risk of future geologic instability and waive liability and indemnify the Commission. Due to the identified presence of special status wildlife identified in the coastal canyon, **Special Condition No. 5** will require, if work is to commence during the bird breeding season, for pre-construction surveys to be conducted for sensitive species and, if any are found, for appropriate buffers and noise reduction measures to be implemented. Because part of the project will impact a coastal canyon containing upland ESHA, **Special Condition No. 6** requires the applicant submit a Habitat Mitigation and Monitoring Plan to restore impacted habitat areas, install new mitigation habitat in a suitable location, and monitor them pursuant to specific performance criteria. Additionally, the greater Torrey Pines area has a documented history of use by the native peoples of the area, and archeological and paleontological

items of significance have been uncovered during development in nearby areas. Thus, because of the location of the proposed development and its inclusion of excavation and grading, **Special Condition No. 7** requires the applicant to adhere to an approved archeological monitoring plan if archeological items are uncovered during the course of construction so as to ensure the appropriate parties are notified and the items addressed properly. Finally, because the project will involve substantial excavating and grading, **Special Condition No. 8** requires the applicant to dispose of any excess spoils at a legal site outside of the coastal zone.

Commission staff recommends that the Commission **APPROVE** coastal development permit application no. 6-19-1007, as conditioned. The appropriate motion is found on page 5. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View of Drainage Basin](#)

[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Site Photos](#)

[Exhibit 5 – Biological Resource Mapping](#)

[Exhibit 6 – Dr. Koteen Natural Resource Memorandum](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-19-1007 subject to conditions set forth in the staff recommendation specified below.

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

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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

- 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 applicant 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 of 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Submittal of Final Plans.

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of the following plans:
- i. Final construction plans that conform with the plans submitted to the Commission on September 10, 2019, titled "Torrey Pines Golf Course Storm Drain Repair."
 - ii. Final staging and storage plan that sites all staging and storage of materials and equipment outside of the boundaries of the coastal canyon.
- (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. Construction and Pollution Prevention Plan.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared by a qualified licensed professional. The final plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

- (a) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation;
 - ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters;

- iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sandbag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters;
- iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area; and
- v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat storm water and non-storm water runoff.

(b) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from storm water runoff using temporary perimeter barriers;
 - B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site;
 - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather;
 - D. Prompt removal of all construction debris from the beach; and
 - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile

equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

- (c) **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control;
 - ii. Soil compaction due to construction activities shall be minimized, to retain the natural storm water infiltration capacity of the soil; and
 - iii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
- (d) **Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- (e) **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins);
 - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation.

Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities;

- iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs; and
 - iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.
- (f) **Construction Site Documents.** The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times, and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (g) **Construction Coordinator.** The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit, or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

3. Post-Development Runoff Plan.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Post-Development Runoff Plan. The final Post-Development Runoff Plan shall demonstrate that the project complies with the following requirements:

(a) **Low Impact Development Strategies.** The project shall comply with the following Low Impact Development standards:

- i. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions;
- ii. Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control;
- iii. Maintain or enhance appropriate on-site infiltration of runoff to the greatest extent feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; amending soil if needed to enhance infiltration; and installing an infiltration Best Management Practice (BMP) (e.g., a vegetated swale, rain garden, or bio retention system);
- iv. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in re-development. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required;
- v. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious surfaces; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation; and
- vi. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows, such as installing an evapotranspiration BMP that does not infiltrate into the ground but uses evapotranspiration to reduce runoff (e.g., a vegetated “green roof,” flow-through planter, or retention pond); directing runoff to an off-site infiltration facility; or implementing BMPs to reduce runoff volume, velocity, and flow rate before directing runoff to the storm drain system.

- (b) **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.
- (c) **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging storm water or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:
- i. Runoff shall be directed inland to the storm drain system or to an existing outfall. If no storm drain system or existing outfall is present, bluff top runoff shall be directed to an existing drainage channel. Runoff shall not sheet flow over the coastal bluff top and may not be directed to the beach or the ocean;
 - ii. The existing outfall pipe located in the canyon shall be eliminated if feasible, or be trimmed back to the bluff face and otherwise camouflaged as much as possible (e.g., through painting or landscaping), and shall be trimmed back further in the future at such times when the pipes again become visible and/or protrude from the bluff face;
 - iii. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or drainage course, determine whether the added volume of runoff is large enough to trigger erosion;
 - iv. Protective measures shall be used to prevent erosion from concentrated runoff flows at storm water outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order, depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles); and

- v. The discharge of dry weather runoff to coastal waters shall be minimized, to the greatest extent feasible. Use strategies such as efficient irrigation techniques that minimize off-site runoff.

(d) **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development.

(e) **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:

- i. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas;
- ii. Identification of pollutants potentially generated by the proposed development that could be transported off the site by runoff;
- iii. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements;
- iv. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs; and
- v. A description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit, or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

4. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to storms, flooding, landslide, erosion, and earth movement, all of which will may worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Sensitive Species Monitoring.

PRIOR TO ANY CONSTRUCTION ACTIVITIES during California gnatcatcher breeding/nesting season (February 15th through August 15th), a qualified biologist approved by the Executive Director shall conduct a site survey for active nests no more than 72 hours prior to any development. If an active nest is located, then a qualified biologist shall monitor the nest daily until project activities are no longer occurring within 300 feet of the nest or within 500 feet of California gnatcatcher or any other nesting bird species or until the young have fledged and are independent of the adults or the nest is otherwise abandoned. The monitoring biologist shall halt construction activities if he or she determines that the construction activities may be disturbing or disrupting the nesting activities. The monitoring biologist shall make practicable recommendations to reduce the noise or disturbance in the vicinity of the active nests or birds. This may include recommendations such as (1) turning off vehicle engines and other equipment whenever possible to reduce noise, and (2) working in other areas until the young have fledged. The monitoring biologist shall review and verify compliance with these avoidance boundaries and shall verify that the nesting effort has finished in a written report. Unrestricted construction activities may resume when the biologist confirms no other active nests are found. The results of the site survey and any follow-up construction avoidance measures shall be documented by the monitoring biologist and submitted to the San Diego office of the California Coastal Commission.

6. Final Habitat Mitigation and Monitoring Plan

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final detailed mitigation and monitoring plan for all impacts to sensitive biological resources associated with the proposed development. The plan shall include:

- (a) Preparation of detailed site plans clearly delineating all impacted upland habitat areas and their exact acreage. Both temporary and permanent impacts shall be included in this delineation.

- (b) All impacts to upland habitat (temporary and permanent) shall be mitigated through restoration/enhancement at not less than a **2:1** mitigation ratio. If feasible, all mitigation shall be located within the project site, and shall not be credited through the purchase of mitigation land. In addition, a detailed site plan of the mitigation areas shall be included and shall include any proposed temporary irrigation, including its proposed duration and timing.
 - i. If an applicant is claiming that mitigation cannot be performed within the project site, the applicant must submit a report to the Executive Director for review and written approval. The report must include the basis for which the applicant believes the project site is not a feasible alternative for the required mitigation and a detailed analysis of other potential sites for which the mitigation could occur.

