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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-22-0597

Applicant: City of San Diego

Agent: Karl Lintvedt

Location: Crest Canyon Park, Torrey Pines Community, San Diego, San Diego County. (APNs 300-160-56, 300-160-35, 300-160-55)

Project Description: Replacement of existing aluminum storm-drain pipe and outfall with concrete pipe as follow-up to emergency action.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by this project relate to protection of sensitive coastal resources, including both wetland and upland habitat areas. The project area is within the Torrey Pines community within the City of San Diego.

The subject application is the follow-up to an Emergency Coastal Development Permit, issued by the Commission in April of 2020 (ref. CDP No. G-6-20-0024). In late 2019, the City observed failure of the storm drain resulted in formation of several sinkholes within Crest Canyon Park. Crest Canyon Park is a city park consisting of a steep coastal canyon vegetated with sensitive upland habitat that descends to wetlands habitat vegetation within San Dieguito Lagoon. (ref. [Exhibit No. 2](#)). To address the failing pipe, the city proposed removal of approximately 4,000 linear feet of damaged Corrugated Aluminum Pipe and replacing it with new Reinforced Concrete Pipe. Of the 4,000 linear

feet of piping proposed to be replaced, 125 linear feet of the pipe is located within the Commission's permitting authority (ref. [Exhibit No. 2](#)).

The project resulted in impacts to 0.057-acres of coastal sage scrub (CSS) habitat, which has been determined to constitute ESHA. As proposed, the impacts to CCS are not avoidable and no environmentally less-damaging alternatives are feasible. Because the project includes removal of vegetation down to the roots, the proposed impacts are considered to be permanent. Given that the purposes allowed in ESHA are very limited, and repair of infrastructure is not one of the allowed purposes, the project is inconsistent with Section 30240.

However, Commission is able to resolve the inconsistency with conflict resolution findings as detailed in Section E of this report. The applicant considered several alternatives, including the no project alternative, at grade piping, or tunneling instead of trenching the new pipeline, and all were determined to either result in greater impacts to ESHA and wetlands or were not feasible.

As proposed, the environmental benefits of the project include that the 0.057-acre site will be revegetated with CSS habitat and the impacts will be mitigated at a 3:1 mitigation ratio, totaling 0.17-acres of CCS habitat mitigation (ref. [Exhibit Nos. 4, 5](#)). The mitigation site identified by the City is located directly adjacent to the project site and will be provided a significant ecological lift through removal of existing non-native grasslands, installation of irrigation, planting of CSS habitat, and ongoing weeding and maintenance activities. The Commission's ecologist has reviewed the draft Habitat Management and Monitoring Plan and supports the mitigation as proposed by the City.

The project also includes replacement of existing concrete headwall and approximately 180 sq. ft. of new riprap at the northern terminus of the storm drainpipe. While the construction of the new riprap is located on non-vegetated wetlands, the existing storm drain is considered an incidental public use and is permitted by 30233 of the Coastal Act. Additionally, because the location of the new revetment is within a portion of the lagoon edge that does not include any vegetation, the project can be found to be the least environmentally impactful alternative. Finally, as proposed, the new outfall will be relocated 18-feet inland of the existing location and San Dieguito Lagoon, thereby facilitating reestablishment of wetland area previously occupied by the outfall and riprap structure (ref. [Exhibit No. 3](#)).

The work, including the portion within the Commission's permitted authority, was completed through implementation of the Emergency Permit. Construction of the replacement storm drainpipe was completed on March 23, 2021. Revegetation of the project site, including mitigation efforts, was completed concurrently with construction in an effort to rapidly stabilize soils and was completed on March 23, 2021. The 120-Day Plant Establishment Period (PEP) was considered complete on July 23, 2021 (ref. [Exhibit Nos. 4, 5](#)).

To ensure that the development was undertaken and authorized by the Emergency Permit, and no additional impacts to sensitive habitat areas occurs, **Special Condition No. 1** requires the applicant to submit Final/As-Built Plans. Additionally, **Special**

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Condition No. 2 requires the City to submit a Final Habitat Mitigation and Monitoring Plan, to ensure that the proposed mitigation is successful.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0597, as conditioned. The motion is on Page 5. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

- [Exhibit 1 – Vicinity Map](#)
- [Exhibit 2 – Aerial](#)
- [Exhibit 3 – Outfall](#)
- [Exhibit 4 - Mitigation Site](#)
- [Exhibit 5 – Current Status of Mitigation Site](#)
- [Exhibit 6 – Existing Public Trail System](#)
- [Exhibit 7 – Surrounding Trail System](#)
- [Exhibit 8 – As-Built Plans](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-22-0597 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.

