

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**

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STAFF REPORT: APPEAL – DE NOVO and REGULAR CALENDAR

Local Government:	City of San Diego
Appeal Number:	A-6-SAN-20-0029
Application Number:	6-20-0356
Applicant:	City of San Diego
Location:	City-wide storm water facilities within the Los Peñasquitos, Mission Bay, San Diego River, Pueblo San Diego, Otay, and Tijuana River watersheds; Torrey Pines, Los Peñasquitos Canyon, Mission Bay Park, Peninsula, Otay-Mesa Nestor, Tijuana River Valley; San Diego, San Diego County.
Project Description:	Implementation of the Municipal Waterways Maintenance Plan (MWMP), a city-wide program governing the ongoing repair, maintenance, and mitigation for city storm water infrastructure projects.
Appellants:	Vice Chair Brownsey and Commissioner Hart
Staff Recommendation:	Approval with Conditions on dual permit

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the both permits according to one set of standard and special conditions.

The Municipal Waterways Maintenance Plan (MWMP) is a city-wide program governing the ongoing repair and maintenance of twenty storm water facilities managed by the City of San Diego's Transportation and Storm Water Department to ensure adequate flood control.

Because the covered storm water infrastructure spans the entire coastal zone, some facilities are located within the City's coastal permitting jurisdiction and some are located in the Commission's permitting jurisdiction. In June 2020, the City approved a local coastal development permit (CDP) for the MWMP covering facilities located within its jurisdiction and separately applied to the Commission for a CDP authorizing the MWMP within the Commission's jurisdiction areas. The local CDP was subsequently appealed by the Commission in July 2020 (CDP Appeal No. A-6-SAN-20-0029) and the state CDP application (No. 6-20-0356) was non-filed due to lack of required information. At the September 2020 hearing, the Commission found Substantial Issue regarding the local CDP, and the City and Commission staff subsequently entered into discussions regarding how best to address the issues identified in the appeal – permit duration, substantial conformance review process, applicable mitigation ratios, and final habitat mitigation plans – and bring both MWMP permits forward in a single Commission action.

This action addresses both the de novo of the City's local CDP for the MWMP as well as their application to the Commission to authorize the MWMP in the Commission's jurisdiction areas. The City proposes the MWMP to address the annual maintenance of its storm water infrastructure in all of its major watersheds, including Los Peñasquitos, Mission Bay, San Diego River, Pueblo San Diego, Otay River, and Tijuana River. While the City has taken efforts to identify the smallest maintenance activities necessary to restore the storm water facilities to design capacity, in the years since these channels were last maintained, sensitive habitat has established in and next to many of the channels that would be permanently impacted by the maintenance activity, namely the removal of vegetation and sediment within the channel boundaries. While many of the channels under the MWMP were covered and mitigated by the previous master storm water permit approved by the Commission (CDP No. A-6-NOC-11-086), the MWMP is more expansive than the previous master permit and covers additional channels that will need mitigation.

Although the Coastal Act and the City's certified LCP prioritize providing mitigation on-site or as close to the impact as feasible, it is not feasible for the City to provide mitigation on-site for most of the channels due to the need to keep the channels clear of obstruction to prevent flooding and the developed nature of the surrounding area. Instead, the City is proposing to provide mitigation at three primary sites previously approved by the Commission to mitigate past projects and serve as a potential mitigation bank for future projects: El Cuervo del Sur Phase II and Los Peñasquitos Phase II in the north of the City along Los Peñasquitos Creek, and Hollister Quarry in the south of the City along the Otay River.

The proposed maintenance projects under the MWMP are expected to impact sensitive habitats and will require approximately 0.88 acre of wetland and riparian mitigation. The City is proposing to fulfill its mitigation requirements by providing 1:1 habitat creation and the balance as habitat enhancement. However, sufficient creation opportunity is available at the El Cuervo del Sur Phase II site and the Hollister Quarry site for the City to provide full habitat creation mitigation without reliance on habitat enhancement. The Biology Guidelines of the City's certified LCP state that "[f]or 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." While the Biology Guidelines allow consideration of the provision of 1:1 creation to achieve a "no net loss" of habitat and the balance through enhancement activities, the language of the LCP clearly prioritizes creation of in-kind habitat as the primary method of mitigation, and this policy is consistent with the Commission's mitigation practices elsewhere in the state. To accept 1:1 creation habitat, the minimum allowed under the LCP, as sufficient mitigation when there is clear opportunity for full creation mitigation would be contrary to the certified language of the LCP and the habitat protection policies of the Coastal Act. Thus, as conditioned, **Special Condition No. 9** requires the City to submit final mitigation plans for El Cuervo del Sur Phase II and Hollister Quarry in conformity with the Commission's previous approvals and detailing how the habitat creation mitigation required of the MWMP will be provided on site. **Special Condition No. 10** requires the submittal of related monitoring plans detailing the success criteria and reporting schedule, among other details, over the multi-year mitigation establishment period.

One storm water facility, the 5-805 Basin, has the potential to support endangered Ridgway's Rail. Because additional information is necessary to determine whether the site qualifies as environmentally sensitive habitat area and fully evaluate the potential impacts of any maintenance clearing, **Special Condition No. 11** clarifies that the 5-805 Basin is not part of this consideration and any future maintenance of the 5-805 basin requires separate Commission review and permitting. The City is amenable with this change in scope of the subject proposed project.

Because many storm water channels are near areas used by sensitive species that could be driven away by human activity, **Special Condition No. 5** requires that no maintenance activity be conducted during bird breeding season (defined as February 15th – September 15th) unless approval is obtained from U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. In order to ensure that each annual round of maintenance activity is conducted pursuant to the approved parameters of the MWMP and that there are no changed conditions warranting additional mitigation, **Special Condition No. 2** establishes a Substantial Conformance Review process wherein the City will submit the upcoming maintenance projects for review and signoff by the Commission prior to implementation. Because the City's storm water infrastructure is extensive and subject to substantial and frequent elemental forces, **Special Condition No. 1** places a five-year duration on the permit, extendable up to ten years in total upon Executive Director determination that the MWMP is operating as approved, in order to allow the opportunity to assess the plan's success and effect on

surrounding habitat and infrastructure and provide the opportunity for necessary changes or amendments, if needed.

Due to the frequent and voluminous flows that the City's storm water infrastructure processes, and the flows' proximity to coastal waters, impacts to water quality from the MWMP's proposed maintenance activity are a concern. Construction-related impacts may occur related to waste management (trash) and spills or leaks from construction equipment and vehicles (oil and grease, fuel, cement slurry, and other hazardous substances). Because the annual maintenance of storm water facilities will often require in-channel activity, often with heavy machinery in or adjacent to the channel, **Special Condition No. 6** supplements the City's construction pollution prevention measures and requires the City to incorporate a number of BMPs to address construction-related water quality issues. **Special Condition No. 7** requires the City to implement enhanced water quality mitigation measures as described in the MWMP. Because the MWMP requires other regulatory approvals such as the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service, **Special Condition No. 3** requires the applicant to provide all necessary state and federal permits or approvals for all aspects of the proposed project, or evidence that no authorization is required, for the review and approval of the Executive Director prior to the commencement of development. Additionally, because these storm water facilities are by design located in flood zones and channel large volumes of runoff during storm events, **Special Condition No. 4** requires the applicant to assume the risk of hazard and accept a waiver of liability related to the maintenance work approved in this permit.

