CALIFORNIA COASTAL COMMISSION
SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384

W15a&b

6-20-0356 (Municipal Waterways Maintenance Plan)

May 12, 2021

CORRESPONDENCE

The City of SAN DIEGO

Agenda Item No. 15a & 15b
CDP No. A-6-SAN-20-0029/
6-20-0356
Bethany Bezak

May 7, 2021

Alex Llerandi, Coastal Program Analyst II
California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive No. 103
San Diego, California 92108

SUBJECT: Response to Staff Report– City of San Diego Transportation & Stormwater Municipal Waterways Maintenance Plan; CDP No. 6-20-0356/A-6-SAN-20-0029

Dear Mr. Llerandi,

The City of San Diego (City) appreciates the California Coastal Commission (Commission) staff's efforts in coordinating and collaborating on the Municipal Waterways Maintenance Plan (MWMP). While the City supports Commission staff's **recommendation for approval** of the proposed Coastal Development Permit (CDP), the City would like to note concerns in response to the information contained in the Staff Report.

The City previously expressed our concerns related to mitigation requirements and Commission policies outlined in the Staff Report and memorandum (Exhibit 2). These concerns have City-wide precedent-setting effects that are not only in conflict with past Commission approvals for City public projects, but more importantly can increase project costs, affect other regulatory agency permit negotiations and negatively impact the City's delivery of essential public services, such as flood control, to San Diego residents and communities.

The activities proposed as part of the MWMP are essential for public health and safety, and cannot be relocated, scaled back, or placed in a manner that would reduce impacts to coastal resources. The costs for additional mitigation are borne by the residents of the City, making such essential infrastructure projects more costly and resulting in delays and greater community flooding risks.

The City's substantial concerns are with the Commission's mitigation policies and their precedent-setting impacts on future City public project CDPs. These requirements are inconsistent with the Commission's Procedural Guidance for Evaluating Wetland Mitigation Projects in California's Coastal Zone and the City's Biological Resources Guidelines (approved February 2018). The main areas of concern are:

1. Application of state-wide policy to provide all wetland creation mitigation, unless proven infeasible, will increase project costs and create additional challenges to secure sites in coastal areas. (Attachment 1, page 1). Other local, State and federal regulatory agencies do not require this and they have consistently allowed the City to provide a minimum of 1:1 creation to adequately compensate for the "no net loss" of wetlands.
2. Requirement to provide 4:1 compensatory mitigation for disturbed wetlands within stormwater conveyance facilities is disproportionate with the quality of habitat provided at

2781 Caminito Chollas, MS 46
San Diego, CA 92105
SWPPP@sandiego.gov

T (619) 235-1000
sandiego.gov

the mitigation site (Attachment 1, page 4). The City's Biology Guidelines (Table 2A) only requires a 2:1 ratio for Disturbed Wetland. The 4:1 ratio should be reduced to 2:1 to be consistent with the City's Biology Guidelines and the Commission's Procedural Guidance on mitigation ratios.

3. The City seeks to perform mitigation within watershed, whenever possible, given the environmental benefits. (Attachment 1, page 5). Additionally, multiple agencies require higher mitigation ratios for out of watershed mitigation that will increase project costs.

The City has worked hard for the past 10-plus years to develop a feasible stormwater maintenance and repair program that would meet the Stormwater Division's goals and objective to: provide flood control; protect and improve the quality of our habitat and water quality in San Diego; and appropriately comply with local, State and federal regulatory requirements to compensate for any wetland impacts that are so rare in the coastal zone. Additional information about the MWMP, including the project-level Facility Maintenance Plans for the coastal facilities covered under this permit, are on the City's website: https://www.sandiego.gov/stormwater/services/wmp with a link to the associated Final Environmental Impact Report.

Should you have any questions or require any additional information, please contact Anne Jarque at (619) 527-7507 or ajarque@sandiego.gov.