- (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 site, including, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation 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, any changes to site topography, hydrology, vegetation types, presence or abundance of sensitive species, and wildlife usage. Any anticipated measures for adaptive management in response to climatic changes are to be included.

 - 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 methods and timing, erosion control measures, duration and use of irrigation, and measures for remediation if success criteria (performance standards) are not met. 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 restoration or mitigation site within 30 days of completion of the initial restoration activities. This is a simple report describing the field implementation of the approved restoration or mitigation plan in narrative and photographs, and reporting of any problems in the implementation and their resolution, and any recommendations for future adaptive measures. The “as built” assessment and report shall be completed by a qualified biologist or restoration ecologist, who is independent of the installation contractor.

- vi. A plan for interim monitoring and maintenance of any restoration or mitigation site, and monitoring of any pre-approved reference site(s), including:
 - A. A schedule;
 - B. Interim performance standards;
 - C. A description of field activities to be performed at the location of habitat loss to determine the species composition and relative species abundance of the plants resident in this location for the purpose of determining the plant palette for the restoration location. The field activities shall include sampling design, number of samples, and sampling method.;
 - D. The monitoring period (generally not less than 5 years, depending on case details or longer if performance standards are not met in the initial time frame).;
 - E. Provision for submission of annual reports of monitoring results to the Executive Director for review and written approval 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; and
 - F. Provisions for the submittal of a revised or supplemental restoration plan to be submitted if an annual monitoring report shows that the restoration effort is falling below the interim performance standards. Triggers shall be included in the plan to define the level of nonperformance at which the submittal of a revised or supplemental restoration plan will be required. The applicant shall submit a revised or supplemental restoration program within 90 days to address

those portions of the original program which did not meet the approved success criteria.

- vii. Final Success Criteria, including, as appropriate:
 - A. total species richness;
 - B. total ground cover of vegetation and of native vegetation;
 - C. vegetative cover of dominant species and definition of dominants;
 - D. percent allowable of non-native species; generally <5% for all species rated as “moderate” or “highly-invasive” by the California Invasive Pest Council, (Cal-IPS), not including non-native annual grass species;
 - E. wildlife usage, including types and frequency of wildlife species;
 - F. hydrology, including timing, duration and location of water movement;
 - G. presence and abundance of sensitive species or other individual “target” species

- viii. The method by which “success” will be judged, including:
 - A. Type of comparison;
 - B. Identification and description, including photographs, of any reference sites that will be used, if it is not possible to sample the habitat pre-disturbance due to safety concerns. If direct sampling of the southern maritime chaparral of the canyon to be disturbed is not possible through field methods, then aerial photos of the site should be used, or an adjacent canon with south facing slopes and similar habitat composition may be sampled in its stead;
 - C. Test of similarity with a reference site. This could simply be determining whether the result of a census was above a predetermined threshold. Generally, it will entail a one- or two-sample t-test that determines if differences between the restoration site and the reference site are within the maximum allowable difference for each success criteria (performance standard);
 - D. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size;
 - E. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion; and
 - F. A statement that final monitoring for success will occur after at least 3 years of documented annual reports submitted to the Executive Director for review and written approval with no remediation or maintenance activities other than weeding.

- ix. Provision for submission of a final monitoring report to the Executive Director for review and written approval at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the restoration site conforms to the goals and success criteria set forth in the approved final restoration program. Following the restoration, reports shall be submitted every ten years to ensure that the restoration is maintained over the time period of the development.

If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental restoration plan to compensate for those portions of the original plan which did not meet the approved success criteria. The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland restoration or mitigation plan following all procedures and reporting requirements as outlined for the initial plan until all performance standards (success criteria) are met. The revised restoration plan shall be processed as an amendment to this coastal development permit unless the Executive Director provides a written determination that no permit amendment is legally required.

The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland mitigation plan. Any proposed changes to the approved final, revised plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is legally required.

7. Archeological and Paleontological Resource Monitoring.

(a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director, a Cultural and Paleontological Resources Treatment and Monitoring Plan (Plan) prepared by a qualified professional that includes all the recommendations of the cultural resources inventory prepared by Spindrift Archeological Consulting, LLC, dated July 2019 and the Mitigated Negative Declaration for the Torrey Pines Golf Course Storm Drain Repair (SCH. No. 2019089111) dated October 17, 2019, except as modified by the requirements below:

- i. The permittee shall provide sufficient archeological, paleontological and Native American monitors and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, to assure that all project earth disturbing activities and machines are monitored at all times;

- ii. Native American monitors shall be selected from tribal groups with documented ancestral ties to the area, and preferably from groups that participated in the tribal consultation process.
 - iii. All project monitors shall be notified a minimum of 30 days prior to commencement of any earth disturbing construction activities; notification shall occur via email, telephone, and U.S. Mail;
 - iv. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archaeological monitoring or research plans, past archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;
 - v. The Native American Most Likely Descendent (MLD), as identified by the Native American Heritage Commission, shall be allowed a minimum of two weeks to arrive at the site to inspect human remains discovered on-site and identified by the coroner as pre-historic, and to offer recommendations for their disposition;
 - vi. The landowner is agreeing at this time and by acceptance of this permit to allow MLD inspection of pre-historic human remains discovered on site;
 - vii. The recommendations of the Native American Most Likely Descendent (MLD), shall be the predominant guidance when addressing ultimate disposition of pre-historic human remains discovered on site;
 - viii. The ultimate disposition of any other archaeological/cultural resources discovered at the site, shall be determined in consultation with the Native American groups with documented ancestral ties to the area as determined by the Native American Heritage Commission.
- (b) If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 100 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.
- (c) The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Disposal of Graded Material

All excess spoils exported from the project site must be disposed of at a legal site outside of the coastal zone. Disposal of graded materials within the coastal zone will require a separate coastal development permit or an amendment to this permit.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The subject site is a City of San Diego owned and operated municipal golf course located to the west of North Torrey Pines Road, to the north of the University of California at San Diego (UCSD) and south of Torrey Pines State Reserve ([Exhibit 1](#)). The Torrey Pines Golf Course is a municipal golf course that originated in the 1950's, and now includes two 18-hole golf course. It is located on a coastal plateau overlooking the Pacific Ocean and is heavily used by both residents and visitors. The golf courses themselves, although part of the overall site, are not affected by the proposed development. The existing clubhouse was constructed around 1990, and the site also includes several putting greens and a driving range. Except for the clubhouse, the golf facilities were in existence prior to the Coastal Act, and as a whole, the site has remained virtually unchanged over time except for ongoing maintenance activities, including some reconfiguration of various portions of the two golf courses (e.g. CDP Nos. 6-06-017, 6-14-1607, 6-17-0615).