Commission staff recommends that the Commission **APPROVE** coastal development permit applications A-6-SAN-20-0029 and 6-20-0356, as conditioned. The motion is on Page 6. The standard of review is the City of San Diego's certified LCP and Chapter 3 of the Coastal Act, respectively.

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EXHIBITS

[Exhibit 1 – Vicinity Maps](#)

[Exhibit 2 – Dr. Koteen Memo](#)

I. MOTION AND RESOLUTION ON DE NOVO PERMIT A-6-SAN-20-0029

Motion:

I move that the Commission **approve** Coastal Development Permit No. A-6-SAN-20-0029 pursuant to the staff recommendation.

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 the certified Local Coastal Program of the City of San Diego. 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. MOTION AND RESOLUTION ON PERMIT 6-20-0356

Motion:

I move that the Commission **approve** Coastal Development Permit No. 6-20-0356 pursuant to the staff recommendation.

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.

NOTE: The Standard and Special Conditions apply to both CDP Nos. A-6-SAN-20-0029 and 6-20-0356

III. 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.

IV. SPECIAL CONDITIONS

1. Duration of Permit.

This permit is valid for a period of five (5) years from the date of Commission action. At the end of the five-year period, the Executive Director may issue, upon request of the City and determination that the requirements of the permit were adequately met and no substantial change in circumstances occurred during the initial five-year period, an extension of up to an additional five (5) years. Future channel maintenance beyond this date will require an amendment to this coastal development permit or a new coastal development permit. Any modification of the project within the five-year period, including, but not limited to, changes in channel size or location, timing of work, or staging areas will require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

2. Substantial Conformance Review.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised substantial conformance review program that incorporates the following:

Channel maintenance activities shall be selected by the City on an annual basis and approved through the substantial conformance review process. The City shall submit an annual work plan and supporting documents for priority channels that require maintenance activities for the upcoming year to the Executive Director of the Coastal Commission for review and written approval. The Executive Director shall review the submitted information to determine whether the proposed maintenance activities are consistent with the Municipal Waterways Maintenance Program (MWMP) and the specific terms of this permit. If any proposed activities are determined by the Executive Director to not be consistent with the MWMP and terms of this permit, those specific activities shall not be permitted for the upcoming year unless reviewed and approved under a separate coastal development permit. The Executive Director shall notify the City of any proposed activities that do not comply with the terms of this permit within thirty (30) working days of submittal by the City of the annual work plan. No work may occur during the Executive Director's review period until the thirty (30) working day period has passed.

3. Other Agency Approvals.

PRIOR TO COMMENCEMENT OF MAINTENANCE ACTIVITIES, the applicant shall provide to the Executive Director a copy of all permits or letters of permission issued by all other require state and 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 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.

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

By acceptance of this permit, the applicant acknowledges and agrees (i) that the sites 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.

5. **Timing of Development.**

To avoid potential impacts to California gnatcatcher, least Bell's vireo, and other sensitive bird species during their nesting season, maintenance within vegetated channels will not be permitted from the dates of February 15 and September 15 of any year unless written permission from the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service is provided to the Executive Director for review and written approval.

6. **Construction Pollution Prevention Plan.**

PRIOR TO THE COMMENCEMENT OF MAINTENANCE ACTIVITIES, 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 qualified licensed professional that substantially conforms with the plan submitted to the Commission. 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, sand bag 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.

- 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. Prompt removal of all construction debris from the beach;
 - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
 - ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site as 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 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.

7. Water Quality Mitigation Measures.

The applicant shall comply with and implement the water quality improvement measures and timeframes identified in the "Mitigation and Monitoring Reporting Program Final Environmental Impact Report for the Municipal Waterways Maintenance Plan" dated May 2020.

8. Other Special Conditions from City of San Diego.

Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act. In addition, except as revised herein, the City shall comply with the requirements of the Municipal Waterways Maintenance Plan and related Mitigation Monitoring and Reporting program.

9. 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 "Conceptual Aquatic Resources Habitat Mitigation and Monitoring Plan for the Hollister Quarry Mitigation Site," dated June 12, 2018.
 - 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. 10.
- 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 or, as applicable, Commission regulations; 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 densely established 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 developed from surveys of an approved nearby reference site(s) (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; and
- viii. Provision 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. 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.

10. Final Monitoring Program

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 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 “Conceptual Aquatic Resources Habitat Mitigation and Monitoring Plan for the Hollister Quarry Mitigation Site,” dated June 12, 2018. 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 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 after completion of the restoration or mitigation of a site, 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;
 - 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; and
 - G. 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 that 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 test may be as simple as
determining whether the result of a census establishes success by
exceeding a predetermined threshold. As appropriate, the test shall
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);
and
 - 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 that 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.

11. Removal of 5-805 Basin from Municipal Waterways Maintenance Plan

The 5-805 basin facility located north of Sorrento Valley Road at the western end of Los Peñasquitos Canyon east of Interstate-805 is removed from the maintenance, review, and authorization procedures of this consideration of the Municipal Waterways Maintenance Program. All future maintenance activity related to the 5-805 Basin shall require separate review and approval by the Coastal Commission.

V. FINDINGS AND DECLARATIONS

A. Project Description and Background

The City of San Diego proposes a master plan to allow channel clearing (removal of sediment and vegetation) and maintenance of storm water facilities in natural, earthen and artificial drainages, in order to provide adequate flood flows and preserve water quality.

As described by the City, the Municipal Waterways Maintenance Plan (MWMP) is intended to guide the long-term maintenance of storm water facilities maintained by the City of San Diego's Transportation and Storm Water Department's Storm Water Division (SWD). This program would apply to storm water facilities located both within and outside of the City of San Diego's coastal zone. Of the facilities located within the coastal zone, some are within the City's permit authority and others within the Coastal Commission's permit authority. The City approved a permit for those facilities located within its own permit authority, which was subsequently appealed to the Commission as further described later in this section. The City also submitted a separate application to the Commission for approval of the program over facilities located within the Commission's permit authority.

Therefore, this staff report describes the MWMP as a single program under two separate permit actions. Coastal Development Permit No. A-6-SAN-20-0029 is the de novo review of the City's locally approved master coastal development permit covering drainages over which that the City of San Diego has permit jurisdiction. Coastal Development Permit No. 6-20-0356 covers drainages located within the Commission's permit jurisdiction.

Most of the drainages covered by the City's program are located outside of the Coastal Zone. The drainages within the coastal zone affected by the proposed project are both earthen and concrete lined. Below is a table that outlines each drainage and its size and type. However, since submittal of the application and appeal of the local approval, discussions between the City, Commission staff, and the U.S. Fish and Wildlife Service have revealed the possibility that the 5-805 Basin facility may support Ridgway's Rail, meaning the basin may be an Environmentally Sensitive Habitat Area (ESHA). Because additional information regarding the presence of Ridgway's Rail is necessary, it was deemed appropriate by all parties to remove the 5-805 Basin from the MWMP authorization at this time, meaning all future maintenance of the 5-805 Basin will require separate Commission review and permitting.