Sincerely,

Anne B. Jarque for

Bethany Bezak
Assistant Deputy Director

abj/BB

Attachment 1: Response to Mitigation Requirements in Staff Report, Agenda Item No. 15a & b, CDP No. A-6-SAN-20-0029 & 6-20-0356

cc: Alia Khouri, Deputy Chief Operating Officer
Adrian Granda, Public Policy Manager, Mayor's Office
Ally Berenter, Program Manager, Mayor's Office
Kris McFadden, Director, Transportation & Stormwater Department
Drew Kleis, Deputy Director, Transportation & Stormwater Department
Christine Rothman, AICP, Development Project Manager III, Transportation & Stormwater Department

ATTACHMENT 1

RESPONSE TO MITIGATION REQUIREMENTS IN STAFF REPORT

Agenda Item No. 15a & 15b
CDP No. A-6-SAN-029 & 6-20-0356

The City of San Diego (City) Transportation & Stormwater Department (TSW) has the critical responsibility to effectively provide essential services to the San Diego region. This responsibility includes protecting residents from potential flood damage and hazards by maintaining, repairing, and constructing City-managed stormwater infrastructure. To do this, TSW understands and has worked diligently over decades to build and maintain strong working partnerships with stakeholders, local, state, and federal agencies to protect environmental resources such as biology and water quality. The City values the working relationship that has been built with California Coastal Commission (CCC) staff and also recognizes that, by its nature, some infrastructure activities required to meet TSW service goals and mission, including stormwater facility maintenance, may result in unavoidable impacts to resources that CCC and other agencies consider sensitive. All City departments rely entirely on the guidance contained within local governing documents (e.g., Biology Guidelines, Land Development Code, etc.), regulatory guidance documents used by state and federal agencies (e.g., California Environmental Quality Act, California Coastal Act), and the precedents set by past projects successfully completed through partnership with these agencies (e.g., Master Maintenance Program, individual Capital Improvement Projects), including CCC, to effectively design and implement essential programs such as the MWMP.

While TSW staff appreciates CCC staff efforts to coordinate with the City and prepare a staff report recommending approval of the CDP for the MWMP, there are substantial concerns regarding this report as it is currently written and the far-reaching negative implications it carries for City-wide programs in all departments that may make it infeasible to conduct essential activities in the Coastal Overlay Zone (COZ). It is the City's position that the current CCC staff report does not represent a consistent application of state regulatory guidance or past project precedent for a number of critical MWMP actions, as described below.

All Creation Mitigation Requirement

The CCC staff report has recommended that mitigation for impacts associated with the MWMP that have not been previously mitigated, be required entirely as creation credit and that enhancement is not to be used. The CCC staff report and exhibit memorandum from Dr. Koteen indicate that this requirement was included to be consistent with statewide standards and because staff have determined that sufficient creation credits are available at currently approved City mitigation sites (e.g., El Cuervo del Sur Phase II Mitigation Site). It is the City's position that this requirement is both inconsistent with existing state guidance and past local CCC approvals as well as an incorrect evaluation of mitigation requirements for an infrastructure maintenance project such as the MWMP.

The CCC's Procedural Guidance for Evaluating Wetland Mitigation Projects in California's Coastal Zone (Procedural Guidance) states in Section 4.2.3.1 that "no-net loss" is the goal of mitigation. Numerous previous CCC actions for City projects have approved a 1:1 no-net loss creation mitigation requirement with the remainder of any required mitigation ratio greater than 1:1 being fulfilled through enhancement, restoration or acquisition/preservation mitigation.

The requirement for **wetland creation mitigation credits only** is more stringent than the mitigation guidance established in the City Land Development Code (i.e., Municipal Code) Environmentally Sensitive Lands Regulations (ESL), Land Development Manual Biological Resources

Guidelines (LDM – Biology Guidelines, February 2018), Procedural Guidance, and the California Code of Regulations Title 14. The City's Land Development Code and Biological Resources Guidelines are not only the implementation plan for the City's certified Local Coastal Program (LCP), but also provide consistent and predictable guidance to meet regulatory requirements.

