

**CALIFORNIA COASTAL COMMISSION**

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# W30a

Filed: 8/4/2020  
180<sup>th</sup> Day: 1/31/2021  
Staff: A. Llerandi-SD  
Staff Report: 12/18/2020  
Hearing Date: 1/9/2021

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-20-0433

**Applicant:** City of San Diego

**Agent:** Stephanie Bracci

**Location:** 2702 North Mission Bay Dr., Mission Bay Park, San Diego, San Diego County. (APN: 424-460-005; 310-051-06; 311-020-14; -15; -24; -26; -35; -46)

**Project Description:** Clear sediment and vegetation from approximately 1,085 linear feet of earthen storm water channel within the Mission Bay Golf Course; construct an approximately 1.65-acre wetland mitigation site and approximately 30-acre riparian enhancement site within Los Peñasquitos Canyon.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Coastal Commission approve the subject stormwater channel clearing project and two mitigation projects to provide mitigation for the proposed channel clearing and to serve as a mitigation bank for future, yet-to-be permitted City projects. The City of San Diego proposed to clear accumulated sediment and vegetation from the Mission Bay Drive 1 Channel on the Mission Bay Golf Course that is causing storm flows to back up and flood portions of the surrounding streets and properties rather than flowing into Mission Bay. While the Mission Bay Drive 1 Channel is identified within the city-wide Municipal Waterways Maintenance Plan (MWMP) programmatic plan for annual review and maintenance of the City's storm water

infrastructure, the MWMP is currently undergoing separate permit review by the Commission (CDP Appeal No. A-6-SAN-20-0029 and CDP No. 6-20-0356). Due to the pressing need to address the blockage in this channel, the City is seeking authorization for this one-time maintenance action separately from the MWMP.

The proposed channel clearing will directly and permanently impact approximately 0.24 acre of disturbed freshwater marsh and 0.2 acre of natural flood channel requiring mitigation. Applying a 4:1 mitigation ratio to the freshwater marsh and 2:1 ratio to the natural flood channel impacts, the City is required to provide 0.96 acre and 0.4 acre of mitigation, respectively, for a total of 1.36 acres of mitigation. The City proposes to create 0.44 acre of new wetland habitat (to achieve no net loss of wetlands) and enhance 0.92 acres of riparian habitat.

The City proposes two distinct mitigation projects in the Los Peñasquitos Canyon Preserve seven miles to the north to provide mitigation for the habitat impacts arising from the proposed maintenance clearing as well as serving as a mitigation bank for future, yet-to-be permitted City projects. The two mitigation projects are the El Cuervo del Sur Phase II mitigation site (El Cuervo Phase II) and the Los Peñasquitos Canyon Preserve Phase II Enhancement project (Los Peñasquitos Phase II).

At El Cuervo Phase II site, the proposes to create 1.65 acres of new wetland habitat along Los Peñasquitos Creek for a total of, consisting of 1.65-acre wetland habitat creation mitigation credit. After deducting the 0.44 acres of wetland creation mitigation required for the channel clearing project, 1.21 acres of wetland creation mitigation credit would remain for application to future projects.

At Los Peñasquitos Phase II Enhancement site, located along Lopez Canyon Creek, the City proposes to enhance 29.26 acres of creek channel, riparian, and upland habitat through the removal of invasive plant species and the subsequent maintenance of the area free of invasive species, with occasional, focused plantings of native vegetation as needed to encourage natural vegetation recruitment. Because the 29.26-acre site is currently substantially free of invasive vegetation, estimated at 4% (1.17 acres) of total coverage, the City proposes a 30% conversion rate to produce an 8.8-acre enhancement mitigation credit. As proposed by the City, after deducting the 0.92 acres of enhancement mitigation required for the channel clearing project, 7.88 acres of enhancement mitigation credit would remain for application to future projects.

However, the Commission's staff ecologist is unable to support the City's proposed 30% conversion rate for Los Peñasquitos Phase II site. The proposed enhancement site is in very healthy condition, with natural vegetation of high quality and limited presence of invasive species. Additionally, the enhancement site consists substantially of riparian upland habitat and seasonal low-flow channel, and not wetland habitat of the kind that will be permanently impacted by the proposed maintenance clearing. Moreover, attribution of such a high amount of credit for an enhancement project that is "out-of-kind" with regards to the resource being enhanced and in a different watershed than the resources being impacted would be inconsistent with mitigation requirements for wetland impacts elsewhere in the state. While the City's certified LCP does allow greater flexibility in the composition of mitigation than is normally found in other LCPs and the Commission's own policies, the proposed mitigation must still represent a

significant, tangible increase in overall habitat value of the area. Considering the above factors, Dr. Koteen recommends instead that the mitigation value available at Los Peñasquitos Phase II be calculated using a divisor of 12, resulting in the 29.26-acre enhancement site producing 2.44 acres of mitigation credit. Thus, the 0.92 acre of enhancement required to fulfill the City's mitigation requirement for the proposed channel clearing should be deducted from 2.44 acres – not 8.8 acres – leaving a remaining enhancement credit of 1.52 acres available for future city projects.