Los Peñasquitos Watershed					
Facility Group Name	Segment Name and Number	Substrate	Coastal Zone - Permit Authority	Linear Feet of Maintenance Proposed	Total Linear Feet
Peñasquitos Lagoon - Industrial	Industrial 1	Earthen	Yes - Commission	25 feet	285 feet
Peñasquitos Lagoon - Industrial	Industrial 2	Concrete	Yes - City	650 feet	650 feet
Peñasquitos Lagoon Industrial - Tripp	Tripp 1	Concrete	Yes - City	1,835 feet	1,835 feet
Soledad Canyon Creek - Sorrento	Roselle 1	Earthen	Yes - City	215 feet	1,554 feet
Soledad Canyon Creek - Sorrento	Roselle 2	Concrete	Yes - City	2,314 feet	2,314 feet
Soledad Canyon Creek - Flintkote	Flintkote 1	Concrete	Yes - City	992 feet	992 feet
Soledad Canyon Creek - Dunhill	Dunhill 1	Earthen	Yes - City	430 feet	430 feet
Los Peñasquitos Canyon Creek - 5-805 Basin	5-805 Fwys 1	Earthen	Yes - Commission	1.44 acres	744 feet
10405 Sorrento Valley Rd	N/A	Concrete inlet	Yes - City	N/A	N/A

Mission Bay Watershed					
Mission Bay - Mission Bay High School	Pacific Beach - Olney 1	Earthen	Yes - City	910 feet	910 feet
Mission Bay - Mission Bay High School	Mission Bay High School 1	Concrete	Yes - City	1,058 feet	1,058 feet
Mission Bay - Mission Bay Drive	Mission Bay Dr 1	Earthen	Yes - Commission	1,085 feet	1,085 feet

San Diego River Watershed					
San Diego River - Valeta	Valeta 1	Concrete	Yes - City	161 feet	161 feet

Pueblo San Diego Watershed					
Chollas Creek - National	National 1	Earthen & concrete	Yes - City	816 feet	1,976 feet

Otay Watershed					
Nestor Creek - Nestor	Cedar 1	Earthen	Yes - City	65 feet	427 feet

Nestor Creek - Nestor	Cedar 2	Concrete	Yes - City	560 feet	560 feet
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Tijuana River Watershed					
Tijuana River - Pilot & Smugglers	Pilot Channel 1	Earthen	Yes - City	5,550 feet	5,550 feet
Tijuana River - Pilot & Smugglers	Smuggler's Gulch 1	Earthen	Yes - City	3,026 feet	3,875 feet
Tijuana River - Tocayo	Tocayo 2	Concrete	Yes - City	2,498 feet	2,498 feet
Tijuana River - Smythe	Via Encantadoras 1	Earthen	Yes - City	120 feet	120 feet

The purpose of the project is to maintain storm water facilities to provide adequate flood control. The MWMP describes the maintenance techniques to be employed as well as the protocols to be followed to minimize the impacts to environmental resources.

The scope of work includes primarily the removal of accumulated vegetation and sediment to restore conveyance capacities. The work is typically done with mechanized equipment, but where access is unavailable, it will be done by hand. Impacts to sensitive water resources and water quality would be minimized through a number of avoidance measures, construction methodologies, and best management practices (BMPs) detailed in the MWMP. As proposed, unavoidable impacts would be mitigated at the ratios included in the certified LCP. For areas where clearing has occurred under previous authorizations and the related mitigation already provided, no additional mitigation is proposed.

The MWMP includes a process by which individual storm water facility maintenance would be identified and prioritized annually through an evaluation process that considers the costs and benefits of maintenance of each facility in meeting flood control and water quality goals. Each year, an annual list of prioritized maintenance would be established for the upcoming fiscal year.

Once the priority list is established, the City will complete a series of studies, the goal of which is to determine the best way to maximize flood control while minimizing impacts on sensitive biological resources and water quality. These studies include individual biological, historical, hydrologic, water quality, and noise assessments. Based on the results of these studies, the City will prepare a Facility Maintenance Plan (FMP) for each maintenance activity. The FMPs would identify the width of the facility to be cleared, maintenance methods and equipment to be used, access roads/paths, staging areas, and schedules. The goal of the FMPs would be to minimize the amount of clearing in order to reduce impacts on sensitive biological resources while providing necessary flood control capacity.

Annual maintenance would then be authorized through a process known as Substantial Conformance Review (SCR). Under the SCR process, the City's Development Services Department would evaluate the potential impacts associated with annual maintenance proposals and compare them with the impacts analyzed in the certified Final

Environmental Impact Report (FEIR), and with the objectives, standards, guidelines, and conditions of the Coastal Development Permit. While the FEIR did analyze potential impacts, it was done on a programmatic basis. For example, impacts on sensitive biological resources were estimated for the entire project based on certain assumptions. The SCR process would utilize a comprehensive checklist included in the MWMP to confirm whether the proposed maintenance is consistent with the MWMP and FEIR. The checklist includes an itemized list of the mitigation measures in the FIER and maintenance protocols included in the MWMP. In addition to the SCR checklist, the City would use the FMPs to assess the project. If Development Services Department determines, based on the site-specific analysis and SCR checklist, that the proposed maintenance activities have been adequately addressed pursuant to the MWMP, FIER and associated mitigation measures, maintenance protocols and the required BMPs, then a Notice of Future Decision would be posted at the project site and mailed to property owners and residents within 300 feet of the site as well as to interested persons. The public then has twelve business days to file an appeal of the City staff's decision to the Planning Commission. The Planning Commission hearing will then be scheduled within 60 days and at that time, the Planning Commission will make a decision to affirm, reverse, or modify the City staff's decision. If a maintenance activity is determined not to be in substantial conformance, then a new or amended permit would be required along with subsequent environmental review.

Concurrent with the City SCR process, information on the proposed project will be submitted to the appropriate State and Federal Resource Agencies for approval under the terms and conditions of their respective permits. The agencies will review the application and supporting documentation to determine consistency of the project with the specific terms of the permit issued by their agency. If any of the agencies determine that one or more of the maintenance activities are not consistent, then the City would have to work with the concerned agency to identify additional measures that would be necessary to bring the activities into compliance. The City will not begin work on any maintenance activity until it has all necessary approvals of the State and Federal Resource Agencies with jurisdiction over the affected biological resources. To ensure that the Coastal Commission has the same opportunity to comment on the yearly projects, **Special Condition No. 2** is proposed. This condition requires that the City's SCR process be revised to include review by the Executive Director of the Commission. If the Executive Director determines any identified project is not consistent with the program, then that project would be deleted or reviewed under a separate CDP.

Project Background

In October 2011, the City of San Diego approved a twenty-year permit for a master storm water program to streamline the review and approval process for repair and maintenance of storm water infrastructure. The Coastal Commission, as well as several non-profit organizations, appealed the City's permit on the grounds that it was inconsistent with the certified LCP's habitat protection policies because the city permit approved wide-ranging impacts from maintenance activities without analyzing alternatives or finalizing mitigation plans. Additionally, the twenty-year duration of the permit and the annual prioritization of channel maintenance created the possibility that

certain channels could remain unmaintained for years, allowing new or additional habitat resources to arise that were not identified in the master storm water program and for which mitigation would not be identified until well after permit approval.