Section 4.2.3.3 of the CCC's own Procedural Guidance states:

> *… Although the mitigation ratio is generally expressed in terms of area (e.g., a ratio of 5 to 1 equals five mitigation acres for each acre impacted through development), the ratio calculation should be based on other factors (e.g., appropriate functions and their associated values) in addition to area. Factoring in function and value information is generally a qualitative process that relies on information from the ecological assessment.*
>
> *The process for determining a final mitigation ratio is influenced by a variety of factors; however, there is no objective process for quantifying many of these factors. The mitigation ratio is affected by the type of project (i.e., creation, restoration, or enhancement), particularly when partial credit is an issue. …*
>
> *Currently, the CCC determines the applicable mitigation ratio on **a case-by-case basis** [Emphasis added]. In an attempt to account for concerns over project location, interim losses, and reduced chances of success, the CCC has required compensatory mitigation ratios greater than 1 to 1.*

CCC's staff report fails to recognize the specific coastal locations and unique nature of stormwater facility maintenance and repair activities covered under the MWMP, as well as previous CCC actions. Inconsistent with previous approvals, the MWMP's CDP requires impacts to coastal wetlands to be mitigated as if the project proposes full-scale development that eliminates wetland habitat function and area. Rather than review the MWMP on a case-by-case basis, a state-wide mitigation policy is applied that requires disproportionate mitigation and ratios. The City has asserted that some wetland functions still remain after maintenance and the project's activities do not result in a net loss of coastal resource area (since the features remain in-place). Therefore, the City respectfully requests that the CCC's decision allow for flexibility in the implementation of mitigation that would allow a 1:1 no net loss approach, with any remaining ratio being met with enhancement, restoration, or preservation that would be consistent with the City's LCP, as well as other state and federal agency requirements. This would be similar to CDP No. 6-20-0433, which CCC approved in February 2021 for one-time maintenance at the Mission Bay Golf Course stormwater channel. The mitigation approved at this facility and other previously permitted coastal facilities included in this permit was in part 1:1 creation, with the remaining being fulfilled through enhancement or restoration.

Should the CCC decide to move forward with the all-creation requirement within the City instead of evaluating impacts and mitigation on a case-by-case basis, the City's mitigation costs would increase exponentially. For reference, if the CCC had approved the West Mission Bay Drive Project (CDP No. 6-15-1975) and required all mitigation at a 4:1 creation ratio, that project alone would require 17.4 acres of creation within the coastal zone, in-watershed, and in-kind. This requirement likely would have rendered the project infeasible or significantly delayed implementation to allow for

identification and permitting of an adequately large coastal wetland creation site. Instead, the CCC approved this project to allow for a combination of enhancement and rehabilitation (restoration) for impacts to 4.35 acres of coastal wetlands. In another example, the City's planned El Camino Real project has potential impacts to approximately 4.58 acres of wetlands, meaning the City would be required to provide 18.3 acres of creation (at a 4:1 ratio) in the coastal zone. These increases in creation requirements would increase project mitigation costs by an estimated two to three times, and it is uncertain whether suitable creation sites are even available within the coastal zone. These significant increases in the time, effort, and cost required to develop and implement maintenance projects could hinder the City's ability to effectively maintain public infrastructure and protect public health and safety.

CCC staff further justify the requirement for all creation mitigation based on the availability of such mitigation at an approved site. However, appropriate areas that could support any kind of mitigation within the City COZ are scarce, very difficult to find, and costly to acquire and develop. Because of that, the City has planned both creation and restoration/enhancement sites to maximize mitigation credits within an area that is ecologically appropriate and feasible with the intent to utilize both types of credits for current and future City mitigation needs, while minimizing the need to find and acquire entirely new mitigation sites. This was done based on years of coordination with CCC staff and other resource agencies where development of large, advanced mitigation sites has been highly encouraged. The current CCC staff recommendation contained in the staff report represents a capricious usurpation of creation credits that are available. This effort, if approved and extended as policy, disincentives the City to identify larger, advanced mitigation sites. The City is instead incentivized to defer design of mitigation sites until specific projects are identified and then design mitigation to only meet the specific requirements of those projects. The value of enhancement mitigation would also be highly diminished and potentially rendered ineffective and therefore would not be pursued, unless needed to support a creation mitigation site.

As an example, for the (concrete) Tocayo facility included in the MWMP, mitigation is required for the removal of one willow tree (approximately 0.01 acres) that is blocking the downstream culvert at Hollister Street and Tocayo Avenue. The mitigation that the City has been asked to provide is 0.03 acres of creation of Riparian Scrub habitat. Although this number is relatively small, the City has invested in planning, permitting, and constructing a mitigation site that is as large as is ecologically appropriate, so that mitigation credits can be allocated to multiple small impacts sites on an as-needed basis. However, to meet the larger creation requirement for this facility, available creation credits for other projects would be reduced and investment in other advance restoration/enhancement mitigation projects may go unused.