The key Coastal Act issues that arise are actual or potential adverse impacts to habitat resources, water quality, and public access. Because the maintenance site is located between a popular public golf course and a major public thoroughfare **Special Condition No. 1** requires the City to submit final construction plans and staging and storage plans demonstrating that the maintenance clearing will not encroach beyond the approved project boundaries and interfere with the public's use of the golf course of major roadway. Additionally, both the El Cuervo Phase II and Los Peñasquitos Phase II mitigation sites are located in Los Peñasquitos Canyon Preserve, a popular open space park utilized by hikers, bikers, and equestrian use, so the City must submit final mitigation and monitoring plans that do not interfere or encroach into public trails and usable open space. Both the maintenance clearing and portions of the mitigation sites are located in the flood zone and receive storm runoff, so **Special Condition No. 2** places the City on formal notice of the flood risk inherent in their development and requires them to accept the risk of future flood damage. The proposed channel maintenance clearing using heavy machinery presents the risk of introducing dislodged sediment or leaking vehicle fluids into the downstream bay water, so **Special Condition No. 3** requires the City to submit a final construction best management plan detailing the measures that will be implemented to retain and treat runoff that may occur during the project. While the Mission Bay Drive Channel 1 is located between a developed golf course and major thoroughfare, it has become filled with wetland habitat over time, and is in close proximity to trees that could provide raptor habitat. Thus, **Special Condition No. 4** requires the City to conduct pre-construction habitat monitoring during the bird breed season to properly identify the presence of any nesting activity and implement appropriate buffer measures. Because the maintenance clearing will have unavoidable habitat impacts that will require appropriate mitigation, **Special Condition Nos. 5 and 6** require the City to submit final mitigation and monitoring plans for El Cuervo Phase II and Los Peñasquitos Phase II detailing the how that mitigation will be implemented in Los Peñasquitos Canyon Preserve. The maintenance clearing is expected to remove over 8,000 cubic yards of material from the channel, and **Special Condition No. 7** requires that all material exported from the project site be deposited in a legal site outside of the Coastal Zone. As the proposed development and mitigation require the review of other resource agencies, **Special Condition No. 8** requires that prior to construction, the City provide copies of any other required resource agency approval to ensure there are no contradictory requirements.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-20-0433, as conditioned. The motion is on Page 4. The standard of review is Chapter 3 of the Coastal Act, with the local certified LCP serving as guidance.

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## EXHIBITS

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[Exhibit 7 – Dr. Koteen Biological Memorandum](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 6-20-0433 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, two full-size sets of the following final plans:
  - i. Final project plans that conform with the plans submitted to the Commission, titled "Mission Bay Drive 1 Facility No. 3-02-130," submitted to the Commission on August 4, 2020;
  - ii. Final staging and storage plans that conform with the plans submitted to the Commission, titled "Mission Bay Drive 1 Facility No. 3-02-130," submitted to the Commission on August 4, 2020.
- 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. Assumption of Risk, Waiver of Liability and Indemnity Agreement**

- a) 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; (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.

#### **3. 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 and certified by a licensed professional, that is in substantial conformance with the plan submitted by the City titled "Water Pollution Control Plan for: Mission Bay Drive Channel Maintenance," dated June 5, 2020. 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 stormwater and non-stormwater 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 stormwater 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. 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 stormwater infiltration capacity of the soil;
  - 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;
  - 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.

#### **4. Sensitive Species Monitoring**

**PRIOR TO ANY CONSTRUCTION ACTIVITIES** during bird breeding season (February 15<sup>th</sup> – September 15<sup>th</sup>), a qualified biologist shall conduct a survey within 500 feet of the project site for active nests no more than seventy-two hours prior to any scheduled 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 500 feet of active birds, 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 or 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 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 District office of the California Coastal Commission.

#### **5. Final Wetland Mitigation Plan**

- a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director a Wetland Mitigation Plan to mitigate for all wetland impacts associated with the proposed project. The Plan shall be developed in consultation with California Department of Fish and Wildlife and U.S. Fish and Wildlife Service and at a minimum shall include:
  - i. Detailed final site plans of the mitigation sites that the Executive Director concludes substantially conform with the site plan submitted to the Commission on August 4, 2020 titled “El Cuervo del Sur Phase II Mitigation Site: Conceptual Habitat Mitigation and Monitoring Plan,” dated July 27, 2020, and “Los Peñasquitos Canyon Preserve Phase II Enhancement Project: Habitat Mitigation and Monitoring Plan,” dated July 2020.
    - A. The final plan must delineate all impact areas (on a map that shows elevations, surrounding landforms, etc.), the types of impact (both permanent and temporary), and the exact acreage of each impact so identified;
    - B. The mitigation site shall include both the restoration area and the buffer surrounding the restoration area; and

- C. The final mitigation site plan shall include: existing and proposed hydrologic, soil and vegetative conditions of the mitigation site(s); engineering/grading plans and schedule; erosion control plans and schedule; weeding plans and schedule; planting plans and schedule; short- and long-term irrigation needs; on-going maintenance and management plans; and a monitoring plan consistent with Special Condition No. 6.
- ii. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including as appropriate, a wetland delineation conducted according to the definitions in the certified LCP, a detailed site description and map showing the area and distribution of vegetation types and site topography, and a map showing the distribution and abundance of sensitive species that includes the footprint of the proposed restoration;
  - iii. All wetland impacts shall be mitigated at ratio of 1:1 for temporary impacts, 2:1 for natural flood channels; 3:1 for impacts to riparian habitat, and 4:1 for impacts to freshwater marsh and disturbed wetland. For purposes of this Special Condition, removal of giant reed (*Arundo*) and other invasive and non-native vegetation is not considered an impact to wetlands that requires mitigation;
  - iv. A description of the goals of the restoration plan and any applicable mitigation ratios. The goals should also include, as appropriate, any changes to site topography, hydrology, vegetation types, presence or abundance of sensitive species, and wildlife usage, and any anticipated measures for adaptive management in response to sea level rise or other climatic changes;
  - v. A description of planned site preparation and invasive plant removal;
  - vi. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, methods and timing of plant installation, 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;
  - vii. 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 any problems in the implementation and their resolution, and any recommendations for future adaptive management. The “as built” assessment and report shall be completed by a qualified biologist, who is independent of the installation contractor.
- viii. Provisions for submittal of a wetland delineation of the mitigation site at the end of five years after completion of the initial restoration activities to confirm that the total acreage mitigated is consistent with required amounts.
- b) The permittee shall undertake development in conformance with the approved final plans. Any substantial changes to the plan require a permit amendment from the Commission. More minor changes to restoration plans may be approved in writing by the Executive Director if it is determined by the Executive Director that no amendment is legally required.