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of the following plans:
 - (a) Final construction plans that conform with the plans submitted to the Coastal Commission, titled Crest Canyon Park Storm Drain Replacement, drafted by San Diego Public Works and dated April 29, 2020.
 - (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Habitat Mitigation and Monitoring Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, a final mitigation plan for all impacts to upland sensitive habitat that is in substantial conformance with the Conceptual Habitat Restoration Plan prepared by Dudek and dated May 2021, and at a minimum shall include:
 - (a) The previously authorized impacts to upland habitat (0.057-acres), shall be mitigated at a ratio of not less than three to one (3:1). The total mitigation required for creation/restoration shall not be less than 0.171-acres of Diegan coastal sage scrub (CSS), with at least 0.057- acres of mitigation being fulfilled as creation of new CSS habitat.
 - (b) The permittee shall submit annual monitoring reports to the Executive Director for review and approval. The first annual report shall be submitted no later than January 1 following the first year in which the plants have been in the planted for an entire spring and summer. The site shall be maintained and monitored for a minimum of five years, or longer as needed to meet the success criteria. Annual reports shall include a description of restoration activities that have occurred onsite; descriptions of vegetation composition, including the species richness and percent cover of plants species; weed species present and a description of eradication efforts; details concerning any erosion problems that may exist and efforts to address them; qualitative and quantitative monitoring data related to the achievement of performance criteria; and quarterly wildlife observations including listed species observations, problems, and remedial actions. After at least five years, or at the time when the mitigation appears to have met all of the success criteria described in the final Habitat Mitigation and Monitoring Plan, the applicant will submit a final monitoring report to the Executive Director for review and approval.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

In December of 2019, staff at the City of San Diego observed failure of an existing approximately 4,000 length of storm water pipe, resulting in formation of several large sinkholes within Crest Canyon Park, an open space area located west of Interstate 5 and south of Racetrack View Drive and San Dieguito Lagoon in the City of San Diego (ref. [Exhibit No. 1](#)). After further inspection, the City determined that the entire storm drain system, including the portion of the pipe and outfall located north of Racetrack View Drive, was in poor condition and in need of immediate repair to avoid further damage to the hillside, Racetrack View Drive, and several single-family homes. In January of 2020, the City of San Diego submitted a request for an Emergency Coastal Development Permit (#G-6-20-002) for the following work located north of Racetrack View Drive:

- 1) Vegetation removal (trimming to ground level) at location of existing failed pipe;
- 2) Removal and replacement of approximately 125-linear feet of 54-inch corrugated aluminum pipe with 54-inch reinforced concrete pipe using open trench methodology;
- 3) Removal and replacement of existing concrete outfall, including the relocation of the outfall approximately 18 feet inland of the existing structure; and
- 4) Installation of approximately 180 square feet (10-feet by 18-feet) of new riprap.

The remaining portion of the pipe replacement project is located upland and within the City's coastal development permit jurisdiction. The emergency CDP was authorized and issued by the Executive Director in April of 2020. Work on the project was completed on March 23, 2021.

The site is within an area of original jurisdiction where the Chapter 3 policies of the Coastal Act are the standard of review with the City's certified LCP used as guidance.

B. Biological Resources

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

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

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

- 2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basin, vessel berthing and mooring areas, and boat launching ramps;
- 3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities;
- 4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines;
- 5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas;
- 6) Restoration purposes;
- 7) Nature study, aquaculture, or similar resource dependent activities.

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

Section 30107.5 of the Coastal Act states:

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

Coastal Act Section 30240 states:

- a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject site is located within Crest Canyon Park, which is comprised of steep naturally vegetated slopes containing sensitive vegetation and wetlands and is located directly adjacent to San Dieguito Lagoon (ref. [Exhibit No. 2](#)). As previously described, under an emergency permit, the City of San Diego reconstructed approximately 4,000 linear feet of storm drainpipe within the slopes and also constructed a new outfall, including a new rock revetment, within the wetland area. Because the existing pipe was located 30 feet underground, removal and replacement of the pipe necessitated significant grading and removal of native Coastal Sage Scrub (CSS) vegetation. The Commission's Ecologist reviewed the biological report submitted by the City prior to issuance of the emergency permit and determined that the vegetation proposed for removal was to be considered an Environmentally Sensitive Habitat Area (ESHA). Additionally, the reconstruction of the outfall was located within an area of non-vegetated wetlands.