The proposed project consists of abandonment in place of an existing municipal storm drain outlet and construction of a replacement storm drain outlet. Currently, an 18-inch below-grade concrete pipe storm water outfall discharges into a coastal canyon on the west side of the Torrey Pines Municipal Golf Course. This pipe serves a 38-acre drainage basin located on the east side of the golf course; the basin includes the golf course parking lot, the Lodge at Torrey Pines Hotel, the Hilton Hotel, a Scripps medical structure, and a segment of North Torrey Pines Road. The golf course itself is served by its own separate storm water system. Construction would take approximately five months, including mobilization and demobilization of staging within the golf course.

The drainage basin, outfall, and golf course sit on a coastal plateau, ranging in elevation of approximately 350 feet above sea level (MSL) on the west side of the golf course around the outfall to approximately 400 feet MSL along North Torrey Pines Road. Due to the elevation and proximity to the ocean, there are several undisturbed east-west coastal canyons bordering the west side of the golf course. These canyons are generally heavily vegetated with mostly native and some non-native plants. The existing outfall, located at the easternmost end of one of these canyons, protrudes from the canyon wall approximately 10 feet below the canyon rim and approximately 25 feet above the canyon floor, with runoff flowing approximately 2,400 feet west down the canyon floor until it reaches the public beach below. It is unknown when the existing 18-inch concrete pipe storm water system was first constructed, but based on available record drawings, the outfall and headwall – which has subsequently fallen into the coastal canyon – were added to the pipe in 1960. Thus, the existing outfall was constructed prior to passage of the Coastal Act.

Over the years, discharge from the outfall has eroded away at the adjacent canyon floor and walls, creating a depression in the floor beneath the outfall and near-vertical slopes along the adjacent canyon walls. The migration of the erosion eastward over the year caused the headwall around the outfall and fencing along the canyon edge to collapse

into the canyon. The City has provided evidence that the inadequate capacity of the 18-inch diameter outfall, approximately 25 cubic feet per second (cfs), compared to maximum flows during a 100-year storm, approximately 118 cfs, causes runoff to discharge at rapid velocities which, coupled with the outfall's 25-foot elevation above the canyon floor, causes a depression to form that undermines the adjacent canyon walls, leading to erosive collapse. Additionally, the outfall and the concrete pipe leading to it are in a state of disrepair, with internal photo surveys by the City showing cracks and infiltration by roots, further impeding the pipe's conveyance of runoff and contributing to infiltration of runoff into the soil around the canyon walls.

The result of this ongoing situation has been that extensive portions of the coastal canyon walls have become undermined by the depression carved by the outfall's discharge at the canyon bottom. This undermining has led the canyon walls around the outfall to experience periodic block collapse, transitioning from the more natural 30%-50% grade found elsewhere in the canyon to a near vertical grade. The block falls have caused portions of the existing outfall as well as safety fencing around the canyon's edge to fall into the canyon. While the golf course is not under current threat, nor will it be for several years, the rate and direction of erosion will eventually impact the nearest golf hole. Furthermore, the near vertical slope of the undermined canyon walls does not allow for the establishment of natural upland vegetation that covered the previously existing slopes. Finally, the depression on the canyon floor allows the runoff to pool along the canyon bottom, which has allowed for the establishment of wetland species not typically found in these natural drainages at the expense of displacement of the natural upland vegetation, such as coastal sage scrub, that is dominant in this area.

To address this situation, the City proposes to abandon the final 100 feet of the existing 18-inch below grade concrete pipe storm drain and construct 360 feet of new 42-inch diameter below grade concrete pipe. A new cleanout would be constructed at the east end of the abandoned pipe segment to accommodate the new, bigger pipe. From this location, approximately 300 feet of the new pipe would be directed northwest paralleling the northern perimeter of the coastal canyon to another new cleanout. From this second cleanout, the remaining 60 feet of pipe would be directed southwest into the coastal canyon to a new outfall, where a headwall and 2-ton rock rip rap energy dissipater with filter blankets would be constructed adjacent to the outfall. Construction of the new pipe will require the excavation and grading of portions of the golf course and the coastal canyon's northern slope, approximately 0.42-acre, with approximately 0.09 acre of the impacts located within the coastal canyon itself.

The project site is located within the University Community Plan area of the North City LCP segment. However, the entire site is within an area of deferred certification, where the Coastal Commission retains CDP authority and Chapter 3 of the Coastal Act is the legal standard of review and the City's certified LCP acts as guidance.

B. Biological Resources

Section 30107.5 of the Coastal Act states:

“Environmentally sensitive area” means any area in which plant or animal life of their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activity and developments.

Section 30240 of the Coastal Act 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.*

Section 113.0103 of the Land Development Code, the Implementation Plan for the certified Local Coastal Program, contains the certified definitions of relevant terms and states, in relevant part:

Sensitive biological resources means upland and/or wetland 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, Tier 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 Regulations, 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; or*
- 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.*

Steep hillsides means all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet.

Section 143.0110 of the Land Development Code states, in relevant part.

This Division applies to all proposed development when environmentally sensitive lands are present on the premises.

- a) *Where any portion of the premises contains any of the following environmentally sensitive lands, this division shall apply to the entire premises, unless otherwise provided in this division:*
- 1) *Sensitive biological resources;*
 - 2) *Steep hillsides;*
 - 3) *Coastal beaches (including V zones);*
 - 4) *Sensitive coastal bluffs; and*
 - 5) *Special Flood Hazard Areas (except V zones).*

Section 143.0142 of the Land Development Code governs development in steep hillsides and states, in relevant part:

Development that proposes encroachment into steep hillsides or that does not qualify for an exemption pursuant to Section 143.0110(C) is subject to the following regulations and the Steep Hillside Guidelines in the Land Development Manual.

- a) *Allowable Development Area*

[...]

- 4) *Within the Coastal Overlay Zone, steep hillsides shall be preserved in their natural state and coastal development on steep hillsides containing sensitive biological resources or mapped as Viewshed or Geologic Hazard on Map C-720 shall avoid encroachment into such steep hillsides to the maximum extent possible.*

[...]

- D. *For the purposes of Section 143.0142, encroachment shall be defined as any area of 25 percent or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to the displacement required for the building, accessory structures, or paving, or is cleared of vegetation (including Zone 1 brush management).*

[...]

The large swath of land to the west of the Torrey Pines Municipal Golf Course consists of large, vegetated coastal canyons that descend to the west toward the beach and tall coastal bluffs above Black's Beach and Torrey Pines State Beach approximately half a mile away. Much of the low sloping ground surface within the coastal canyons is covered with thick vegetation growth of native coastal sage scrub and grasses, though the near-vertical slopes immediately adjacent to the existing outfall caused by its erosive discharges are sparsely vegetated.