## 6. Final Monitoring Plan

- a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director a final detailed Wetland Monitoring Plan designed by a qualified wetland or restoration ecologist for monitoring of the wetland mitigation site that substantially conforms with the monitoring programs submitted to the Commission on August 4<sup>th</sup>, 2020 titled “El Cuervo del Sur Phase II Mitigation Site: Conceptual Habitat Mitigation and Monitoring Plan,” dated July 27, 2020, and “Los Peñasquitos Canyon Preserve Phase II Enhancement Project: Habitat Mitigation and Monitoring Plan,” dated July 2020. The monitoring Plans shall at a minimum include the following:
- i. A plan for interim monitoring and maintenance of any restoration or mitigation site, including monitoring of a pre-approved reference site(s), including:
- A. A schedule of all implementation, maintenance, monitoring, and reporting activities for the approved plan(s) duration;
- B. Interim performance standards
- C. A description of field activities that includes sampling design, number of samples and sampling methods. The number of samples should rely on a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference between the restored site and a reference site(s);

- D. A monitoring period not less than 5 years, with a proposal for a second monitoring period if performance standards are not met in the initial time frame;
- E. Monitoring of changes in sea level rise, sediment dynamics, and the overall health of the wetland to allow for adaptive management, as needed. Include triggers for implementing adaptive management options; and
- F. 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 plan are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.

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 permittee shall submit a revised or supplemental restoration program plan within 90 days of the latest submittal to address those portions of the original program which did not meet the approved success criteria.

- ii. Final Success Criteria for each habitat type, including, as appropriate:
  - A. total species richness;
  - B. total ground cover of all vegetation and of native vegetation;
  - C. vegetative cover of dominant species;
  - D. wildlife usage including types and frequency of wildlife species;
  - E. hydrology, including timing, duration and location of water movement; and
  - F. presence and abundance of sensitive species or other individual “target” species.

- iii. The method by which “success” will be judged, including:
  - A. Type of comparison;
  - B. Identification and description, including photographs, of any high functioning, relatively undisturbed reference sites that will be used;
  - 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. A statement that final monitoring for success will occur after at least three years after which no remediation or maintenance activities take place other than weeding;
- iv. Provisions for submission of a final monitoring report to the Executive Director 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, objectives, and success criteria set forth in the approved final restoration program. The report must address all of the monitoring data collected over the monitoring period. Following the restoration, reports shall be submitted every five years to ensure that the restoration is maintained over the time period of the development.
- v. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved success criteria (performance standards), the applicant shall submit within 90 days of the latest submittal a revised or supplemental restoration program 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 wetland restoration or mitigation plan following all procedures and reporting requirements as outlined for the initial plan until all performance standards and success criteria are met. The revised restoration program, if necessary, 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.

- b) The permittee shall undertake monitoring and other activities listed in the Monitoring Plan in conformance with the approved final plan. Any substantial changes to the plan require a permit amendment from the Commission. More minor changes to restoration plans may be approved in writing by the Executive Director, if it is determined by the Executive Director that no amendment is legally required.

## **7. Disposal of Graded Material**

By acceptance of this permit, the applicant agrees that 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.

## **8. Other Agency Approvals**

**PRIOR TO CONSTRUCTION**, the applicant shall provide to the Executive Director a copy of all permits or letters of permission issued by all other required state or federal agencies (e.g. U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, Army Corps of Engineers, Regional Water Quality Control Board, etc.), or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the other permitting agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director issues a written determination that no amendment is legally required.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Background

#### Project Description

The City of San Diego proposes to remove approximately 8,600 cubic yards of material comprised of 3,070 cubic yards of sediment and 5,525 cubic yards of vegetation, as well as some non-native palm trees from the 1,085-foot long Mission Bay Drive 1 Channel. The 20-foot wide, 6-foot deep earthen storm water channel with 1.5:1 sloped banks is located along the northeastern boundary of the Mission Bay Golf Course where Mission Bay Park borders the community of Pacific Beach ([Exhibit 1](#)). Adjacent existing land uses include the Mission Bay Golf Course to the west and south, and commercial and residential uses across Mission Bay Drive and Grand Avenue to the east and north ([Exhibit 2](#)). The channel receives runoff from a culvert under Grand Avenue to the northwest and conveys flows to a 60-inch wide reinforced concrete pipe at its southern end that subsequently discharges into Mission Bay. Following heavy rains in April 2020 that caused flooding of adjacent road and properties, the City of San Diego identified a significant accumulation of sediment and vegetation within the channel. This blockage is causing storm flows to back up and flood portions of the surrounding streets and properties rather than flowing into Mission Bay.

The proposed maintenance clearing will be conducted over a period of approximately 30 days with a crew of 18-20 workers utilizing a bulldozer within the channel to move sediment and vegetation next to an excavator located outside the channel that will subsequently place the material into waiting dump trucks or temporary stockpiles for disposal at a legal site outside the coastal zone. During the course of the maintenance clearing, standing water will be pumped out, and temporary dry-weather flow diversions berms will be installed across the channel upstream and downstream of the maintenance area, with a mechanical pump capturing incoming flows and directing them through pipes down channel beyond the maintenance site.

In conjunction with the proposed maintenance clearing in Mission Bay, the City proposes two distinct mitigation projects in the Los Peñasquitos Canyon Preserve seven miles to the north to provide mitigation for the habitat impacts arising from the proposed Mission Bay Drive 1 maintenance clearing and serve as a mitigation bank for future, yet-to-be permitted City projects. The two mitigation projects are the El Cuervo del Sur Phase II mitigation site (El Cuervo Phase II) and the Los Peñasquitos Canyon Preserve Phase II enhancement site (Los Peñasquitos Phase II) ([Exhibit 1](#)).

El Cuervo Phase II is a 5-year plan designed to provide 1.65 acres of wetland creation along Los Peñasquitos Creek, consisting of 0.58 acre of herbaceous wetland, 0.93 acre of riparian scrub, and 0.14 acre of riparian scrub transitional habitat ([Exhibit 5](#)). The wetland establishment will consist of grading existing disturbed upland habitat to elevations capable of supporting wetland vegetation and hydrology, installing temporary above-grade irrigation and, container plantings and seed, and removing non-native

vegetation. The City proposes a 1.65-acre wetland habitat creation mitigation credit for El Cuervo Phase II for application to this and future projects.