Prior to issuance of the emergency permit and in consultation with Commission staff, the City evaluated alternatives that might have avoided or lessened impacts to ESHA and wetlands including repairing the existing pipe, reconstructing the new pipe above ground, underground tunnelling, and a no project alternative. However, all alternative projects were determined not to be feasible or would result in impacts greater than the identified alternative. As proposed and constructed under the emergency permit, the project impacted 0.057-acres (2,482 sq. ft.) of ESHA, and 0.006-acres (261 sq. ft.) of wetlands.

Allowable Use in Wetlands

As set forth above, any proposed diking, dredging, or filling in wetlands must be for an allowable purpose as specified under Section 30233. In this case, the relevant category of use is listed under Section 30233 is for incidental public service purposes, the repair of infrastructure.

The project includes replacement of an existing concrete headwall and approximately 180 sq. ft. of new riprap placed at the northern terminus of the storm drainpipe, resulting in impacts to 0.006-acres (26.1 sq. ft.) of wetland habitat (ref. [Exhibit No. 3](#)). As previously discussed, there are no alternatives that would eliminate the wetland impacts. Additionally, because the location of the new outfall and riprap dissipator are within a portion of the lagoon edge that does not include any vegetation, the project can be found to be the least environmentally impactful alternative. Finally, as proposed, the new outfall will be relocated 18-feet inland of the existing location and increases the distance separating the outfall to San Dieguito Lagoon. Therefore, as proposed, wetland reestablishment will occur at the location of the previous outfall and riprap structure. Given the removal of the existing outfall will result in increased wetland habitat beyond that proposed by the new outfall, the Commission's Ecologist has determined the project to be self-mitigating. Additionally, the relocation is enhancing the functional capacity of the wetland by removing the outfall from the lagoon and relocating 18-feet further inland of lagoon waters (ref. [Exhibit No. 3](#)).

ESHA

Section 30240 of the Coastal Act permits only resource-dependent uses within ESHA, and a storm drain and outfall, though it supplements important infrastructure, does not constitute a resource-dependent use. As previously discussed, prior to replacement of the pipe, the City examined a variety of alternatives, however, all identified alternatives were not feasible or would have resulted in more impacts to ESHA. In particular, the no project alternative would have resulted in additional harm to coastal resources. The existing storm drain was determined to be in poor condition and the City provided documentation that, if not replaced, the storm drain was at risk of further failure with every rain event in the future. Once the initial break occurred, stormwater from the broken drain flowed through the vegetated canyon, impacting habitat, creating sink holes, and breaking apart sediment, which then accumulated in San Dieguito Lagoon. Therefore, the consequences of leaving the existing storm drain and outfall in place would be inconsistent with Coastal Act policies established to protect sensitive habitat areas and wetlands, and to preserve water quality. Thus, given the potential impacts to ESHA and wetlands if the storm drain is not replaced, the Commission's ecologist determined that the proposed project would be an improvement over the existing conditions.

Therefore, the Commission has determined that the impacts to ESHA are unavoidable and conditioned the project to ensure that the project limits impacts to ESHA to the maximum extent feasible. Additionally, the applicant is proposing to fully mitigate for the approximately 2,482 sq. ft. of impacts to ESHA.

As currently proposed by the City, mitigation will occur within Crest Canyon Park and will be located directly adjacent to the project site and within an area that was previously disturbed by placement of dredge spoils, and which is primarily vegetated by non-native grasses. Restoration efforts include removal of non-native vegetation, installation of temporary irrigation, planting of CSS vegetation and long-term monitoring and maintenance included weeding and additional planting efforts. Typically, the Commission requires CSS mitigation to be provided at a 3:1 mitigation ratio, with 1:1 being provided as creation/substantial restoration, and the remaining 2:1 as enhancement of existing vegetation. However, the City is proposing to provide all 0.17-acres of mitigation as creation/substantial restoration. Additionally, the City will be revegetating the 0.057-acre project site with native vegetation. Thus, as proposed, restoration efforts will include the initial 0.057 project site, and an additional 0.17-acres of CCS habitat creation, for a total of 0.227-acres of restored CCS habitat (4:1 ratio).

As conditioned, the proposed project is consistent with the wetland protection policies of the Coastal Act, but inconsistent with Section 30240 regarding allowable uses in ESHA.

C. Growth Inducement

Section 30250 of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

As proposed, this development will not be growth-inducing. The proposed water and sewer facility upgrade is located within a developed urban community. The proposed facilities are intended bring the system up to current standards and lessen the likelihood of backups, overflows, and frequency of needed maintenance. System capacity is not being increased, consistent with Section 30250 of the Coastal Act.