Finally, by applying the same high mitigation requirement as would be required for a typical development project that eliminates habitat function, the City may be more inclined to propose undergrounding or concrete-lining of currently open stormwater facilities rather than proposing periodic maintenance, since the mitigation cost of both projects would presumably be the same and closed or concrete-lined facilities have much greater reliability, require less maintenance, and are therefore a highly cost-effective manner of providing flood protection. However, this approach would result in greater loss of wetland functions and community benefits that have currently been retained throughout much of the City of San Diego, especially when compared with similar stormwater facilities

throughout Southern California, such as the urbanized portions of Los Angeles and Orange Counties. In contrast, the City believes that prior CCC approvals did recognize the benefits of retaining open stormwater conveyance facilities and provided an appropriate balance by requiring a minimum 1:1 creation mitigation for maintenance, but allowing the remainder of the mitigation requirement to be fulfilled through enhancement or restoration mitigation. Utilizing this approach would improve the City's ability to retain the storm channels as they currently exist, rather than undergrounding them.

Disturbed Wetland Mitigation

While the City acknowledges that the facilities for which additional mitigation is required in the CCC staff report are not covered by a certified LCP, both City staff and CCC staff have historically used the City's Biology Guidelines and CCC's Procedural Guidance to determine appropriate mitigation for their projects and CDPs. The City's Biology Guidelines require a mitigation ratio of 2:1 for disturbed wetland. This ratio is included in Table 2A of the LDM – Biology Guidelines, which is reprinted on page 29 of the CCC staff report.

While the City recognizes that the function and value of disturbed wetland may vary across the region, it is the City's position that disturbed wetland specifically within MWMP flood control facilities provides a lower function and value than a similar habitat that is present in more pristine coastal wetland areas with natural topography. The CCC staff report and Exhibit 2 state that mitigation is required at a 4:1 ratio for wetlands and 3:1 for riparian habitat. There is no distinction made regarding the quality of the habitat, its current function and value, or potential for ongoing function and value after maintenance occurs. Dr. Koteen argues that consistent statewide mitigation requirements lead to certainty for the regulated community and reduced case-by-case negotiation. From the perspective of the City, CCC staff are not applying consistent ratios and requirements but rather are deviating from what was a consistent practice of applying ratios and mitigation standards in the LDM – Biology Guidelines.

The City contends that a **mitigation ratio of 4:1 for disturbed wetlands** should be reduced to 2:1, even when located in the COZ, to be consistent with Table 2A of Biology Guidelines and MWMP Environmental Impact Report. The City acknowledges that an increased ratio is required for riparian scrub and freshwater marsh in the COZ, as these are native habitats that have been severely reduced in extent within the COZ and provide relatively high function and value. Disturbed wetlands are defined in the MWMP as consisting of less than 20% native species and non-native cover of over 50%. In combination with the location of these wetlands within urban areas and outside of large wetland/riparian preserve areas, disturbed wetlands potentially impacted by MWMP activities have demonstrably lower function and value than native wetlands such as freshwater marsh, brackish marsh, or salt marsh. Furthermore, non-native species present in disturbed wetlands actually pose a risk to adjacent native habitats through the potential spread of non-native species.

Based on the CCC's own Procedural Guidance, mitigation ratios are developed by comparing the function of wetlands impacted by development with the function of wetlands increased by mitigation, with additional factors such as temporal loss and risk/uncertainty also incorporated. The application of a 4:1 ratio for disturbed wetlands indicates that the function of these disturbed wetland resources is equivalent to a pristine freshwater marsh. Furthermore, the wetlands that will

be created and enhanced through mitigation will actually have a much higher relative function and value per acre than the disturbed wetlands being impacted by maintenance activities.

Out-of-Watershed Mitigation Assignment

As CCC staff is aware, TSW is required to meet mitigation requirements assigned both internally by City guidance documents and externally by all resource agencies with jurisdiction over City infrastructure being affected. For the record, the City proposed alternative, in-watershed mitigation for the Valeta and Tocayo facilities. However, CCC staff expressed their preference that mitigation occur at the El Cuervo Phase II Creation Mitigation Site and Hollister Quarry Site, which are both located **out-of-watershed**, primarily because the sites have been previously approved and the required creation mitigation credit would be available.