Los Peñasquitos Phase II is a 5-year plan covering 32 acres along a mile-long segment of Lopez Canyon Creek, a tributary of Los Peñasquitos Creek ([Exhibit 6](#)). Once San Diego Gas & Electric and city sewer easement acreage is deducted from the 32 acres, Los Peñasquitos Phase II will enhance 29.26 acres of creek channel, riparian, and upland habitat through the removal of invasive plant species and the subsequent maintenance of the area free of invasive species in perpetuity, with occasional, focused plantings of native vegetation as needed to encourage natural vegetation recruitment. Because the 29.26-acre site is currently substantially free of invasive vegetation, estimated at 4% (1.17 acres) of total coverage, the City proposes a 30% conversion rate to produce an 8.8-acre enhancement mitigation credit for application to this and future projects.

Both the channel maintenance clearing site and the two mitigation sites are within areas of deferred certification, where the Chapter 3 policies of the Coastal Act are the standard of review, with the City's certified LCP used as guidance.

### Background

In November 2012, on de novo review, the Commission approved a Master Storm Water Maintenance Program (Master Maintenance Permit or MMP for short) for annual repair and maintenance of storm water infrastructure located in specific coastal areas (CDP No. A-6-NOC-11-086). The approved program detailed the scope of maintenance work, water quality best management practices, the maximum potential habitat impacts and related mitigation ratios, and identified specific mitigation sites and plans with the coastal zone. Under the MMP, the City prioritized the storm water facilities to repair or maintain for the next fiscal year, identified the necessary maintenance measures to restore adequate flood capacity in the least impactful manner, performed resource surveys to identify avoidable impacts, and identified how the impacts would be mitigation under the approved mitigation plans. The City then compiled Individual Maintenance Plans (IMPs) and submitted a Substantial Conformance Review package to Commission staff to demonstrate how the IMPs conformed to the MMP and how any unavoidable impacts were mitigated under the approved mitigation plans. Commission staff would then provide the City with a letter confirming that year's IMPs' conformance with the MMP and authorization to proceed with maintenance. Separately, the City also submitted quarterly and annual monitoring reports tracking the mitigation sites' progress vis-à-vis approved success criteria. The MMP expired in November 2019, and each individual storm water maintenance project now requires its own separate permit review.

The City recently drafted the Municipal Waterways Maintenance Plan (MWMP) as a successor city-wide master permit to the 2012 MMP, regulating the annual repair and maintenance of an expanded number of storm water facilities compared to the previous permit. Whereas the Mission Bay Drive 1 Channel was not included in the 2012 MMP, it is one of the new storm water segments that is included under the MWMP. Like the

2012 MMP, the MWMP establishes annual prioritization of maintenance of storm water channels and facilities city-wide for the subsequent fiscal year, and generally describes the various maintenance measures and implementation methodologies to select from, the protocols taken to identify any sensitive resources present within the channels, how to minimize impacts from the maintenance, and the general categories of mitigation for unavoidable impacts. The MWMP requires the creation of project-specific Facility Maintenance Plans for each distinct channel or facility to be maintained for the following fiscal year.

However, the City's local approval of the MWMP for the storm water segments under its jurisdiction was appealed by the Commission in 2020 (CDP Appeal No. A-6-SAN-20-0029) due to issues regarding permit duration, substantial conformance review, the absence of formal habitat mitigation plans, and inadequate habitat mitigation ratios. The Commission found Substantial Issue with the MWMP at the September 2020 hearing. Relatedly, because a portion of the city's storm water system, including Mission Bay Drive Channel 1, is in the Commission's jurisdiction area of Coastal Zone, the City also submitted a separate permit application to the Commission in July 2020 to apply the MWMP to those storm water facilities (CDP No. 6-20-0356). Both the de novo permit and CDP application for the MWMP are being reviewed by Commission staff and currently pending a future hearing.

Because of the previous flooding event in April 2020 and the possibility that a heavy storm event could cause further flooding before the MWMP is processed and voted on by the Commission, the City decided to apply for a specific one-time round of maintenance clearing under this separate permit application, with future maintenance actions governed by the MWMP, should it be approved by the Commission.

## **B. Biological Resources**

Section 30233 of the Coastal act states, in relevant part:

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

[...]

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

[...]

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

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.

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

#### Section 113.0103 Definitions

[...]

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

(a) Lands that have been included in the City of San Diego Multiple Species Conservation Program Preserve;

(b) Wetlands;

(c) Lands outside the MHPA that contain Tier I Habitats, Tier II Habitats, Tiers IIIA Habitats, or Tier IIIB Habitats;

(d) Lands supporting species or subspecies listed as rare, endangered, or threatened under Section 670.2 or 670.5, Title 14, California Code of Regulation, or the Federal Endangered Species Act, Title 50, Code of Federal Regulations, Section 17.11 or 17.12, or candidate species under the California Code of Regulations;

(e) Lands containing habitats with Narrow Endemic Species as listed in the Biology Guidelines in the Land Development manual;

(f) Lands containing habitats of covered species as listed in the Biology Guidelines in the Land Development Manual.

#### Section 143.0130 - Uses Allowed Within Environmentally Sensitive Lands

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

[...]

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

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

#### Section 143.0141 - Development Regulations for Sensitive Biological Resources

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

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

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

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

[...]

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

The City's LCP also contains a number of applicable provisions within the City's Biology Guidelines which state, in part:

### Section III: Biological Impact Analysis and Mitigation Procedures

[...]

#### B. Identification of the Mitigation Program

##### 1. Mitigation Element

##### a. Mitigation for Wetlands Impacts

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

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

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

[...]