The City conducted a "Biological Technical Report for the Torrey Pines Golf Course Storm Drain Repair Project," dated July 23, 2019. The biological report identified three vegetation communities and three land cover types in the project area: southern willow scrub, scrub oak chaparral, southern maritime chaparral, cliff face, disturbed land, and developed area (i.e. golf course). Special-status plants observed in close proximity to the proposed project include ashy spikemoss, Nuttall's scrub oak, and San Diego barrel cactus. Special-status wildlife observed during the survey include coastal California gnatcatcher and the orange-throated whiptail lizard. Wetlands were mapped along the base of the canyon where runoff flows west down toward the beach. The biological survey noted that the canyon area has the potential to support nests for common avian species.

Upon analyzing the biological technical report and conducting a site visit, the Commission's staff ecologist, Dr. Laurie Koteen, determined that the canyon and vegetation within it is environmentally sensitive habitat area (ESHA). In her September 16, 2020 memorandum ([Exhibit 6](#)), Dr. Koteen describes that the special status plant species identified by the biological survey are species of limited distribution throughout the broader area in California or are rare in their range and declining in numbers. Relatedly, the California gnat catcher is federally listed as threatened while the orange-throated whiptail is on the state's watch list for species of special concern. Dr. Koteen's memorandum continues that while they were not observed during the biological survey, other special status species that have a moderate likelihood to reside on site due to habitat suitability are the Southern California legless lizard and the Coast horned lizard. Also on site are a number of sensitive habitat types including southern willow scrub, scrub oak chaparral, and southern maritime chaparral. The latter two vegetation communities are classified as Tier 1 communities based on their rarity and ecological importance.

Project Impacts to Sensitive Habitat

Construction of the proposed pipe and outfall would require excavating and grading approximately 0.42-acre of land, the majority being within the golf course but approximately 0.09 acre located in the coastal canyon area consisting mostly of southern maritime chaparral. The vegetation will be impacted by the excavation and grading necessary to construct the new pipe and outfall at the desired elevation and alignment. While the new 42-inch pipe will be below grade and the majority of the 0.09-acre impacted area in the canyon will be refilled with soil, graded, and revegetated after construction is complete, the outfall and its related headwall and rip rap energy dissipator will be permanent at-grade features on the canyon wall, occupying approximately 300 square feet.

In addition to the impacts associated with construction of the proposed outfall, the Commission has generally discouraged the construction of new outfalls on canyons and beaches because of potential impacts to water quality (discussed below in Section D. Marine Resources and Water Quality) and habitat. In a September 30, 2019 letter to the City, the California Department of Parks and Recreation (State Parks) commented on the adverse effects that runoff from the developed properties atop the coastal plateau are having on the canyons and beaches of the Torrey Pines State Natural Reserve west of the golf course. Specifically, the subject outfall and other storm water outfalls that the City maintains in the area have, according to State Parks, increased erosion rates and deposition of eroded material within the coastal canyons and Torrey Pines State Beach, altering the natural drainages over time and encouraged the growth of invasive non-native species because eroded sediment provides good recruitment sites for invasive upland species (such as pampas grass).

Thus, the proposed project would impact ESHA, inconsistent with Section 30240. Furthermore, Section 30240 only allows resource-dependent uses and development in ESHA, and a drainage pipe and rip rap do not constitute such an allowable use in ESHA. Therefore, the City reviewed a range of alternatives to determine if there are feasible alternatives that would avoid impacts to or development in ESHA.

Alternatives Analysis

Because of the presence of ESHA and the proposed project's encroachment into it, Commission staff worked with the City to analyze approximately a dozen alternative projects that could potentially negate the need for a new outfall. The alternatives generally fell under the categories of ceasing discharges from the existing outfall or conducting improvements to the existing outfall.

Because the least impactful option to the canyon would be to cease the discharge of runoff into the canyon altogether, the City analyzed alternatives that directed runoff back to North Torrey Pines Road or utilized basins to allow water to infiltrate into the soil. Regarding redirection of the runoff, due to the approximately 45-foot elevation difference between the existing outfall and North Torrey Pines Road approximately 1,000 feet to the east, pumping a 100-year storm's worth of runoff would require at least five 550 horsepower pumps to convey the water uphill to North Torrey Pines Road and then further uphill south along the road to the nearest inlet served by a separate outfall. Pumping the runoff up to North Torrey Pines Road and letting it flow downhill to an inlet system further away to the north would require fewer pumps, but still be sizeable in scale. In either scenario, the two neighboring outfalls to the north and south are both located in adjacent open space and are 18 inches and 36 inches in diameter, respectively, so the redirection of an additional 38-acres of runoff during a 100-year storm would overwhelm either outfall, requiring their replacement as well and introducing the same issues being addressed in the current project.

Regarding capturing the runoff in an infiltration basin, geological analysis of the soil underlying the greater project area found a very high clay content, indicating that infiltration rates would be a very low 0.05-0.1-inches per hour. As such, an infiltration basin that could accommodate a 100-year storm would need to be at least 45,000

square feet and occupy a sizeable portion of the adjacent municipal golf course, the scope of which was deemed to be infeasible.

Because infiltration is not feasible and much of the erosion caused by the existing outfall is due to the velocity of its discharge, Commission water quality staff suggested an alternative project whereby a below grade vault is constructed to hold runoff during a storm event and then subsequently pump it out to the existing outfall at much lower velocity once the storm even has passed. The City's analysis determined that constructing a vault to hold a 100-year storm event would require approximately 532 vaults units measuring 16 feet by 8 feet, and while it could be feasibly located under the golf course parking lot, it would still require pumps to capture runoff from a few street inlets lower in elevation. The resulting project would cost approximately forty million dollars and was not deemed by the City to be financially feasible. The Commission's engineering and water quality specialists have reviewed the City's analysis and agree that redirecting, slowing, or reducing the amount of water draining to this outfall is not feasible.

Given that the existing amount of drainage must be accommodated in the general location of the existing outfall, the City analyzed whether or not the existing outfall could be repaired or expanded in place, in order to avoid the impacts associated with constructing a new outfall. Because much of the erosion and undermining arising from the existing outfall are due in part to its elevation approximately 25 feet above the canyon floor, alternatives that involve repairs to the outfall require some form of extension of the pipe down into the canyon. Regardless of design, extending the pipe would result in unavoidable impacts to the canyon floor and wetlands within, either through occupation of the wetland by the pipe itself or, in the case of elevated extensions, by pier supports below the extended pipe. Due to the existing canyon-floor depression formed by the outfall and the need to avoid further erosion, all extensions of the pipe would require the grading of the canyon floor to achieve an even grade and would also involve placement of a rip rap energy dissipator at the mouth of the extended pipe, further permanently occupying wetland area. Finally, according to the City, due to the narrow confines of the location of the existing outfall, and the sheer verticality of the eroded cliff walls, any work on the existing pipe would require grading an access path down a more gradual canyon wall to the west as well as placement of bracing structures along the canyon walls while work was ongoing. Thus, repair and expansion of the existing outfall would result in more significant impacts to habitat than the proposed project.

Finally, because no primary structures nor any golf holes are in immediate or near danger (other than the outfall itself), a "no project" alternative was analyzed. In such a scenario, even with a worst-case erosion rate of 0.8-feet a year, it would take several years before the nearest golf hole was at risk, at which time it would be feasible to simply reconfigure it. However, the "no project" alternative would itself result in ongoing undermining of the existing outfall and further impacts to ESHA during those years, as described below.