D. Public Access

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a) of the Coastal Act states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected...

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The project is located within Crest Canyon Park, a public open space that has been improved with two public access trails (ref. [Exhibit No. 6](#)). The work undertaken by the City required that portions of these trails were closed during the 8-month construction phase, completed in 2021. However, impacts to public access were addressed at the time of the emergency permit.

Firstly, while the project required temporary closure of public trails, several alternative public access trails were identified that are located in close proximity to the subject site and provide similar access to San Dieguito Lagoon and adjacent beaches of Del Mar (ref. [Exhibit Nos. 6, 7](#)). Therefore, the access impacts resulting from the temporary closure were determined not to be significant.

Additionally, if the storm drainpipe was not replaced, the public trails would have to be closed after any storm event to assess damage to the drainpipe, adjacent habitat and trail system on a continual basis, which would result in more significant impacts to public access.

Finally, as part of the project, the existing trail system was improved, including reconnection of fragmented trail sections, and reestablishment of connections to existing trails and entry points located within the local community. The reconstructed trails were designed to resist erosion, avoid impacts to existing and restored habitat, and maximize existing views of the lagoon and coast.

Thus, the project was constructed in a manner that provided adequate protection to public access, consistent with sections 30210, 30211, 30212 and 30213, 30221, 30223 of the Coastal Act.

E. Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine

organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effect of waste water discharges and entrainments, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

As proposed, significant grading was required in order to reconstruct the new storm drainpipe at the current underground elevation. Additionally, grading was required within steeply sloped areas, thus, there was the possibility that construction of the new pipe could have impacts to the water quality and specifically, the water quality of San Dieguito Lagoon. To address this concern, the City submitted a Water Pollution Control Plan that proposed several measures in order to adequately protect surrounding water quality. These measures included waste management, vehicle and equipment management, erosion, sediment and dust control measures, and measures to address runoff. Thus, the project was constructed in a manner that provided adequate protection to water quality, consistent with sections 30230 and 30231 of the Coastal Act.

F. Archeological and Cultural Resources

Section 30244 of the Coastal Act states:

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

Because the project included significant grading, potential impacts to Archeological and Cultural resources were identified and addressed through the Emergency CDP. Specifically, all work was restricted to be located in the same alignment that was disturbed through the initial construction of the storm drainpipe completed in the 1980's, thus no new disturbance was land was required as a part of the proposed development. Additionally, archeological and tribal monitors were present on site during all construction activities. Thus, the project was constructed in a manner that provided adequate protection to Archeological and Cultural resources, consistent with section 30244 of the Coastal Act.

G. Conflict Resolution

Section 30200(b) of the Coastal Act states:

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

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

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

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

Applying Section 30007.5

The standard of review for the Commission's decision on a coastal development permit in the Commission's retained jurisdiction is whether the proposed project is consistent with the Chapter 3 policies of the Coastal Act. In general, a proposal must be consistent with all relevant policies in order to be approved. If a proposal is inconsistent with one or more policies, it must normally be denied or conditioned to make it consistent with all relevant policies. However, the Legislature recognized through Sections 30007.5 and 30200(b) that conflicts can occur among those policies. It therefore declared that when the Commission identifies a conflict among the policies of Chapter 3, the conflict is to be resolved "in a manner which on balance is the most protective of significant coastal resources," pursuant to Coastal Act Section 30007.5. The Commission has traditionally resolved conflicts via Section 30007.5 by analyzing the project according to the following seven steps, each of which is explained in greater detail below:

- 1) The project, as proposed, is inconsistent with at least one Chapter 3 policy;
- 2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources;
- 3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;
- 4) The project, if approved, would result in tangible resource enhancement over existing conditions;

- 5) The benefits of the project are not independently required by some other body of law;
- 6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to “create a conflict;” and,
- 7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

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

Section 30240 states:

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

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

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

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

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

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 effect of waste water discharges and entrainments, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

A conflict between Chapter 3 policies results from a proposed project which is inconsistent with one or more policies, and for which denial or modification of the project would be inconsistent with at least one other Chapter 3 policy. Further, the policy inconsistency that would be caused by denial or modification must be with a policy that affirmatively mandates protection or enhancement of certain coastal resources.