Wetland enhancement and wetland acquisition focus on the preservation or the improvement of existing wetland habitat and function, and do not result in an increase in wetland area; therefore, a net loss of wetland may result...**All mitigation for unavoidable wetland impacts within the Coastal Overlay Zone shall occur within the Coastal Overlay Zone.** [emphasis added]

The City’s Biology Guidelines state on Pages 38-39:

The following list provides operational definitions of the four types of activities that constitute wetland mitigation under ESL:

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

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

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

**Wetland acquisition** may be considered in combination with any of the three mitigation activities above.

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

For example, satisfaction of the mitigation requirement may be considered for a 3:1 mitigation ratio, with two parts consisting of acquisition and/or enhancement of existing acres, and one part restoration or creation.

[...]

### Maintenance Clearing

The proposed channel clearing will directly and permanently impact approximately 0.24 acre of disturbed freshwater marsh, 0.11 acre of disturbed (Arundo dominated) wetland, 0.05 acre of disturbed (palm dominated) wetland, 0.2 acre of natural flood channel, and 1.09 acre of ornamental plantings. While sensitive plants in the form of Torrey Pines were observed in the channel area, none are located within the alignment proposed to be cleared. The western bluebird, a sensitive wildlife species, was also observed in the general vicinity, and the area contains suitable habitat for various raptor species. The

Commission's staff ecologist reviewed the habitat delineation and concurred with the findings.

Section 30233 of the Coastal Act limits the diking, filling, or dredging of coastal waters, wetlands, estuaries, and lakes to only where there is no feasible less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and when the action is one of the allowable uses listed in the section. Among the allowable uses within wetlands is "incidental public service purposes."

The subject storm drain channel and adjacent Mission Bay Golf Course and surface streets are public facilities constructed prior to passage of the Coastal Act. The currently congested state of the channel causes storm water flows to overtop the channel and upstream segments, flooding the golf course and streets, and causing traffic impacts and placing nearby public and private property at risk of flood damage. The proposed maintenance clearing by the City would restore the as-built design of the channel and not increase its design capacity, thus constituting the repair and maintenance of existing public service infrastructure, an allowable use in wetlands.

The City looked at several alternative projects before proposing the current maintenance clearing. A "no project" alternative would allow the existing blockage to remain and likely cause future flooding events on adjacent properties, as the sediment and vegetation would not clear out on its own. A "limited sediment removal" alternative would remove vegetation only, leaving the sediment. Because there is over 3,000 cubic yards of sediment in the channel segment, removal of just the vegetation would reduce the flood risk, but not restore the channel's design capacity, resulting in a continued elevated flood risk. An "alternative sediment management approach" would conduct narrowly focused sediment and vegetation clearing at specific locations along the channel segment. However, because the accumulated sediment is 2-6 feet thick, distributed excavation and removal would cause voids and gaps within the sediment that would cause inconsistent flow rates and sediment accumulation. A "low flow channel" alternative that would excavate a narrower channel within the accumulated material than the as-built design is not feasible because such a channel would not be able to accommodate even a 2-year storm event. An alternative that would clean the upstream pipe under Grand Avenue adjacent to the subject channel segment was deemed insufficient, as the primary cause of low flow velocity and overtopping is the accumulated sediment and vegetation within the subject channel segment.

As described in the "Background" section of this report, the Mission Bay Drive 1 Channel is included in the City's proposed MWMP master storm water permit currently under review by the Commission. Because the Commission reviewed and approved the predecessor 2012 MMP (CDP No. A-6-NOC-11-086), which in turn was based on the requirements of the certified LCP as the standard of review, it serves as appropriate guidance in determining the mitigation required for the proposed maintenance clearing. Pursuant to the LCP, the Commission's 2012 MMP permit required that all wetland impacts were to be mitigated at a ratio of 1:1 for temporary impacts, 2:1 for natural flood channel, 3:1 for riparian habitat, and 4:1 for impacts to freshwater marsh and disturbed

wetlands. Recognizing that storm water infrastructure processes runoff from large areas and are thus likely to experience frequent introduction of invasive species, the 2012 MMP permit did not consider the removal of giant reed (*Arundo*) and other exotic, invasive, and non-native vegetation to be an impact to wetlands requiring mitigation.

Consistent with the mitigation standards applied in the 2012 MMP permit, in this case, no mitigation is required for the removal of the *Arundo* dominated and palm dominated wetlands, or ornamental vegetation. Mitigation will be required for the impacts to 0.24-acre of disturbed freshwater marsh and 0.2-acre of natural flood channel. Applying the 4:1 mitigation ratio to the freshwater marsh and 2:1 ratio to the natural flood channel impacts, the City is required to provide 0.96 acre and 0.4 acre of mitigation, respectively, for a total of 1.36 acres of mitigation.

The Commission and the certified LCP typically require that if mitigation cannot be fulfilled within the same site as the impacts, mitigation should occur within the Coastal Zone and ideally within the same watershed, to the extent feasible. Mitigation within or immediately surrounding the Mission Bay Drive 1 Channel is not possible due to the need to keep the channel clear to prevent flooding and because it is located between a golf course and major thoroughfare. Most of the adjacent Rose Creek watershed is located outside the Coastal Zone, and because Mission Bay Park is a highly used park space with limited mitigation potential at this time, it does not provide adequate mitigation opportunity. Instead, the City proposes to mitigate the impacts of this channel clearing project within Los Peñasquitos Canyon Preserve, approximately seven miles to the north of Mission Bay Drive Channel 1 and within the Coastal Zone.

When unavoidable impacts to wetlands occur, the preferred mitigation method is to mitigate at a 4:1 ratio consisting of wetland creation in order to compensate for the loss of natural wetland habitat. The 4:1 ratio is in recognition of the fact that man-made wetlands take several years to become established, constituting a temporal loss of habitat value between the impact and the establishment of habitat structure and function at the site of mitigation, and that such man-made habitats have a notable chance of failure to achieve the full set of functions inherent to the impacted habitat. However, the City's certified LCP is unique in that the Biology Guidelines in the Land Development Manual, while calling for mitigation to consist of creation of new, in-kind habitat to the fullest extent possible, does allow for mitigation to consist of 1:1 creation to achieve "no net loss" of habitat acreage and the balance of the mitigation credit to be satisfied with wetland enhancement.