In November 2012, on de novo review, the Commission approved a five-year Master Storm Water System Maintenance Program (Master Maintenance Permit or MMP for short) for annual repair and maintenance of storm water infrastructure concentrated in three coastal areas: Sorrento Valley, Mission Bay High School, and the Tijuana River Valley (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 within the Coastal Zone. Under the MMP, the City annually 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 unavoidable impacts, and identified how the impacts would be mitigated 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 was subsequently extended for an additional two years and expired in November 2019. Since then, each individual storm water maintenance project has required its own separate permit review.

Prior to the end of the seven-year term of the MMP, the City began work on drafting the MWMP as a successor program. During its preparations, the City held meetings with Commission staff and other stakeholders. Commission staff's comments on the draft program focused on using the final, Commission-approved 2012 program as a model for the successor program and ensuring that proper mitigation was identified for any new impacts arising from the successor program. The City completed its CEQA process and internal permit approvals in early 2020, and the Notice of Final Action for the MWMP was submitted to the Commission in July 2020. Around the same time, the City also submitted a permit application to the Commission to apply the MWMP to those storm water facilities located within the Commission's permit authority (CDP No. 6-20-0356). The local CDP was subsequently appealed by the Commission, and the Commission CDP application was non-filed due to lack of necessary information.

At the September 2020 hearing, the Commission found Substantial Issue regarding the local CDP, and the City and Commission staff subsequently entered into discussions regarding how best to address the issues identified in the appeal – permit duration, substantial conformance review process, applicable mitigation ratios, and final habitat mitigation plans – and bring both MWMP proposals forward for joint consideration.

Standard of Review

The MWMP includes specific storm water facilities spread across the City of San Diego's coastal zone and located within the City's permit jurisdiction, where the San Diego certified LCP and the public access policies of Chapter 3 of the Coastal Act are the standard of review, and areas of deferred certification and the Commission's retained jurisdiction, where Chapter 3 of the Coastal Act is the standard of review.

B. Biological Resources

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 30233 of the Coastal Act states:

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

[...]

(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

(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. Any alteration of coastal wetlands identified by the Department Fish and game, including, but not limited to, the 19 coastal wetlands identified in the report entitled, "Acquisition Priorities for the Coastal Wetlands of California," shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

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.

The Torrey Pines Community Plan states the following:

Torrey Pines Community Plan – Local Coastal Program Policies

E. Environmentally Sensitive Habitat Areas

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible, less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities”

1. 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;
2. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas;
3. Restorative purposes;
4. Nature study, aquaculture or similar resource-dependent activities.

The Tijuana River Valley Land Use Plan states the following:

Tijuana River Valley Land Use Plan – Specific Recommendations

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to minor incidental public service projects, restoration purposes, nature study, and mineral extraction.

Section 143.0130 of the San Diego Land Development Code, which serves as the certified IP, states:

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.

(e) Wetland buffer areas in the Coastal Overlay Zone. Permitted uses in wetland buffer areas shall be limited to the following:

- (1) Public Access paths;
- (2) Fences;
- (3) Restoration and enhancement activities; and
- (4) Other improvements necessary to protect wetlands.

Section 143.0141 of the Land Development Code states:

Development Regulations for Sensitive Biological Resources

Development that proposed encroachment into sensitive biological resources requires a development permit in accordance with Section 143.0110, unless exempted pursuant to Section 143.0110(c) and is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(a) General Regulations for Sensitive Biological Resources

(1) All development occurring in sensitive biological resources is subject to a site-specific impact analysis conducted by a qualified Biologist, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact:

- (A) Dedication in fee title to the City of San Diego; or

(B) Dedication of a covenant of easement in favor of the City of San Diego, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service for either:

(i) An off-site location with long-term viability and biological values equal to or greater than the impacted site, and with limited right of entry for habitat management, as necessary; or

(ii) On-site creation of new habitat, preservation of existing habitat outside the Coastal Overlay Zone, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary. The location of the easement must have long-term viability and biological values equal to or greater than the impacted site.

(iii) In off-site locations or on-site, Zone Two brush management shall be placed within a covenant of easement, but may not qualify for mitigation purposes.

[...]

(3) Sensitive biological resources that are outside of the allowable development area on a premises, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife are to be named as third-party beneficiaries to any covenant of easement recorded pursuant to this section.

[...]

(b) Wetland Regulations

(1) State and federal law regulate adverse impacts to wetlands and listed species habitat. The applicant shall confer, when applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Wildlife before any public hearing for the development proposal.

(2) The applicant shall solicit input from U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Wildlife on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat.

(3) The applicant shall, to the maximum extent feasible, incorporate U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Wildlife recommendations into the development proposal prior to the first public hearing.

(4) Construction permits shall not be issued for any project that impacts wetlands or listed species habitat until all necessary federal and state permits have been obtained.

(5) Impacts to wetlands shall be avoided, except where permitted in accordance with Section 143.0141(b)(6). A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetlands. 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 this section.

(6) Outside the Coastal Overlay Zone, encroachment into a vernal pool is allowed outside of the MHPA where the development is consistent with the Biology Guidelines of the Land Development Manual and VPHCP. Such development does not require a deviation to the wetland regulations

Section 143.0145 of the Land Development Code states:

Development Regulations for Special Flood Hazard Areas

[...]

(g) Floodways

[...]

(3) Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:

(A) Essential public service projects, where no other feasible construction method or alternative project location exists; and

(B) Flood control projects, where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety.

(C) Projects where the primary function is the improvement of fish and wildlife habitat.

[...]

(5) Development that involves channelization or other substantial alteration of rivers or streams is subject to the following requirements.

(A) All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into the project design and mitigation measures. These requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

(B) The channel shall be designed to ensure that the following occur:

(i) Stream scour is minimized;

(ii) Erosion protection is provided;

(iii) Water flow velocities are maintained as specified by the City Engineer;

(iv) There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;

(v) Wildlife habitat and corridors are maintained;

(vi) Resource management criteria are implemented consistent with applicable land use plans; and

(vii) Groundwater recharge capability is maintained or improved.

(C) Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a nonconfined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.

(D) All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and a maintenance and monitoring process shall be established to the satisfaction of the City Engineer.

(6) Development shall not significantly adversely affect existing sensitive biological resources on-site or off-site.

[...]

The City’s LCP also contains a number of applicable provisions within the City’s Biology Guidelines within its Land Development Manual 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 Impacts

The City's storm water system is comprised of different types of facilities such as natural (earthen) and artificial (concrete, rip rap) channels, which are used to convey storm runoff throughout the metropolitan area. The drainages within the coastal zone affected by the MWMP are substantially natural drainages. Within these drainages, wetlands exist and there is the potential for further establishment of additional wetlands, sensitive uplands, and various wildlife species. Because during high-flow storm events vegetation may impede flows and sediment may lower carrying capacity, maintenance of channels primarily involves the removal of accumulated sediment, vegetation, and debris to restore design capacity.

Section 30233 of the Coastal Act and the above cited LCP provisions limit 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 facilities covered by the MWMP are public facilities constructed prior to passage of the Coastal Act. Blockages of these facilities cause storm water flows to overtop the channel and upstream segments, flooding adjacent properties and roads, 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 channels and not increase their design capacity, thus constituting the repair and maintenance of existing public service infrastructure, an allowable use in wetlands.