Although this may meet the CCC's needs, it creates a bigger problem and many challenges for the City to meet other resource agency mitigation requirements that conflict and are not consistent with those required by CCC. For example, the California Department of Fish and Wildlife, Regional Water Quality Control Board, and U.S. Army Corps of Engineers typically require an increased level of mitigation ratio for every watershed over from the impact site. In other words, providing mitigation outside the watershed to accommodate CCC means providing more mitigation overall to the other agencies, which may or may not be feasible or acceptable to them. The City is faced with either providing additional in-watershed mitigation for agencies that require in-watershed mitigation or potentially providing increased total mitigation area due to out-of-watershed mitigation ratio factors that are applied by the U.S. Army Corps of Engineers and Regional Water Quality Control Board. In either scenario, more mitigation is expected to be required by other resource agencies. It is not economically feasible to provide multiple types of mitigation for multiple agencies, which in effect inappropriately increases the cumulative mitigation ratio being required based on the impact being proposed.

The City's Biology Guidelines state that if mitigation is not available on site (which is infeasible for MWMP coastal facilities), then it shall occur within the same watershed as impacts. Therefore, the preference by CCC staff for credits to be applied at mitigation sites that are located out-of-watershed for these facility groups is inconsistent with the City's LDM – Biology Guidelines direction and is also inconsistent with CCC staff's own rationale described for the creation-only mitigation requirement (i.e., if creation mitigation is available anywhere in the City, all mitigation for impacts must be provided as creation).

In summary, these mitigation requirements are expected to significantly impact the City's ability to identify and secure adequate mitigation for essential City work for the benefit of our neighborhoods, residents, and the environment. This shift in mitigation requirements and associated costs may require City departments to pursue more cost-effective but less environmentally friendly alternatives, such as undergrounding of stormwater facilities rather than maintenance of open conveyance facilities. The activities proposed as part of the MWMP are essential for public health and safety, and cannot be relocated, scaled back, or designed in a manner that would reduce impacts to coastal resources. The costs for additional mitigation are borne by the residents of the City, making such essential infrastructure projects more costly and resulting in delays and greater community flooding risks. We recommend instead that the CCC revise the staff report findings and

special conditions, and approve a CDP that is consistent with prior CCC actions and the City's Biology Guidelines, which allow for a combination of creation and restoration/enhancement mitigation at ratios agreed upon for the coastal zone within the City.

Llerandi, Alexander@Coastal

From: Livia Borak Beaudin <livia@coastlawgroup.com>
Sent: Friday, May 7, 2021 2:21 PM
To: SanDiegoCoast@Coastal
Cc: Llerandi, Alexander@Coastal
Subject: Public Comment on May 2021 Agenda Item Wednesday 15a - Application No. A-6-SAN-20-0029 (San Diego Municipal Waterways Maintenance Plan, San Diego)
Attachments: App. 6-20-0433. CERF Comments.pdf

Please accept the following comments on the City of San Diego's Municipal Waterways Maintenance Plan (Items 15a and 15b) on behalf of our client, Coastal Environmental Rights Foundation (CERF). CERF previously submitted comments on this item (attached). CERF's concerns regarding water quality impacts remain. Because the CDP will remain operative for 15 years, CERF believes water quality monitoring within impacted waterbodies is warranted to ensure the maintenance activities do not have a negative impact on waterbodies/channels, especially where maintenance occurs upstream or within impaired waterbodies.

In connection with the City's prior 401 certification from the Regional Water Quality Control Board for some of the earlier maintenance activities, the Water Board required water monitoring before and after maintenance activities. CERF believes the same is necessary here for a CDP of such duration.