Consistent with the LCP requirements and the mitigation standards applied to the 2012 MMP permit, to mitigate for the unavoidable impacts at Mission Bay Drive 1 Channel, the City proposes to provide 1:1 wetland creation at El Cuervo Phase II to achieve "no net loss" of habitat, and satisfy the remaining mitigation requirement at the Los Peñasquitos Phase II enhancement site. However, the currently proposed El Cuervo Phase II and Los Peñasquitos Phase II will provide more mitigation area than is required by this channel clearing. Thus, the City is proposing to deduct 0.44 acre of 1:1 habitat creation mitigation from the 1.65-acres of wetland creation available at El Cuervo Phase II, leaving a balance of 1.21 acres of wetland creation credit. Similarly,

the City proposes to deduct 0.92 acre of enhancement from the 8.8-acre Los Peñasquitos Phase II, leaving 7.88 acres of enhancement credit. As proposed, this excess mitigation credit would then be available to apply to future projects.

### Mitigation Sites

The 2012 MMP permit included two mitigation sites in Los Peñasquitos Canyon Preserve: El Cuervo Del Sur Phase I (2.3 acres of wetland creation) and the Los Peñasquitos Canyon Preserve Wetland Enhancement Project Phase I (approx. 7.3 acres of wetland and riparian enhancement). El Cuervo del Sur Phase I is currently in the middle of its 5-year establishment period, while Los Peñasquitos Canyon Preserve Wetland Enhancement Project Phase I recently completed its 5-year program.

Building on the mitigation provided under the 2012 MMP permit, the City now proposes wetland creation at El Cuervo del Sur Phase II, which is adjacent to the Phase I project site. It also proposed wetland and riparian enhancement at Los Peñasquitos Phase II, which is adjacent to the Phase I site in order to address the immediate mitigation required for the proposed maintenance clearing, as well as provide mitigation credits for future yet-to-be-permitted development.

Work at El Cuervo del Sur Phase II would result in the establishment of 1.65 acres of wetland habitat in the Los Peñasquitos Canyon Preserve along Los Peñasquitos Creek, including 0.58 acre of herbaceous wetland, 0.93 acre of riparian scrub, and 0.14 acre of riparian scrub transitional habitat. The proposed wetland creation will consist of grading existing upland habitat to elevations capable of supporting wetland vegetation and hydrology, installing temporary above-grade irrigation, placing container plantings and seed, and removing non-native vegetation. The City proposes a 1.65-acre mitigation credit for El Cuervo Phase II.

Work at Los Peñasquitos Phase II encompasses approximately 29.26 acres of seasonal channel, wetland, riparian, and upland habitat along Lopez Canyon Creek in the Los Peñasquitos Canyon Preserve. The enhancement will involve removing and controlling a variety of non-native invasive species and subsequently maintaining the enhancement area free of invasive plants. In addition to invasive plant removal, the limited, focused planting of native vegetation or seeds may be implemented as needed to aid the recruitment of native vegetation.

Recognizing that the 29.26-acre site is currently in healthy condition, the City proposes a 30% conversion rate for the enhancement site to produce an 8.8-acre mitigation credit. However, the presence of invasive species within the enhancement site is of such a scattered nature that the use of transects and polygons, the traditional method for determining the quantity and coverage of vegetation, is not feasible. Instead, the City estimates that there is only four percent cover (1.17 acres) of invasive species across the area. The City believes that the removal of the existing invasive plants, coupled with the environmental benefit of subsequent maintenance of such a large area free of future invasive establishment, supports an 8.8-acre credit.

The Commission's staff ecologist, Dr. Koteen has reviewed El Cuervo Phase II and Los Peñasquitos Phase II and believes the plans are properly designed to achieve their habitat goals. However, after visiting the site, Dr. Koteen is unable to support the City's proposed 30% conversion rate for the Los Peñasquitos Phase II. As explained in Dr. Koteen's biological memorandum ([Exhibit 7](#)), the proposed enhancement site is in very healthy condition, with natural vegetation of high quality and limited presence of invasive species. Additionally, the enhancement site consists substantially of riparian upland habitat and seasonal low-flow channel, and not wetland habitat of the kind that will be permanently impacted by the proposed maintenance clearing. Moreover, attribution of such a high amount of credit for an enhancement project that is "out-of-kind" with regards to the resource being enhanced and in a different watershed than the resources being impacted would be inconsistent with mitigation requirements for wetland impacts elsewhere in the state. While the City's certified LCP does allow greater flexibility in the composition of mitigation than is normally found in other LCPs and the Commission's own policies, the proposed mitigation must represent a significant, tangible increase in the overall habitat value of the area. Considering the above factors, Dr. Koteen recommends instead that the mitigation value available at Los Peñasquitos Phase II be calculated using a divisor of 12, resulting in the 29.26-acre enhancement site producing 2.44 acres of mitigation credit. Thus, the 0.92 acre of enhancement required to fulfill the City's mitigation requirement for the proposed channel clearing should be deducted from 2.44 acres – not 8.8 acres – leaving a remaining credit of 1.52 acres available for future city projects.

While the City is correct to assert that there is habitat benefit from their proposal to maintain the area free of invasive plants in perpetuity, it is already common practice for the City to periodically check on their mitigation sites after the initial mitigation program is complete, either as part of routine management by City's Parks and Recreation Department, or at the behest of the original permitting resource agency when the City requests to impact the area originally requiring the mitigation. The City does not typically receive additional mitigation credit for such post-mitigation actions, as generally, once a mitigation site achieves the required performance standards (typically within 5 years), it is considered self-sustaining. The City indicates that they will check on the mitigation site regularly; however, any mitigation site on public land is similarly maintained, and the City is not proposing any site-specific ongoing maintenance that it does not already complete for other mitigation sites. Fortunately, even at the appropriate, reduced conversion rate, El Cuervo Phase II and Los Peñasquitos Phase II sites will provide adequate mitigation to address the impacts of the Mission Bay Drive 1 Channel clearing, with some excess credits remaining to apply to future projects.