The City looked at several alternatives before proposing the current MWMP. A "no-project alternative" would continue the City's current approach of seeking project-specific permits annually rather than implementing the MWMP. This was rejected by the City for requiring more time and City resources to process individual maintenance projects while not reducing impacts to sensitive habitat because facility maintenance would continue to occur. A "reduced in-stream maintenance alternative" would limit heavy machinery use to the banks of the channels as opposed to in-channel use and only use hand tools within the channels. However, this alternative would result in greater impacts to upland areas and potentially greater use of herbicides within the channel to compensate for the loss of mechanical removal of accumulated material. A "limited sediment removal alternative" would only remove sediment from concrete channels but not from earthen channels. This was rejected by the City because while some of the impacts would be avoided in the natural channels under the limited sediment removal alternative, mechanized equipment would still be used to remove the vegetation in the earthen channels while leaving pollutant-laden soil behind, limiting the effectiveness of the flood control efforts and increasing adverse impacts to water quality. An "alternative sediment management approach" would leave strips of sediment

and vegetation within the channels after partial removal of blockages. The City rejected this alternative because more numerous access paths would be needed to maintain the areas between the strips, and the strips themselves would interfere with water flow and erode downstream over time. A “reduced project alternative” would eliminate from the MWMWP any facility that would adversely affect more than 0.5 acre of wetlands that have not been previously mitigated. Only two of the four facilities that meet this criteria are located in the coastal zone – Mission Bay Drive and Nestor Creek – and the City rejected this alternative due to the substantial increase in flood risk to the surrounding areas. Thus, the MWMP is the least impactful feasible alternative for the necessary annual maintenance of its storm water infrastructure.

The City surveyed the current state of its storm water channels and prepared an initial inventory of project-specific FMPs for the first round of maintenance activities to be undertaken during the fiscal year following approval of the MWMP. Pursuant to the procedures in the MWMP for preparing FMPs, the City prepared a Biological Resources Technical Report of the storm water segments slated for maintenance and overlaid them with the FMPs’ maintenance project footprints in order to identify the anticipated habitat impacts that would arise, tabulating the acreage and habitat types that would be removed by maintenance clearing.

The MWMP includes storm water facilities that were covered and mitigated by the previous 2012 master storm water permit as well as new storm water facilities not previously covered. The following new, previously unmitigated habitat impacts would arise from maintenance of the following four storm water facilities: 0.03 acre (0.01 acre freshwater marsh and 0.02 acre riparian wetland) at the “Industrial” facility in Sorrento Valley, 0.11 acre (0.03 freshwater marsh and 0.08 disturbed wetland) at the “Dunhill” facility in Sorrento Valley, 0.05 acre (0.01 acre freshwater marsh and 0.05 riparian wetland) at the “Valeta” facility in Famosa Slough, and 0.05 acre (0.05 acre riparian wetland) at the “Tocayo” facility in Nestor.

There is a fifth new location, the 5-805 Basin facility in Los Peñasquitos Canyon, which contains approximately 0.92 acre of salt marsh. However, this location has been identified by the US Fish and Wildlife Service as potentially containing Ridgway’s Rail, an endangered species, which will require a protocol survey. Presence of the rails could mean this area qualifies as Environmentally Sensitive Habitat Area (ESHA). After discussions between the various parties, it was deemed appropriate at this time to remove the 5-805 Basin from the MWMP. Therefore, **Special Condition No. 11** clarifies that the 5-805 Basin is not part of the MWMP and any future maintenance at this site will require separate Commission review and permitting.

The MWMP also covers the “Nestor Creek” channel in Nestor (0.13 acre of impacts: 0.04 acre freshwater marsh, 0.03 acre southern willow scrub, and 0.06 acre of disturbed wetland) and the “Mission Bay Drive” channel in Mission Bay Park (0.44 acre of impacts: 0.24 acre freshwater marsh and 0.2 acre natural flood channel). These two sites are also newly included in the MWMP, however, unlike the previously mentioned channels, these two channels have been recently maintained and cleared. Those clearings were approved by Commission actions (CDP No. 6-18-0688 for Nestor Creek and 6-20-0433 for Mission Bay Drive) that will be described in greater detail later in this

section. The past Commission actions for the maintenance of those two channels were one-time actions, and all future maintenance of the channels and any new habitat impacts above and beyond what was covered in the past Commission actions will be covered by the MWMP and this permit.

Mitigation Requirement

Because the MWMP is a city-wide program that encompasses storm water facilities both within the Commission's and the City's permit jurisdiction, the habitat protection policies of both the Coastal Act and the certified LCP apply. Section 30230 of the Coastal Act requires the protection of sensitive habitat areas and the areas adjacent to them, and Section 30233 only allows the dredging and filling of coastal waters when there is no less impactful feasible alternative and when accompanied by the appropriate mitigation. The habitat protection policies of the City's certified LCP are primarily contained in the Environmentally Sensitive Land regulations of the Land Development Code and the Biology Guidelines within the supplementary Land Development Manual. Section 143.0130(d) of the Land Development Code lists the limited uses allowed in wetlands and states that incidental public services are allowed only when reduced to the maximum extent feasible and accompanied by appropriate mitigation. The City's Biology Guidelines further state that "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."

While the project is a permitted use in wetlands, and is the least environmentally damaging feasible alternative, because the MWMP will implement maintenance clearing in several storm water facilities across the coastal zone that have been identified as having habitat within them, mitigation will be required to offset the impacts. As part of the MWMP process, when a pre-maintenance habitat survey identifies unavoidable habitat impacts, the maintenance cannot be implemented until an appropriate mitigation requirement, site, and plan have been identified. However, for the Commission to be able to approve future maintenance through the MWMP, those mitigation standards and appropriate, feasible mitigation sites must be identified at this time.

When an applicant proposes to restore or create a wetland as mitigation for impacts from development, the Commission must determine if the quantity and quality of the proposed mitigation will adequately compensate for the wetland area lost through development. Resource and regulatory agencies typically required additional acreage beyond that lost through development, because of interim losses in wetland acreage and functional capacity, and because the success and resulting value of compensatory mitigation projects are uncertain. The ratio of wetland acreage created or restored to the wetland acreage lost to development is termed the wetland replacement ratio or mitigation ratio. Wetland replacement ratios may vary depending on the acreage, functions, and values of the wetland lost to development and the type of mitigation proposed.

Pursuant to the LCP and the Commission's standard practice, wetland impacts should 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, past Commission action on the 2012 master storm water permit and the January 2021 one-time clearing of the Mission Bay Drive channel 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. While even non-native vegetation could potentially have some positive impact on water quality, as many plants remove pollutants from the water, that positive impact can be more than offset by the negative impacts non-native plants have on the native ecosystem through displacement of native vegetation and loss of native plant function. That exemption is also appropriate here, where the MWMP defines a habitat area as dominated by invasive species if more than eighty percent of the area is invasive species.

Thus, consistent with the mitigation ratios applied in prior Commission actions, in this case, no mitigation is proposed or required for the removal of the *Arundo* dominated and palm dominated wetlands, or ornamental vegetation. Mitigation will be required for the impacts to the freshwater marsh, riparian wetland, and disturbed wetland. Applying the 4:1 mitigation ratio to the freshwater marsh and disturbed wetland, and 3:1 ratio to riparian wetland, the City would be required to provide a total of 0.88 acres of mitigation for the new impacts to freshwater marsh, disturbed wetlands, and riparian wetland that are anticipated to arise under the MWMP.