Existing Project Impacts to Sensitive Habitat

As described above, while the proposed project would have direct temporary and permanent impacts to ESHA, it is important to understand the context in which the existing drainage pipe functions. The coastal canyon conveys both natural and artificially directed runoff during periodic rain events. Outside of storm events, there is little to no flow down its length except for minimal amounts of dry weather runoff discharging from the outfall. However, during storm events, the rate of runoff flow down the existing storm water system can reach up to 118 cfs during a 100-year storm. Due to the large 38-acre drainage basin served by the existing 18-inch pipe, discharges from the outfall can resemble a fire hose, with the arc of the discharge hitting the canyon floor up to sixty feet away. The discharges impact the canyon floor, carving out a depression over the years and pooling water within it, undermining the adjacent canyon walls until such time as sections of the wall slough off in block falls into the canyon bottom, leaving near-vertical slopes as a result and causing portions of the outfall and fences along the canyon rim to fall in over the years.

In addition to the on-going effects on the landform of the canyon and the native vegetation along the canyon bottom in the vicinity of the existing outfall, the biological technical report identified wetlands in excess of what would typically be expected from natural flows within the canyon, and surmised that the above-average wetland presence was a direct result of the large volume of artificially directed runoff exiting the outfall and pooling within the depression carved out by the high velocity discharge from the existing under-sized pipe. The pooling and above-natural runoff volume have led to a stand of southern willow scrub, dominated by arroyo willow, to become established along the canyon bottom. While willow scrub is a native wetland species, the natural volume of runoff in the coastal canyon would not typically support the establishment of such a stand in this location. The expanded wetlands and willow scrub have displaced what would otherwise be the natural upland vegetation, such as southern maritime chaparral. This artificially caused habitat conversion and the loss of vegetation on the eroded near-vertical canyon walls are adverse impacts the existing outfall is having on the ESHA in the canyon.

Thus, given these ongoing impacts to ESHA, after review of the proposed project, the Commission's ecologist determined that on balance, the proposed project is expected to be an improvement over the existing conditions in several ways. The proposed siting of the new outfall would be on an existing canyon slope, rather than elevated in midair like the current eroded outfall, to remove the gravity-assisted acceleration that the existing discharge experiences. The proposed outfall's location, in addition to allowing for the placement of a rip rap energy dissipator, will be lower down in elevation to allow for placement in the denser old paralic deposits and Scripps Formation, which are more resistant to erosion (as discussed further in Section C: Geologic Hazards). This means that the canyon wall is not expected to erode to a near-vertical profile devoid of vegetation, as found around the existing outfall. Furthermore, the canyon slope at the proposed location is between 25% and 50% grade, meaning that the discharges, in addition to being slowed by the rip rap energy dissipator, will flow continually down slope in the natural canyon drainage, rather than pooling as they do now on the canyon

floor under the existing outfall. With the continuous flow and lack of pooling, there is not expected to be the habitat transformation that is currently displacing upland habitat in the vicinity of the existing outfall.

The existing outfall configuration has created southern willow scrub wetland habitat though the concentration of artificially directed runoff into the canyon channel below that has grown over time and displaced natural upland vegetation. Once the existing drainage is abandoned and runoff directed to the new outfall further down the canyon, the water supply to the willow scrub stand will be substantially reduced, impacting it. As a result, over time the willow scrub community will contract. However, due to the established nature of the willow scrub stand, the amount of contraction and period over which it will occur cannot be readily predicted. Because the wetland vegetation is expected to contract gradually and be replaced with the naturally occurring chaparral upland vegetation over the subsequent years and decades, it is not viewed at this time as an impact requiring mitigation.

Nevertheless, the project will still impact approximately 0.09 acre of canyon space through trenching, grading, and construction of the outfall. Because the canyon has been documented to contain ESHA vegetation and serve as habitat for special status wildlife, it is important that the proposed project's footprint in the canyon is limited to the smallest extent feasible. Thus, **Special Condition No. 1** requires the City to submit final construction plans that delineate the final footprint of work to be done. As much work as feasible shall be sited outside of the canyon, including staging and storage plans that locate all preparatory work outside of the canyon. Due to the presence of special status wildlife in the canyon, **Special Condition No. 5** requires the City to conduct biological monitoring leading up to and during the project so that, should any special status species or their nests be sited in proximity to the project, the appropriate measures will be taken to cease or relocate work to an appropriate buffer. **Special Condition No. 6** requires a final mitigation plan from the City that describes how the project site in the canyon will be revegetated to a native state and how appropriate mitigation will be sited, established and monitored to compensate for the unavoidable vegetation impacts.

Conclusion

For the reasons discussed above, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative, will mitigate impacts to habitat, and will have a positive impact on ESHA compared to the existing situation or the "no project" alternative. The proposed project, however, will occur in ESHA and is not a resource dependent use. As a result, the Commission finds that the project is inconsistent with Coastal Act Section 30240. As a result, as discussed below in Section F: Conflict Resolution, the Commission may approve the project via the "conflict resolution" provision contained in Section 30007.5.

C. Geologic Hazards

Section 30253 of the Coastal Act states, in relevant part:

New development shall do all of the following:

- a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

[...]

The overall canyon topography is incised by numerous much smaller drainage features which drain surface runoff from the golf course across and into the main canyon. Slopes within the canyon range from approximately 6:1 (horizontal to vertical) to near vertical. The near vertical slopes around the existing outfall are approximately 30 feet in height. Existing surface topography across the project site above the canyon is generally level between approximate elevations of 360-365 feet above MSL. The canyon floor under the existing outfall is at approximately 330 feet MSL and gradually slopes down as it proceeds west to the public beach approximately 2,400 feet away. The new 42-inch concrete pipe will branch off from an existing cleanout at 360 feet MSL and proceed northwest, paralleling the north rim of the coastal canyon as it slopes down, with the new outfall located further down the coastal canyon at approximately 300 feet MSL

The City conducted a Report of Geotechnical Investigation dated May 1, 2019, with an addendum dated July 25, 2019. Based on the subsurface investigation, shallow fill materials were likely placed during development of the golf course before passage of the Coastal Act and are underlain by very old paralic deposits. Scripps Formation was also observed at the exposed surfaces of the canyon sidewalls directly below the very old paralic deposits, at approximately 25 feet below the canyon edge. The canyon bottom is covered with an accumulation of loose alluvial/talus materials, built up from material shed from the canyon walls.

The geotechnical investigation found that the potential risk for landslides and slope instability is nominal on the level terrain of the golf course area and low-to-moderate in the canyon slope area of the proposed outfall. Seismically-induced liquefaction and seismic settlement potential are low due to the dense nature of the very old paralic deposits and underlying Scripps Formation.