Specifically, CERF requests a condition requiring the following monitoring:

> To establish a baseline, 5-year receiving water monitoring must begin prior to the start of project construction (maintenance activities). If the CDP is extended an additional 10 years, the monitoring should continue for the duration of the permit.
>
> **1. Benthic Macroinvertebrate Community Analysis**
> Bioassessment monitoring must be performed using the professional level non-point source protocol of the California Stream Bioassessment procedure to assess effects of the project on the biological integrity of receiving waters. At a minimum, bioassessment monitoring must be performed at three sites (assessment stations) within the impacted waterbody (as flow permits) once per year, during the established "index period" for each Watershed. The first assessment station is the reference station, which must be located upstream of the discharge from the project maintenance location on the impacted waterbody in a reference area; the second assessment station must be located immediately upstream of the discharge from the project site on the impacted waterbody, the third assessment station must be located immediately downstream of the discharge from the project site on the impacted waterbody. The reference station upstream of the project discharge must be located and sampled concurrently with second and third assessment stations. The results of the Benthic Macroinvertebrate Community Analysis must be submitted
> each year.
> **2. Water Quality Assessment**
> The City of San Diego must perform water quality sampling and analysis for alkalinity, ammonia as N (NH3-N), chloride (Cl-), nitrate/nitrogen as N (NO3-N), nitrite-hitrogercas N (NO2-N), total Keldjahl nitrogen (TKN), ortho-phosphate phosphorus (OPO4 as P), total phosphorus (TP04), total suspended solids (TSS), chlorophyll a, pH, temperature, turbidity, specific conductance, and dissolved oxygen. At a minimum, sampling must be conducted once each year, concurrent with Benthic Macroinvertebrate Community Analysis above. The results of the water quality assessment must be submitted each year.
> **3. California Rapid Assessment Method**

The City of San Diego must conduct a quantitative function-based assessment of the health of wetland and riparian habitats in the Tijuana River using the California Rapid Assessment Method (CRAM) at the three assessment stations described above. The results of the CRAM assessment must be submitted each year.
4. Where procedures are not otherwise specified for the Receiving Water Quality Monitoring Plan, sampling, analysis, and quality assurance/quality control must be conducted in accordance with the Surface Water Ambient
Monitoring Program (SWAMP) Quality Assurance Program Plan for the State of California's Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board.

For reference, the monitoring requirements have been substantially adopted from this 401 certification for channel maintenance in the Tijuana River Valley.

Thank you in advance for your consideration of our comments.
~Livia

Livia Borak Beaudin (she/her)
livia@coastlawgroup.com

Coast Law Group LLP
1140 South Coast Highway 101
Encinitas, California 92024
tel. 760.942.8505 x118
fax 760.942.8515

"Like music and art, love of nature is a common language that can transcend political or social boundaries." — Jimmy Carter

January 8, 2021

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

VIA EMAIL
SanDiegoCoast@coastal.ca.gov

Re: Application 6-20-0433 (Mission Bay Dr Channel maintenance, San Diego)
CERF Comments

Dear Chair Padilla and Commissioners:

On behalf of Coastal Environmental Rights Foundation ("CERF") please accept the following comments regarding the City's Mission Bay Drive channel maintenance project, a subset of the Municipal Waterways Maintenance Plan (MWMP). CERF is a nonprofit environmental organization founded by surfers in North San Diego County. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF has been a stakeholder in the City's quest to find a sustainable solution to its flood management issues for over a decade. The City's efforts in the MWMP are an improvement to the original Master Storm Water Maintenance Plan, which CERF challenged in court. Though the current MWMP awaits further consideration by the Commission, the City has requested separate consideration of the Mission Bay Drive channel maintenance project.

First, CERF appreciates the Commission's considered approach to wetland mitigation and agrees the reduced mitigation credit for "enhancement" is more appropriate. (Staff Report, p. 3 [Recommending divisor of 12 for Los Penasquitos Phase II mitigation]). The City has consistently relied on non-native vegetation removal as a purported mitigation measure. However, vegetation removal – though well intentioned – also results in negative environmental impacts. Such impacts are routinely ignored. Here, it is unclear whether removal of invasive plants within the Los Penasquitos Phase II mitigation site will impact primarily wetland, upland, or riparian habitat; however, the staff report acknowledges the mitigation sites are bothwithin the floodplain. (Staff Report, p. 30). Removal of vegetation – especially without native revegetation – will likely result in a negative impact to water quality where existing vegetation removes pollutants and sediment from urban runoff. This benefit is more pronounced where water flows more slowly, after small storms or during dry weather. Los Penasquitos is plagued with dry weather nuisance flows. (See, Los Penasquitos WMA Water Quality Improvement Plan, September 2015, p. v [Highest priority condition/pollutant in Los Penasquitos WMA is "freshwater discharges during dry weather" and "Bacteria accumulations as measured during both wet and dry weather at Torrey Pines State Beach near the Los Penasquitos Lagoon mouth"]). Therefore, vegetation removal may cause negative water quality impacts downstream.