Mitigation that creates new, in-kind habitat has long been the preferred and primary form of mitigation for habitat impacts, as it best serves to compensate for the temporal and physical loss of habitat from unavoidable development impacts. As noted above, creation of new wetlands at a 4:1 ratio is appropriate because artificial wetlands take several years to become established, resulting in a temporal loss of habitat value between the impact and the establishment of habitat structure and function at the site of mitigation, and because such artificial habitats have a notable chance of failure to achieve the full set of functions inherent to the impacted habitat.

The City's certified LCP is atypical in that the Biology Guidelines in the Land Development Manual allow consideration of less than full creation to fulfill wetland mitigation requirements.

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.

For the wetland impacts identified in the MWMP, the City proposes mitigation consisting of 1:1 wetland creation and the remainder consisting of riparian enhancement. The City

argues that such a mitigation package achieves no net loss of habitat, and that fulfilling the remainder of the mitigation requirement through enhancement is acceptable under the language of the Biology Guidelines. However, the language of the LCP clearly prioritizes creation of in-kind habitat as the primary method of mitigation, and this policy is consistent with the Commission's mitigation practices elsewhere in the state. This section of the Biology Guidelines states that "[w]etland 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." Anything less than full creation would exacerbate the temporal and physical habitat loss of development impacts by not creating sufficient habitat function as compensation.

The City notes that past Commission actions, such as the previous master storm water permit (CDP No. A-6-NOC-11-081) and the recent January 2021 action for the one-time clearing of the Mission Bay Drive channel (CDP No. 6-20-0433), have accepted mitigation packages that consisted of 1:1 creation and 3:1 enhancement. While it is true that past actions have accepted alternatives to fulfilling mitigation requirements entirely with new habitat creation, these mitigation packages are in accordance with the Biology Guidelines' allowance for lower ratios to be accepted where full creation is not feasible. In the case of the January 2021 action, the Commission supported the proposal for 1:1 creation and 3:1 riparian enhancement for a one-time clearing because the Commission was simultaneously reviewing the full MWMP application for a subsequent hearing. At the time, Commission staff noted that if full 4:1 creation was mandated for the 0.44-acre impact arising from that clearing, no additional creation mitigation area would have been available for the remainder of the MWMP impacts being addressed in this action. Further, the application was submitted ahead of the full MWMP because the City believed that flooding was imminent, requiring approval of the mitigation package on an expedited basis.

As the largest jurisdiction in the Coastal Zone, with much of that area long developed with development predating the Coastal Act, the City's opportunities for substantial new wetland creation are limited. Recognizing the responsibility and benefit of maintaining storm water infrastructure, the Commission has coordinated with the City to find biologically acceptable mitigation packages that would allow the City to proceed with their maintenance. However, the flexibility in the LCP to allow less than 4:1 creation in various circumstances does not mean the language in the Biology Guidelines clearly stating that "mitigation shall consist of creation of new, in-kind habitat to the fullest extent possible and at the appropriate ratios" does not remain in full force. The City's proposal to provide mitigation consisting of 1:1 creation and the rest as restoration is insufficient where creation is feasible.

Whenever feasible, the City should fulfill its mitigation requirements in full through creation of new, in-kind habitat, consistent with the language of the certified LCP and the Commission's practices statewide.

Mitigation Sites

Both the Coastal Act and the City's Biology Guidelines emphasize providing mitigation on-site or as close to the impact as feasible. If on-site mitigation is not feasible, then mitigation shall occur within the same watershed. At a minimum, all mitigation for unavoidable wetland impacts within the City's coastal zone shall occur within the coastal zone.

Mitigation within or immediately surrounding the subject channels is not possible due to the need to keep the channel clear to prevent flooding and because they are located amidst existing development. Commission staff worked with the City to attempt to identify as many mitigation sites as feasible that were in close proximity or within the same watershed as the impacts identified in the MWMP. However, due to space constraints, the lack of habitat creation opportunity (as opposed to simply habitat enhancement opportunity), lack of funding or final approvals being in place, and high levels of encroachment by transients, not all of the impacts can be mitigated in the same watershed at this time.

After review of currently available mitigation opportunities, the City is proposing to mitigate the identified MWMP impacts at two previously approved mitigation sites: El Cuervo del Sur Phase II/Los Peñasquitos Phase II in the north of the city in the Los Peñasquitos Lagoon watershed (approved in CDP No. 6-20-0433), and the Hollister Quarry site in the Otay River watershed (approved in CDP No. 6-18-0688).

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 is proposing to mitigate habitat impacts with 1:1 creation and the remainder through enhancement activities using the Los Peñasquitos Phase II adjacent to El Cuervo Phase II to provide the proposed riparian enhancement mitigation. 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. Because Commission review of the Los Peñasquitos Phase II site determined that it was substantially healthy and free of invasive vegetation, the Commission applied a divisor of 12 to the site, resulting in the 29.26-acre enhancement site producing 2.44 acres of mitigation credit. The El Cuervo Phase II and Los Peñasquitos Phase II sites have already been approved by the Commission to mitigate for the habitat impacts at the Mission Bay Drive channel.

The Hollister Quarry is a 2.2-acre site located along the Otay River which was previously approved to provide 0.39-acre of mitigation for previous clearing of the

“Nestor Creek” channel. Mitigation at the site would lower the elevation of riparian land that is currently too high to support wetland habitat and expand the low-flow flood channel to restore a more natural hydrology, and eradicate large strands of giant reed, *Arundo donax*.

In this application for the MWMP, the Commission’s ecologist, Dr. Laurie Koteen, reviewed the potential mitigation sites, El Cuervo del Sur Phase II and Hollister Quarry mitigation sites and found that both sites, despite being partially committed to mitigating other projects, are of sufficient size and quality to mitigate all of the above-identified new impacts arising from the MWMP with full creation at the applicable ratios, with extra area remaining for the City to apply to other, future projects. El Cuervo del Sure Phase II has sufficient excess credit to create new habitat at the appropriate mitigation ratios for all impacts occurring at “Industrial” and “Dunhill” channels in Sorrento Valley, downstream of El Cuervo del Sur, as well as the “Valeta” facility at Famosa Slough on the San Diego River. The Hollister Quarry mitigation site has sufficient excess creation opportunity to mitigate for the impacts at the “Tocayo” channel in the adjacent Tijuana River watershed. As such, there is no need at this time to rely on Los Peñasquitos Phase II, which provides only enhancement mitigation opportunities. Thus, as called for in the LCP, it is feasible for the City to provide full creation for its entire 0.88 acre mitigation requirement for anticipated impacts associated with maintenance of the Industrial, Dunhill, Valeta, and Tocayo facilities at El Cuervo del Sur Phase II and Hollister Quarry.