In the area of the existing outfall, the geological stability is greatly impacted. Discharges from the outfall approximately 25-feet above the canyon floor have created a depression 5-10 feet deep and approximately 60 feet long along the canyon floor below the outfall. The geotechnical investigation addendum noted that abandonment of the existing outfall will arrest the stormwater-induced erosion caused by the concentrated outflow of the undersized pipe and reduce erosion effects on slopes in adjacent areas along the perimeter of the canyon. However, due to all the past erosion, the canyon walls surrounding the existing outfall are marginally stable in their current over-steepened

inclination and height, and subject to continued natural block failures even after the outfall is abandoned as the canyon walls gradually revert to a more natural, stable slope. Furthermore, erosion is also active along the flanking canyon slopes, which is attributed to surface water runoff over the slope edge and down the sidewalls, which in turn is concentrated along several drainage pathways, resulting in the cutting of gully features. Prolonged downcutting between adjacent gullies result in the formation of isolated column features that become unstable and eventually fail by slumping or rotating outward. Numerous blocks from previously failed columns are present along the toe of these steep slopes. This upper portion of the canyon is in an unstable condition and various size failures will continue to occur. These failures will range from small slumps and blocks spalling off of the sidewalls to larger failures of column blocks. However, the rate of erosion will be greatly reduced once the primary cause, the existing outfall, is abandoned.

The geotechnical investigation addendum found that erosion downcutting below the proposed new outfall would be minimal due to the siting of the outfall in the Scripps Formation material and installation of a rip rap energy dissipator, though some erosion over the years of its operating life would still occur. Likewise, the necessary excavation to install the currently proposed extension and realignment of the storm drain would be unlikely to increase the instability of the canyon slopes, due to the presence of the dense old paralic and Scripps Formation under the golf course fill and along the canyon walls, though the depth of the excavations will require temporary shoring of the trenches during the project.

The Commission's staff geologist, Dr. Joseph Street, has reviewed the proposed project and related geotechnical investigation, and agrees that the existing outfall is the primary cause of the deepening and steepening of that portion of the coastal canyon and the continued lateral erosion toward the golf course. Continued discharges from the existing outfall will continue to erode the canyon base, increasing the susceptibility to block failures and preventing the canyon walls from natural restoring to a more gradual, stable slope.

In studying the alternatives that the City and Commission staff identified for analysis, Dr. Street concluded that the proposed outfall would reduce the rate or extent of erosion compared to retaining the existing outfall in place. In addition, construction of the proposed project is not expected to result in any significant geologic instability. However, while the existing outfall is the primary cause of the erosion of the canyon walls and, Dr. Street believes the canyon walls at the site of the existing outfall will still continue to erode after abandonment due to the vertical grade they currently exhibit, as well as erosion arising from non-point source sheet runoff flowing from the golf course over the canyon edge. The walls would eventually achieve a more natural, stable slope, likely in the range of 30%-40% grade.

Because the proposed project will occur in a natural drainage feature that has already experienced substantial erosion, **Special Condition No. 4** requires the City to assume the risk of constructing development in the coastal canyon and its related exposure to

erosive forces. Thus, as conditioned, the proposed development can be found in conformance with Chapter 3 of the Coastal Act.

D. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act 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 minimize alteration of natural streams.

As discussed above, there are no feasible alternatives that would allow sufficient runoff to be either diverted from the existing outlet entirely, or temporarily captured and released slowly into the pipe at the existing location, thereby allowing the existing pipe to remain and be repaired in place. Thus, it is important to evaluate impacts associated with storm water flows at the proposed new outfall location. As with most municipal storm water systems, the existing storm water system captures runoff from its thirty-eight-acre drainage basin along North Torrey Pines Road and conveys it mostly untreated into the coastal canyon. The conveyance of untreated runoff introduces pollutants and particulates into coastal waters that negatively impact water quality and the subsequent ability of the public and wildlife to utilize those waters. The Commission has strongly discouraged the construction of new outfalls that divert water to the beach in order to protect and restore water quality. Thus, analyzing the existing outfall and proposals to repair and improve it, Commission staff and the City looked at the existing storm water situation and the feasibility of diverting runoff before it enters the canyon.

Apart from the parking lot and area around the clubhouse, the Torrey Pines Municipal Golf Course has its own drainage system for its fairways that was installed in 2016. However, the drainage system only collects runoff from the putting greens and sand bunkers. Runoff collected in the greens and bunkers are directed to sump pumps located throughout the golf course. These sumps are not connected to any storm drain outfalls along the coastal canyons, and do not contribute to the subject outlet. The golf

course's sumps are approximately ten feet by ten feet, and runoff not collected in them generally surface flow to the west into the coastal canyons.

Separate from the golf course itself, the 38-acre drainage basin served by the subject outfall system is surrounded by four other drainage basins along North Torrey Pines Road of various size and outfall location, ranging from 9.4 acres to 71 acres. Due to the coastal plateau that North Torrey Pines Road bisects, these other basins either drain down the coastal canyons to the west as well, or down canyons to the east into Soledad Creek and Peñasquitos Lagoon. These basins are served by concrete pipes that range in size from 18 to 36 inches, and City analysis has shown that diverting runoff from the subject drainage basin into these neighboring basins would require the installation of several powerful sumps pumps due to elevation changes and would ultimately overwhelm those outfalls during storm events.

As discussed in detail above in Section B: Biological Resources, diverting runoff into an infiltration basin was not deemed feasible due to the very high silty sandstone content having an infiltration rate of just .1-inch an hour, resulting in a very large basin being required to handle a 100-year storm. A below grade vault to hold runoff during a storm event and then subsequently pump it out to the existing outfall at much lower velocity once the storm even has passed was not feasible due to a vault designed to hold a 100-year storm event requiring approximately 532 vaults units measuring 16 feet by 8 feet, and potentially still requiring pumps to capture runoff from a few street inlets lower in elevation, in addition to costing tens of millions of dollars.

The City also looked at capturing and infiltrating runoff upstream of the system, before it enters the pipe system. However, a substantial portion of the 38-acre drainage basin served by the existing outfall is composed of private properties, such as hotels and medical facilities. Without an application for improvements from those property owners, the ability of the City to require or construct storm water improvements on those properties is very limited and currently infeasible. However, given the substantial impacts such a large volume of runoff has had on the canyon, future applications for improvements at those upstream properties will present opportunities for the City to require storm water improvements that should be capitalized upon.

As noted, there is no feasible way to either divert or slow runoff such that the existing pipe could either remain in place and avoid the impacts associated with the construction of the proposed project, while reducing the impacts of outflow at the existing location. There are also no treatment options that would improve the quality of the outflow. The City's proposed outfall is the only feasible alternative regarding water quality. However, the placement of the new outfall lower down in the canyon within the denser paralic deposits and Scripps Formation will be more resistant to erosion. Coupled with the lower discharge velocity due to the wider pipe and rip rap energy dissipator, there will be less erosion and resultant sediment transport compared to the existing outfall. While sediment from the outflow typically does not reach the ocean in this location, nevertheless, reducing erosion and sediment is a minor improvement to water quality.