In addition, though the staff report acknowledges vegetation "can function as natural filtering mechanisms," it does not ascribe any water quality impact to the "maintenance" (i.e. vegetation

removal) activity within the Mission Bay Drive channel itself. (Staff Report, pp. 29-30). Rose Creek and Mission Bay are both impaired for numerous pollutants and therefore any increase in pollutants will exacerbate the negative water quality impacts.[1] (See, Pub. Res. Code §30230 ["Marine resources shall be maintained, enhanced, and, where feasible, restored…"]; §3031 ["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…"]). As noted above, vegetative pollutant removal is most pronounced during small storms and dry weather flows – conditions prevalent through most of the year in San Diego County. Therefore, CERF urges the Commission to impose additional mitigation measures for the water quality impacts associated with vegetation removal in the channel itself and for any potential impacts of invasive removal in portions of Los Penasquitos Phase II which receive dry or wet weather flows.

Despite the Commission's reduction in mitigation credit for enhancement (invasive removal), its mitigation calculation remains flawed. The Commission relies on the invalidated 2012 Master Storm Water Maintenance Plan to justify *no mitigation* for invasive removal in the channel. (Staff Report, p. 25). Pursuant to a settlement agreement with CERF, the City can no longer rely on the invalidated EIR to support additional maintenance activities. Therefore, reliance on the EIR would be a breach of the City's agreement with CERF. The City prepared a more recent EIR for the MWMP – it is unclear why the 2012 program and EIR are part of the analysis today. The City's local approval (MWMP and Site Development Permit) certainly relied on the more recent plan and EIR. Further, in an area of deferred certification, the City's LCP is guidance and Chapter 3 controls. Therefore, reliance on the LCP to establish mitigation ratios (or lack of mitigation) is inappropriate. (Staff Report, pp. 24-25). Indeed, the Staff Report acknowledges the City's LCP "allow[s] greater flexibility in the composition of mitigation than is normally found in other LCPs and the Commission's own policies." (Staff Report, p. 2). Moreover, the lack of mitigation is not justified in light of the habitat provided by non-native vegetation and, as mentioned, the water quality benefit of such vegetation.

The justification for mitigation outside of the Mission Bay watershed is also puzzling in light of the City's pending Master Plan Update and the ReWild initiative – which provide ample opportunity for mitigation within the watershed. The Staff Report acknowledges the Los Penasquitos Phase II invasive removal mitigation project is essentially unnecessary. (Staff Report, p. 2 ["The proposed enhancement site is in very healthy condition, with natural vegetation of high quality and limited presence of invasive species."]). Mitigation where it makes an actual impact is thus more appropriate.

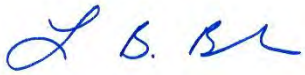
Lastly, it is unclear how the City characterizes the Mission Bay Drive channel as part of its Mission Bay Park Master Plan. If the channel is characterized as parkland, mitigation should be required for loss of use during maintenance activities. If the channel is characterized as wetland, this provides further support for mitigation of all vegetation removal activities.

[1] See, https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml. Rose Creek is impaired for benthic community effects, selenium, and toxicity. Mission Bay is impaired for mercury and PCBs. Mission Bay at the mouths of Rose Creek and Tecolote Creek is impaired for eutrophic impacts and lead. Mission Bay at the Quivira Basin is impaired for copper.

In light of the foregoing issues, we urge the Commission to require: (1) mitigation within the watershed; (2) mitigation for water quality and biological impacts for non-native vegetation removal within the channel and mitigation areas; and (3) clarification of the channel's role in providing recreational opportunities and/or wetland habitat within the Mission Bay Park Master Plan.

Thank you in advance for your consideration of our comments.

Sincerely,



Livia Borak Beaudin
Legal Director
Coastal Environmental Rights Foundation