Thus, because the least impactful maintenance activities envisioned under the MWMP will have impacts on wetland and riparian habitat, appropriate mitigation sites and composition must be identified at this time. **Special Condition No. 9** requires the submittal of a final mitigation plan detailing the provision of the habitat creation that will occur at the El Cuervo del Sur Phase II and Hollister Quarry sites, while **Special Condition No. 10** describes the related monitoring plan that must be submitted describing the success criteria and a reporting schedule. Due to the evidence of Ridgway’s Rails in the 5-805 Basin facility and the outstanding information still needed to be gathered regarding the potential status of the wetlands therein as ESHA, **Special Condition No. 11** removes the 5-805 Basin from the MWMP and requires all future maintenance of this facility to obtain separate Commission review and approval. Because many storm water channels are located near areas used by sensitive species that could be driven away by human activity, **Special Condition No. 5** requires that no maintenance activity be conducted during bird breeding season (defined as February 15th – September 15th) unless approval is obtained from Us Fish and Wildlife Service and the California Department of Fish and Wildlife. In order to ensure that each annual round of maintenance activity is conducted pursuant to the approved parameters of the MWMP and that there are no changed conditions warranting additional mitigation obligations, **Special Condition No. 2** establishes a Substantial Conformance Review process wherein the City will submit the upcoming maintenance projects for review and signoff by the Commission prior to implementation. Because the City’s storm water infrastructure is extensive and subject to substantial and frequent elemental forces, **Special Condition No. 1** places a five-year duration on the permit, extendable up to ten years in total upon Executive Director determination that the MWMP is operating as

approved, in order to allow the opportunity to assess its success and effect on surrounding habitat and infrastructure and permit the opportunity for necessary changes or amendments, if needed. Thus, as conditioned, the MWMP can be determined to be the least impactful project feasible that will meet the City's needs to maintain its storm water capacity while mitigating for unavoidable impacts, and can be found consistent with Chapter 3 of the Coastal Act, as conditioned.

C. Water Quality/Hazards

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.

Section 30233 of the Coastal Act states:

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

[...]

(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. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

[...]

(c) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have

been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236 of the Coastal Act states:

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

The following provision of the Torrey Pine Community Plan – Land Use Plan pertains to the proposed development:

7. Riparian vegetation in channels through the Sorrento Valley industrial area shall be preserved in its natural state in order to maintain its vital wildlife habitat value. When vegetation removal is necessary for flood control, the required state and federal permits shall be obtained.

The following provisions of Tijuana River Valley Land Use Plan are applicable and state, in part:

Tijuana River Valley Land Use Plan- Specific Recommendations,

(C) Flood Control

- Flood Control should generally be limited to existing agreements with wildlife agencies and where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety and unless demonstrated to be needed based on a cost benefit analysis and pursuant to a restoration plan. Floodplains within the MHPA, and upstream from the MHPA if feasible, should remain in a natural condition and configuration in order to allow for the ecological, geological, hydrological, and other natural processes to remain or be restored.
- No berming, channelization, or man-made constraints or barriers to creek, tributary, or river flows should be allowed in any floodplain within the MHPA unless reviewed by all appropriate agencies, and adequately mitigated. Review must include impacts to upstream and downstream habitats, flood flow volumes, velocities and configurations, water availability, and changes to the water table level. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development,

or (3) developments where the primary function is the improvement of fish and wildlife habitat.

- No riprap, concrete, or other unnatural material shall be used to stabilize river, creek, tributary, and channel banks within the MHPA. River, stream, and channel banks shall be natural, and stabilized where necessary with willows and other appropriate native plantings. Rock gabions may be used where necessary to dissipate flows and should incorporate design features to ensure wildlife movement.

[...]

(G) Grading/Sediment Control/Water Quality

- Sediment control measures (debris basins, desilting basins or silt traps) shall be installed in conjunction with any new development in which grading is proposed. The prevention and control of runoff of fertilizers, pesticides and other urban pollutants into riparian and floodplain areas should be required.

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

Section 143.0145 - Development Regulations for Special Flood Hazard Areas

[...]

(3) Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:

(A) Essential public service projects, where no other feasible construction method or alternative project location exists;

(B) Flood control projects, where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety.

(C) Projects where the primary function is the improvement of fish and wildlife habitat.

[...]

(5) Development that involves channelization or other substantial alteration of rivers or streams is subject to the following requirements.

(A) All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into the project design and mitigation measures. These

requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

(B) The channel shall be designed to ensure that the following occur:

- (i) Stream scour is minimized;
- (ii) Erosion protection is provided;
- (iii) Water flow velocities are maintained as specified by the City Engineer;
- (iv) There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
- (v) Wildlife habitat and corridors are maintained;
- (vi) Resource management criteria are implemented consistent with applicable land use plans; and
- (vii) Groundwater recharge capability is maintained or improved.

(C) Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a nonconfined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.

(D) All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and maintenance and monitoring processes shall be established to the satisfaction of the City Engineer.

(6) Development shall not significantly adversely affect existing sensitive biological resources on-site or off-site.

Water quality in receiving waters adjacent to urbanized areas can be impacted by pollutants in storm water runoff. Pollutants generated from human activities settle onto impervious surfaces until precipitation or dry weather discharge events wash those pollutants into the Municipal Separate Storm Sewer System (MS4). Common pollutants found in urban runoff include metals, pesticides, fertilizers, bacteria, litter, and sediment. Storm water and dry weather runoff mobilizes and transports these and other pollutants, which are then discharged to waterways via the MS4.

The drainages proposed for maintenance within the Coastal Zone in the MWMP are spread throughout the City. While some of the drainages are relatively minor in size and

scope of resources, the Tijuana River, Soledad, and Los Peñasquitos Creek facilities all contain significant sensitive resources. In addition, all the drainages in the MWMP are upstream of and drain directly into significant resource areas (Tijuana Estuary, Mission Bay, San Diego River, and Los Peñasquitos Lagoon). Thus, maintenance work in the upstream channels could have impacts on the downstream water quality of these natural habitat areas by increasing sediment or other pollutant transport through the more “efficient” channels once maintained. In addition, vegetation removes some pollutants from the water, so the removal of vegetation can adversely impact water quality. Conversely, sediment can accumulate pollutants, and the proposed removal of these sediments is likely to have a positive impact on water quality.

The City is proposing an environmental protocol to reduce the potential for downstream water quality impacts resulting from proposed channel maintenance activities. The MWMP requires the development of a facility-specific water pollution control plan (WPCP) prior to maintenance that outlines the best management practices (BMPs) and pollution prevention measures that shall be implemented prior to and during maintenance activities. The WPCP will be tailored to address facility-specific water quality conditions and BMP requirements based on the actual maintenance procedures to be performed. BMPs shall ensure that no trash, oil, parking, or other maintenance-related material or activities adversely affect environmentally sensitive land. Each WPCP shall include objectives, responsibilities, maintenance, and inspection standards to ensure adherence to pollution prevention standards.

The proposed MWMP also allows limited use of herbicides to manage vegetation, which has the potential to adversely impact water quality. The City is required to apply herbicides in accordance with the Statewide National Pollution Discharge Elimination System Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications (State Water Resources Control Board Order No. 2013-0002- DWQ, General Permit No. CAG990005) to ensure that proposed maintenance activities avoid increases in pollutant discharge to receiving waters, including already impaired waters or Environmentally Sensitive Areas, during or following vegetation management. At this time, the City does not have licensed applicators, which are required for the application of herbicides, on staff, so the City contracts out such work to licensed entities, and incorporates language and informational material into its contracts requiring adherence to state water quality laws and sensitive animal avoidance measures such as avoiding work during nesting season and within 500 feet of sensitive animals. The discharge of residual algacides and aquatic herbicides must meet applicable water quality standards, and dischargers would implement BMPs when applying these substances. The BMPs must be detailed in an Aquatic Pesticide Application Plan, which must be submitted to the San Diego Regional Water Quality Control Board at least 90 days prior to the expected day of permit coverage. The Commission’s water quality technical staff have reviewed the City’s proposed herbicide application procedures and BMPs and agree that they are sufficient to minimize adverse impacts to water quality.