Because the work will occur in a coastal canyon adjacent to the ocean, there is the potential for the construction activity during installation of the new outfall and

abandonment of the existing outfall to introduce pollutants that may reach the ocean. **Special Condition No. 3** requires the City to submit approved construction BMP plans that demonstrate how water quality will be protected from site runoff and debris during all stages of construction. Because the proposed outfall will be sited within the coastal canyon for an extended period of time and process sizeable volumes of runoff, **Special Condition No. 4** requires the City to submit post-construction BMP plans demonstrating how the project will avoid exacerbating erosion in the manner the current outfall does so as to prevent segments of the infrastructure from falling into the canyon or undermining the adjacent canyon slopes. Finally, because the new outfall extension will be below grade and necessitate extensive trenching, **Special Condition No. 8** requires that the City dispose of any excess grading spoils in a legal site outside of the coastal zone. Thus, as conditioned, the proposed development can be found in conformance with Chapter 3 of the Coastal Act.

E. Cultural and Historical Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The City conducted a Cultural Resources Inventory Report dated July 2019 that that evaluated historical records, literature review, and archaeological surveys. No evidence of cultural resources was encountered during the surveys, but due to the presence of recorded cultural resources within the golf course and the limits inherent in initial surveys, the potential exists that subsurface buried cultural deposits may be present at the project site. Based on this potential to uncover Native American cultural resources, the City, in its Mitigated Negative Declaration for the project, devised a mitigation, monitoring, and reporting program. If unknown cultural resources are encountered during development, the on-site resource monitor will be authorized to temporarily divert ground disturbance in the area until the resource is identified and addressed properly.

A 2014 Historical Resources Technical Report for the Torrey Pines Golf Course concluded that the North Course segment of the facility is eligible for the California Register of Historical Resources designation. While the North Course has not subsequently been officially designated on the register, it is important to note that the development consists of constructing and repairing below grade development consisting of the storm water system. Once the construction is complete, the development will be reburied below the golf course and restored to its pre-construction state of grass play area and paved paths. Therefore, the project will not impact any historical resources.

Thus, because the potential exists for paleontological resources to be found in the vicinity of the project area, **Special Condition No. 7** requires the City to adhere to the Mitigation, Monitoring, and Reporting Program as described in their Mitigated Negative Declaration and the recommendations of the cultural resources survey during the course of the project to ensure all uncovered resources are properly handled and

preserved. Thus, as conditioned, the proposed development can be found consistent with Chapter 3 of the Coastal Act.

F. Conflict Resolution

Section 30200(b) of the Coastal Act states:

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

Section 30007.5 of the Coastal Act provides for the Commission to resolve conflicts between Coastal Act policies as follows:

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

As discussed in Section B: Biological Resources, above, the proposed project is inconsistent with Section 30240 of the Coastal Act because the new stormwater outfall would be sited within upland ESHA, and the project is not a resource-dependent use of the ESHA. However, if the Commission denied the development, the existing stormwater outfall would remain in place, continuing to significantly impacts to coastal resources, specifically that same ESHA, and thus to inconsistency with Coastal Act policies protecting these resources (Section 30240). In such a situation, when a proposed project is inconsistent with a Chapter 3 policy and denial or modification of the project would be also be inconsistent with other Chapter 3 policies, Section 30007.5 of the Coastal Act provides for resolution of such a policy conflict in a manner that is most protective of coastal resources.

Applying Section 30007.5

The standard of review for the Commission's decision on a coastal development permit in the Commission's retained jurisdiction is whether the proposed project is consistent with the Chapter 3 policies of the Coastal Act. In general, a proposal must be consistent with all relevant policies in order to be approved. If a proposal is inconsistent with one or more policies, it must normally be denied or conditioned to make it consistent with all relevant policies.

However, the Legislature recognized through Sections 30007.5 and 30200(b) that conflicts can occur among those policies. It therefore declared that when the

Commission identifies a conflict among the policies of Chapter 3, the conflict is to be resolved “in a manner which on balance is the most protective of significant coastal resources,” pursuant to Coastal Act Section 30007.5.

The Commission has traditionally resolved conflicts via Section 30007.5 by analyzing the project according to the following seven steps, each of which is explained in greater detail below:

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

1) The project, as proposed, is inconsistent with at least one Chapter 3 policy.

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.*

For the Commission to apply Section 30007.5, a proposed project must be inconsistent with an applicable Chapter 3 policy. As discussed in Section B: Biological Resources, above, because the proposed stormwater outfall and its related headwall and rip rap energy dissipator would be sited within an upland scrub ecosystem supporting several rare and sensitive plant and wildlife species, the project is located with an environmentally sensitive habitat area but is not consistent with the “allowable use” test of Section 30240(a) of the Coastal Act, which requires that “... only uses dependent on those resources shall be allowed within ... [environmentally sensitive habitat] areas.”

Therefore, proposed project is inconsistent with the policy in Section 30240 that limits uses in ESHA.

2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources.

However, denial would create a conflict with the other policy in 30240(a) that ESHAs “shall be protected against any significant disruption of habitat values.” The current placement of the outfall is causing the surrounding ESHA to deteriorate.

A conflict between Chapter 3 policies results from a proposed project which is inconsistent with one or more policies, and for which denial or modification of the project would be inconsistent with at least one other Chapter 3 policy. Further, the policy inconsistency that would be caused by denial or modification must be with a policy that affirmatively mandates protection or enhancement of certain coastal resources. If the Commission were to deny this proposed project, the existing undersized outfall would remain in place. Over time, the discharge from the outfall would further erode the canyon bottom, undermine the near-vertical canyon walls, and alter the composition of the adjacent ESHA habitat from its natural state. Therefore, denial of the outfall replacement project would be inconsistent with Section 30240, which requires, in part, that environmentally sensitive habitat areas “shall be protected against any significant disruption of habitat values” *[emphasis added]*. In most cases, denying a proposed project will not cause adverse effects on coastal resources for which the Coastal Act mandates protection or enhancement, but will simply maintain the status quo. Where denial of a project would result in such effects, as with the proposed project because excessive discharge would significantly adversely affect ESHA, a conflict between or among two or more Coastal Act policies is presented.

3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement.

For denial of a project to be inconsistent with a Chapter 3 policy, the proposed project would have to protect or enhance the resource values for which the applicable Coastal Act policy includes an affirmative mandate. That is, if denial of a project would conflict with an affirmatively mandated Coastal Act policy, approval of the project would have to conform to that policy. If the Commission were to interpret this conflict resolution provision otherwise, then any proposal, no matter how inconsistent with Chapter 3, that offered a slight incremental improvement over existing conditions could result in a conflict that would allow the use of Section 30007.5. The Commission concludes that the conflict resolution provisions were not intended to apply to such minor incremental improvements.