Because the maintenance clearing will impact habitat resources and occur in the vicinity of Mission Bay and Rose Creek, **Special Condition No. 1** requires that the City provide final construction plans showing that all maintenance clearing shall occur only within the approved channel segment, as well as final staging and storage plans showing that all construction-related preparation and storage will occur in previously disturbed areas adjacent to the channel. Due to the fact that the biological survey of the site identified a sensitive avian species in the general vicinity and potential raptor habitat, **Special Condition No. 4** requires the City to conduct pre-construction surveys during any work

scheduled during the bird breeding season to identify any nesting or foraging activity and implement appropriate impact reduction measures. **Special Conditions Nos. 5 and 6** require the City to submit final mitigation and monitoring plans, respectively, in conformance with the submitted El Cuervo del Sur Phase II and Los Peñasquitos Phase II Habitat Mitigation and Monitoring Plans to ensure that appropriately designed, self-sustaining mitigation is established that will adequately mitigate the habitat impacts from the maintenance clearing. Because the proposed clearing and mitigation sites involve protected habitat and long term mitigation and monitoring activity in open space areas, multiple resource agencies besides the Commission will be reviewing the proposed development, and **Special Condition No. 8** requires the City to submit copies of the necessary approvals from other resource agencies to ensure that there is no conflict between the various permit requirements. Thus, as conditioned, the least impactful feasible project will be implemented, and adequate, sustainable mitigation will be provided to offset the impact, and the project can be consistent with the habitat protection policies of Chapter 3 of the Coastal Act as well as the LCP.

### **C. Marine Resources/Water Quality/Hazards**

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The subject channel is located within the Mission Bay watershed, approximately 625 feet east of the mouth of Rose Creek where it discharges into Mission Bay and has a physical and hydrological connection with the bay due to flows traversing the channel continuing on through below-grade pipes to drain into the De Anza Cove segment of Mission Bay, approximate 400 feet to the south. According to data recorded at the nearest monitoring station at the San Diego International Airport, annual precipitation averages approximately 10.76 inches, and most precipitation (greater than 0.5 inches

per month) occurs between November and April. Periods of extended drought are common throughout the region.

The City conducted a hydrology and hydraulics analysis of the Mission Bay Drive 1 Channel. The accumulated sediment depth in the channel is estimated at two feet at the upstream end and six feet at the downstream end. In its current condition, the channel can convey 208 cubic feet per second (cfs), approximately a 2-year storm event, before the adjacent roadways and culverts are impacted, while the upstream storm water segments outside of the project area can handle a 5-year storm event before impacting adjacent properties. Because the subject channel flows into a concrete pipe, the capacity of the channel is limited by the fixed nature of the pipe, and the proposed maintenance clearing will not substantially increase the conveyance capacity of the channel beyond a 2-year storm. However, the maintenance clearing will increase the velocity of runoff traversing the channel and decrease the likelihood that the concrete pipe will become clogged, increasing the capacity of the upstream channel segments outside of the project area up to a 100-year storm and reducing flooding risk.

While the maintenance clearing will restore the design capacity of the storm water system and decrease the likelihood of floods, which can adversely impact water quality by introducing pollutants located on normally dry land into coastal waters, the proposed maintenance clearing involves the removal of sediment and vegetation from an earthen channel in close proximity to coastal waters using heavy machinery, presenting potential short-term and long-term impacts to coastal water quality through discharges of sediment and artificial chemicals.

The removal of approximately 8,600 cubic yards of sediment and vegetation will cause large-scale ground disturbance that, if not properly contained, may cause portions of the excavated material to flow down into Mission Bay, increasing pollutant load and turbidity. The use of heavy machinery both in and next to the channel increases the likelihood of chemicals leaking or spilling from the machinery and flowing into coastal waters. To minimize these short-term impacts to water quality, the City will implement a water pollution control plan detailing the BMPs that will be utilized, the manner in which materials will be stored and secured against spillage, the maintenance of vehicles, and runoff retained or minimized, among other measures. Temporary work and staging areas will be located to maximize the use of existing access and staging areas and previously disturbed land where feasible. Any new disturbance of native soil and vegetation would be generally confined to areas on the edges of existing access and staging areas, and the storm water facility.

In the longer term, removal of vegetation may expose soil that could erode away during future storm events and enter coastal waters, leading to sedimentation and turbidity. In this case, the earthen slopes of the channel are at a 1.5:1 slope, which is not an overly steep slope vulnerable to erosive collapse. As stated previously, this channel will be covered by the separately proposed MWMP master storm water program, so the channel will be periodically inspected and, if damage or sedimentation is identified, a channel-specific Facility Maintenance Plan will be submitted for that particular year's round of maintenance. Furthermore, sediment and vegetation can function as natural

filtering mechanisms, depending on flow rate, and their removal may decrease the capacity of the storm water facility to retain and infiltrate sediment and pollutants rather than transport them into coastal waters. However, the existing sedimentation is causing upstream flooding of adjacent properties. The proposed maintenance clearing will reduce the risk of flooding events and the potential for pollutants from dry areas to become inundated and enter coastal waters. Finally, the 60-inch reinforced concrete pipe at the southern end of the channel has a metal grate over its entrance to capture large debris and prevent it from entering Mission Bay.

Regarding the two proposed mitigation projects in Los Peñasquitos Canyon Preserve – El Cuervo del Sur Phase II and Los Peñasquitos Phase II– they are both partially or wholly located within the canyon floodplain. However, the proposed mitigation projects will restore and enhance natural wetland and riparian habitat, adding to their natural filtering benefits to the canyon’s water quality. Additionally, no permanent structures are proposed in the two sites, and both will naturally process flood events as they occur and not substantially alter canyon hydrology.