In addition to the water quality impacts associated with the actual maintenance work, the removal of vegetation will have other water quality impacts. Storm water discharges

in urbanized areas typically contain high concentrations of pollutants. Pollutants and sediments from human activities settle on streets, walkways, and other impervious surfaces until a storm event washes them into nearby storm drains. From there, these pollutants and sediments are transported with the storm water runoff and deposited into downstream waterways and ultimately lagoons, estuaries, and the ocean.

Wetland vegetation, channel configuration, and biological conditions can have positive impacts to water quality by spreading out and slowing down flows, providing shading, allowing for nutrient uptake, and reducing potential for anthropogenic sources of erosion and sediment transport. The removal of vegetation as a result of maintenance may decrease the capacity of storm water facilities to retain pollutants and result in greater quantities of sediments and pollutants to reach downstream sensitive resources.

To minimize vegetation removal and the associated loss of ecosystem functions, the MWMP uses hydrology-based data to limit maintenance to only those areas where a reduction in flood risk would be achieved. Where impacts to habitat are unavoidable, **Special Condition No. 9** requires the City to implement compensatory habitat mitigation at sufficient ratios to compensate for loss of ecosystem functions and values that may result from maintenance activities, as discussed in greater detail in Section B: Biological Resources. These ratios account for multiple functions that habitat can support, including those associated with pollutant assimilative capacity losses and temporal losses. This approach is expected to reduce the potential for long-term degradation of water quality.

Although **Special Condition No. 9** establishes the minimum ratios for mitigation to offset impacts to sensitive habitat, including the temporal loss associated with mitigation projects (typically, it takes approximately 5 years after a project impact before mitigation is fully functional), the EIR for the project identified that additional mitigation would be appropriate for circumstances where the required mitigation is not expected to be in place within 5 years. In the event that required compensatory mitigation has not been initiated by the time that maintenance activities impacting wetland vegetation occur, the City proposes to implement one of three additional water quality measures to offset potential long-term water quality impacts: (1) maintenance-activity-specific outreach with enhanced catch basin cleaning, (2) enhanced street sweeping, and (3) green infrastructure. The outreach would occur after each maintenance event and involve distributing educational material to at least 250 in-watershed parcels addressing appropriate BMPs tailored to the parcel's property use type to reduce sediment and pollutant load. Enhanced in-watershed catch basin inspection and cleaning would occur quarterly for one year per maintenance event (as opposed to annually). Currently, the City operates its water quality program under a municipal separate storm sewer system (MS4) permit to implement the requirements of the Clean Water Act and federal National Pollutant Discharge Elimination System (NPDES) regulation. Under these requirements, the City takes measures such as installing desilting basins, installing "first flush" diversions from its storm water inlets into the sewer system, operates pump stations in low-lying areas to prevent runoff accumulation and flooding, and sweeping residential areas monthly and commercial areas weekly. The enhanced street sweeping would cover one mile for every five feet of wetland impact with more frequent sweeping.

Green infrastructure can potentially include low-impact-development type BMPs, multi-use treatment areas, or stream rehabilitation projects. The stream rehabilitation project would be at least 500 square feet or greater. While these mitigation measures are not specifically required by the LCP, they will provide additional benefits to water quality when construction of the wetland mitigation has not been initiated at the time maintenance is completed.

Based on the above, the City is acknowledging that the proposed project will have impacts on water quality and while these impacts have not been specifically quantified, the City is proposing mitigation measures that will directly, and over the long-term, result in the reduction of polluted inputs and sediment into the drainages proposed for maintenance. In order to ensure that construction material, debris, or other waste associated with project activities does not enter the water, **Special Condition No. 6** supplements the City's construction pollution prevention measures and requires the City to incorporate a number of BMPs to address construction-related water quality issues. **Special Condition No. 7** requires the City to implement the enhanced water quality mitigation measures as described in the MWMP. Because the MWMP requires other regulatory approvals such as the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service, **Special Condition No. 3** requires the applicant to provide all necessary state and federal permits or approvals for all aspects of the proposed project, or evidence that no authorization is required, for the review and approval of the Executive Director prior to the commencement of construction.

The primary purpose of the proposed project is to minimize the risk of flooding developed areas surrounding the channels proposed for maintenance. The proposed project will improve the hydraulic capacity of the channels and manage sediment accumulation to accommodate higher flows and reduce flooding events in the immediate area. Moreover, the proposed project, as conditioned, effectively protects water quality while minimizing the risk to life and property from flood and geologic (i.e., erosion) hazards. The Commission therefore finds that the proposed project is consistent with the above cited provisions related to hazards. However, because these storm water facilities are by design located in flood zones and channel large volumes of runoff during storm events, **Special Condition No. 4** requires the applicant to assume the risk of hazard and accept a waiver or liability related to the maintenance work approved in this permit. Therefore, as conditioned, the proposed development can be found consistent with the water quality and hazards policies of Chapter 3 of the Coastal Act and certified LCP.

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.

The repair and maintenance activities under the MWMP will occur at existing stormwater facilities across the entirety of the City's coastal zone. Due to the design and nature of the facilities, they are located within drainages where limited, if any, public access is available or desirable. However, most of the existing facilities include access features – ramps, utility roads, footpaths, etc. that can be used by the public to walk, bike, traverse adjoining areas, etc. Additionally, many of the facilities are located adjacent to or in proximity to coastal recreation areas.

While maintenance activity is occurring, it may be that portions or all of the access ways will be blocked by equipment and staging or closed for safety concerns. However, the maintenance activity envisioned by the MWMP does not typically take substantial amounts of time, often being completed in a single day. Furthermore, due to the nature of the work, it often occurs outside of the summer season. Thus, any disruptions to public access along the coast would be minimal, and the project as conditioned can be found consistent with the public access policies of the certified LCP and Chapter 3 of the Coastal Act.

E. Local Coastal Planning

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

The MWMP addresses repair and maintenance of stormwater facilities city-wide, both within the City's certified LCP jurisdiction area and areas of deferred certification and original jurisdiction overseen by the Coastal Commission. Based on the above analysis, the project, as conditioned, can be found in conformance with both the certified LCP and Chapter 3 of the Coastal Act, and will not prejudice the ability of the City of San Diego to continue to implement its LCP for the various planning areas affected by this permit.

F. 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. As the lead agency for purposes of CEQA review, the City of San Diego prepared and certified the Final Environmental Impact Report for the Municipal Waterways Maintenance Plan, SCH No. 2017071022 Project No. 616992, dated March 2020.

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 permit duration, water quality protection measures, and habitat mitigation will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Final Environmental Impact Report for the Municipal Waterways Maintenance Plan SCH No. 2017071022 Project No. 616992, dated March 2020
- Mitigation Monitoring and Reporting Program (MMRP) Final Environmental Impact Report (FIER) for the Municipal Waterways Maintenance Plan, Project Number 616992 SCH No. 2017071022, May 2020
- Municipal Waterways Maintenance Plan, dated March 2020