As discussed previously in Section B: Biological Resources, the proposed project is designed to abandon a decades-old, under-capacity outfall and replace it with a new outfall of updated design to address the erosive impacts of discharge. As conditioned by **Special Conditions Nos. 1-8**, the proposed project would protect against significant

disruption of habitat values within its area of ESHA and is therefore fully consistent with the provisions of 30240 that affirmatively mandate the protection of ESHA.

4) The project, if approved, would result in tangible resource enhancement over existing conditions.

This aspect of the conflict between policies may be looked at from two perspectives – either approval of the project would result in improved conditions for a coastal resource subject to an affirmative mandate, or denial or modification of the project would result in the degradation of that resource.

Approval of the proposed project would result in the abandonment of a poorly designed outfall that has been documented to be caused the degradation of nearby sensitive habitats and any sensitive species dependent upon these habitats, in violation of the Coastal Act's ESHA policies.

Denial of the proposed project would result in the outfall being left in its current condition indefinitely. The existing pipelines is over 60 years old, and at some point in the future, the continuous erosion will cause additional block falls within the canyon and expose more of the concrete pipe, causing further portions to fall into the canyon. Given the age of the outfall and the difficulty of maintenance due to elevation and current condition of the canyon walls, there is some risk of failure that will only increase in the future. All the while, the near vertical canyon walls will not be able to naturally restore to more gradual slopes capable of supporting vegetation, and the canyon bottom will continue to accumulate water and displace upland habitat with wetland vegetation. These consequences of leaving the outfall in place would be inconsistent with Coastal Act policies established to protect sensitive habitat areas. If approved, these risks would be avoided and ESHA would be protected, as affirmatively required by the Coastal Act. Therefore, approval of the project results in resource enhancements over existing conditions.

5) The benefits of the project are not independently required by some other body of law.

The benefits that would cause denial of the project to be inconsistent with a Chapter 3 policy cannot be those that the project proponent is already being required to provide pursuant to another agency's directive under another body of law. In other words, if the benefits would be provided regardless of the Commission's action on the proposed project, the project proponent cannot seek approval of an otherwise non-approvable project on the basis that the project would produce those benefits. In essence, the project proponent does not get credit for resource enhancements that it is already being compelled to provide. In this case, the benefits of the project would not be provided in the absence of the Commission's approval of this project. The project is not being mandated by any other regulatory body, nor is it required under any other body of law. Thus, this test is also met because the benefits of the project to ESHA would not be provided if the Commission were to deny the proposed project.

6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to “create a conflict.”

A project’s benefits to coastal resources must be integral to the project purpose. If a project is inconsistent with a Chapter 3 policy, and the main elements of the project do not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the project proponent cannot “create a conflict” by adding to the project an independent component to remedy the resource degradation. The benefits of a project must be inherent in the purpose of the project. If this provision were otherwise, project proponents could regularly “create conflicts” and then request that the Commission use Section 30007.5 to approve otherwise non-approvable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and easily manipulated process and were not designed to barter amenities in exchange for project approval.

The purpose of the proposed project is to allow for the permanent abandonment of the existing outfall and installation of a new outfall of superior design to handle runoff in a manner that would eliminate present and future risks to geological safety and of environmental degradation. The benefits of the project result directly from the main purpose, and not from any ancillary component.

7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

Finally, a project does not present a conflict among Chapter 3 policies if at least one feasible alternative would meet the project’s objectives without violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all of the relevant Chapter 3 policies, then the proposed project does not create a true conflict among those policies.

The objective of the proposed project, as noted above, is to abandon the existing outfall and replace it with a better sited and designed outfall to address the erosion and habitat impacts currently occurring. Accordingly, the “no action” alternative would not achieve the project objectives. As discussed in greater detail in Section B: Biological Resources, above, the City evaluated several alternative project designs that would repair the existing outfall or capture runoff further upstream. However, in all cases, the alternative project designs were infeasible due to practical reasons, such as the high clay content of the soil impeding infiltration, or financial reasons, such as the high cost of numerous commercial-scale generators that would be required to redirect 38 acres worth of runoff elsewhere.

Existence of a Conflict Between Chapter 3 Policies

Based on the above, the Commission finds that the proposed project presents a conflict between the two policies of Section 30240, that is, the allowed uses within ESHA and

the mandated protection of ESHA, must be resolved through application of Section 30007.5, as described below.

Conflict Resolution

After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is on balance most protective of coastal resources. In this case, the proposed project would result in a non-resource dependent use occurring within an environmentally sensitive habitat area, thus making it inconsistent with the allowable use policy of Coastal Act Section 30240. However, denying the project because of its inconsistency with this policy would result in significant adverse effects to ESHA due to the continued erosion and habitat transformation from the existing outfall, and would thus be inconsistent with the affirmative policies of Section 30240 to protect and maintain these resources. With the inclusion of **Special Conditions Nos. 1-8** to avoid and minimize the proposed project's potential impacts on coastal resources, as described in previous sections, the Commission finds that the impacts on coastal resources from not carrying out the project would be more significant and adverse than impacts stemming from the project's location within ESHA, which would be addressed by the special conditions. The Commission therefore concludes that the project would, on balance, be most protective of significant coastal resources, consistent with Coastal Act Section 30007.5. As such, it is consistent with Chapter 3, and the Commission therefore approves the coastal development permit, as conditioned.

G. 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 Commission has certified a LUP for the University Community planning area of the North City LCP segment, and the City of San Diego has assumed coastal development permit authority for most of the community. However, the Torrey Pines Golf Course and adjacent coastal canyons are an area of deferred certification. The LUP identifies the golf course and adjacent canyons as public "open space," with the canyons further identified as a "resource-based park" and the golf course identified as "golf course." In the Implementation Plan, both the coastal canyons and the golf course are zoned as OP-1-1, which allows for developed, active parks. The proposed development is consistent with the certified LUP, and, as conditioned, has been found consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the project will not prejudice the ability of the City of San Diego to continue implementation of or make amendments to their certified LCP.

H. 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 prepared a Mitigated Negative Declaration (MND) dated August 2019 (SCH No. 2019089111) that identified potential substantial adverse impacts to Historical Resources (Archaeological) and Tribal Cultural Resources and a specific mitigation and monitoring plan to reduce the potential significant impacts below significance thresholds requiring the preparation of a full Environmental Impact Report (EIR).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing project design and siting, construction and permanent Best Management Practices, pre-construction biological surveys, and disposal of excess spoils 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. 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Report of Geotechnical Investigation Storm Drain Improvements Torrey Pines Golf Course dated May 1, 2019 by Kleinfelder
- Addendum #1 to Report of Geotechnical Investigation dated July 25, 2019
- Biological Technical Report for the Torrey Pines Golf Course Storm Drain Repair Project dated July 23, 2019 by Alden Environmental, Inc.
- Mitigated Negative Declaration: Torrey Pines Golf Course Storm Drain Repair (SCH No. 2019083111) dated October 17, 2019
- Cultural Inventory Resources Report for the Torrey Pines Golf Course Storm Drain Outfall Repair Project, dated July 2019 by Spindrift Archeological Consulting, LLC