Thus, while the proposed maintenance clearing presents the potential for short- and long-term water quality impacts, the manner in which the clearing will be conducted and the resultant decrease in flooding events will benefit local water quality and minimize water quality impacts to the greatest extent feasible. While neither the maintenance clearing or two mitigation projects propose permanent structures, because they are all wholly or partly in the floodplain, the projects are vulnerable to flood hazards. Thus, **Special Condition No. 2** gives the City formal notice of the risk of flood hazards and their assumption of said risk. **Special Condition No. 3** requires the City to submit a final construction pollution prevention plan in conformance with the submitted plan that details the BMP measures that will be implemented to prevent and treat runoff and spills from the project area during the maintenance clearing. Finally, because a substantial volume of material will be excavated from the channel, **Special Condition No. 7** requires the City to dispose of any excess spoils at a legal site outside of the coastal zone. Thus, as conditioned, the water quality of coastal waters will be protected to the greatest extent feasible from adverse water quality impacts, and the project can be found consistent with the water quality protection policies of Chapter 3 of the Coastal Act.

## D. Public Access and Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states, in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and where, feasible, provided.

[...]

Section 30214 of the Coastal Act states:

- a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
  - (1) Topographic and geologic site characteristics.
  - (2) The capacity of the site to sustain use and at what level of intensity.
  - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

The subject channel is located on the northeastern boundary of the Mission Bay Golf Course, a public recreational facility, along Mission Bay Drive and Grand Avenue. The Mission Bay Golf Course is a popular coastal facility providing athletic activities (golf, frisbee golf, driving range, etc.) to the public at a lower cost compared to other private and municipal golf courses in the City. While the maintenance work is being conducted, the maintenance and staging areas will be cordoned off from public use. However, because the channel is not located within or between any of the active golfing areas, and staging will be located in a previously disturbed area utilized for facility storage purposes, the maintenance work is not expected to preclude public use of the golf course facilities or adjacent roadways.

El Cuervo Phase II and Los Peñasquitos Phase II sites are both located at the western end of the Los Peñasquitos Canyon Preserve, a seven-mile long, 4,000-acre canyon park and preserve jointly maintained by the City and County of San Diego. In addition to containing hundreds of plant and animal species, the preserve is a popular visitor destination, with an extensive trail system along Los Peñasquitos Creek and the adjacent canyon slopes serving pedestrian, bicyclist, and equestrian activity.

The El Cuervo Phase II site is located between one of the primary trails along Los Peñasquitos Creek, while the Los Peñasquitos Phase II site encompasses the land along the primary trail along Lopez Canyon. Neither mitigation project will extinguish or

redirect the existing trails used by the public, though the El Cuervo mitigation project may modify the adjacent trail's grade in spots to redirect surface flows into the mitigation site so as to improve wetland hydrology.

To ensure that the maintenance clearing work is concentrated around the channel to be cleared and does not encroach into adjacent park space or occupy public parking, **Special Condition No. 1** requires the City to submit final construction plans and final staging and storage plans siting the development within the approved project boundaries. **Special Condition No. 5** requires the City to submit final mitigation plans in conformance with the El Cuervo del Sur Phase II and Los Peñasquitos Phase II Mitigation and Monitoring Plans to ensure that the mitigation projects do not encroach into or occupy established public recreational trails. Thus, as conditioned, the proposed maintenance clearing and mitigation projects can be found consistent with the public access policies of Chapter 3 of the Coastal Act.

## **E. Archaeological Resources**

Section 30244 of the Coastal Act states:

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

An ethnohistoric Native American village called "La Rinconada de Jamo" covers more than 320 acres at the mouth of Rose Canyon, through which Rose Creek flows and discharges into Mission Bay on the western, opposite side of Mission Bay Golf Course from the project site. An archeological index of the site done in 1986 found ground stone tools, flaked stone tools, ceramics, bone artifacts, shell, historical artifacts, charcoal, and other habitat debris. However, much of the area in and around the project has been heavily modified and developed as the Pacific Beach community expanded and Mission Bay Park was developed. Thus, while the channel is within the archaeological site boundary, it was constructed on sediment known to be fill. Because the proposed clearing will remove sediments within an area that was originally open channel so as to restore as-built design capacity, it is not expected that the maintenance clearing will uncover sensitive archaeological resources. Thus, the proposed development, as conditioned, can be found in conformance with Chapter 3 of the Coastal Act.

## **F. Local Coastal Program**

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.

Mission Bay Park is primarily unzoned and is a dedicated public park. While the park has a certified Mission Bay Park Master Plan, the subject site is located within the City of San Diego in an area of deferred certification, where the Commission retains permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. Los

Peñasquitos Canyon Preserve is similarly unzoned and is a dedicated urban park and open space. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act, and thus, approval of the development, as conditioned, will not prejudice the ability of the City of San Diego to implement a certified LCP for the Mission Bay Park segment.

## **G. California Environmental Quality Act**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Mission Bay Drive 1 Channel is included among the facilities covered by the Municipal Waterways Maintenance Plan (MWMP) master storm water permit that the City has currently submitted to the Commission, and thus this channel clearing was addressed in the Final Environmental Impact Report drafted for the purposes of locally approving the MWMP. (SCH No. 2017071022)

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 final construction and staging plans, final construction pollution prevention plans, final habitat mitigation and monitoring plans, 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 EQA.

## APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of San Diego Municipal Waterways Maintenance Plan – Substantial Conformance Review for Mission bay Drive 1 Channel Maintenance – Biological Resources Evaluation Memo” by Dudek, dated July 20, 2020
- Garske-Garcia, Lauren, Memorandum to: Peter Allen, Tami Grove & Dan Carl, *Impact Definitions and Mitigation Framework for Gleason’s Beach Highway 1 Realignment*, Exhibit 24, Application No. 2-20-0282 (California Department of Transportation (Caltrans), Gleason Beach Highway 1 (PM 15.1-15.7), Sonoma Co.) <https://www.coastal.ca.gov/meetings/agenda/#/2020/11>
- El Cuervo del Sure Phase II Mitigation Site: Conceptual Habitat Mitigation and Monitoring, by Helix Environmental Planning, Inc., dated July 27, 2020
- Los Peñasquitos Canyon Preserve Phase II Enhancement Project: habitat Mitigation and Monitoring Plan, by ESA, dated July 2020