Here, denial would create a conflict with the Commission's mandates to protect public access, preserve lower cost visitor and recreational facilities, and maintain or improve water quality. Regarding the latter, if the Commission were to deny this proposed project, the existing pipe would remain in place, would continue to fall, and would further erode the canyon and impact wetlands at the termination of the stormwater pipe, affecting the lagoon and watershed. Regarding the mandate to maximize public access and protect lower-cost recreational facilities, denial would affect the public safety of adjacent trails due to the continuing damage, debris, and erosion.

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

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

Approval of the project would be consistent with the mandates to protect water quality, given further damage would be prevented, including sedimentation of San Dieguito Lagoon, through implementation of the project. Approval also help ensure safe access to the popular trail system at this park by ensuring that future storm events do not impact the existing trails.

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

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

Denial of the proposed project would result in the outfall being left in its current condition indefinitely. The existing pipelines is in poor condition and, if left in place, will continue to erode the surrounding habitat during any future storm event. The consequences of leaving the outfall in place would be inconsistent with Coastal Act policies established to protect water quality, public access, and lower-cost recreational facilities.

Approval of the proposed project would result in tangible environmental and public access benefits. First, as discussed previously in Section B: Biological Resources, the proposed project is designed to remove a decades-old, stormwater pipe and outfall and replace it with a new outfall of updated design to address the erosive impacts of discharge. As conditioned by Special Conditions Nos. 1-2, the proposed project would protect against significant disruption of habitat values within its area of ESHA. The City has offered to mitigate for the loss of CSS at a 3:1 ratio, thus the project will expand the habitat. Additionally, the prevention of damage, debris, and erosion protects the ESHA that exists now. The protection of the trail system also creates a tangible benefit for the public.

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

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

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

A project's benefits to coastal resources must be integral to the project purpose. If a project is inconsistent with a Chapter 3 policy, and the main elements of the project do not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the project proponent cannot "create a conflict" by adding to the project an independent component to remedy the resource degradation. The

benefits of a project must be inherent in the purpose of the project. If this provision were otherwise, project proponents could regularly “create conflicts” and then request that the Commission use Section 30007.5 to approve otherwise non-approvable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and easily manipulated process and were not designed to barter amenities in exchange for project approval.

The purpose of the proposed project is to allow for the removal of the existing stormwater pipe and outfall and installation of a new pipe and outfall of superior design to handle runoff in a manner that would eliminate present and future risks to the environment. The benefits of the project result directly from the main purpose, and not from any ancillary component.

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

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

The objective of the proposed project, as noted above, is to remove the existing stormwater pipe and outfall and replace it with a better designed outfall to address the erosion and habitat impacts currently occurring. Accordingly, the “no action” alternative would not achieve the project objectives. As discussed in greater detail in Section B: Biological Resources, above, the City evaluated several alternative project designs including placing the newly constructed storm drain at-grate and underground tunneling for the pipe in lieu of trenching, both of which were physically or financially infeasible. Additionally, the “no action” alternative would create worse impacts than the proposed project, given that during any storm event stormwater would sheet flow down the canyon and into the lagoon, and significantly impacting ESHA, wetlands, water quality and public access.

Existence of a Conflict Between Chapter 3 Policies.

Based on the above, the Commission finds that the proposed project presents a conflict between Section 30240(a) and the water quality, public access, and recreational policies of the Coastal Act, and the conflict must be resolved through application of Section 30007.5.

Conflict Resolution

After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is on balance most protective of coastal resources. In this case, the proposed project would result in a non-resource

dependent use occurring within an environmentally sensitive habitat area, thus making it inconsistent with the allowable use policy of Coastal Act Section 30240. However,

Additionally, denying the project because of its inconsistency with this policy would result in significant adverse effects to ESHA due to the continued erosion and habitat transformation from the existing stormwater pipe and outfall, and would thus be inconsistent with the affirmative policies of Section 30240 to protect and maintain these resources. With the inclusion of **Special Conditions Nos. 1-2** to avoid and minimize the proposed project's potential impacts on coastal resources, as described in previous sections, the Commission finds that the impacts on coastal resources from not carrying out the project would be more significant and adverse than impacts stemming from the project's location within ESHA, which would be addressed by the special conditions. The Commission therefore concludes that the project would, on balance, be most protective of significant coastal resources, consistent with Coastal Act Section 30007.5. As such, it is consistent with Chapter 3, and the Commission therefore approves the coastal development permit, as conditioned.

H. 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 subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Torrey Pines community.

I. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego determined that the project was exempt through CEQA provision 21080(b)(4); and specifically, that the project was undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed.

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 requiring submittal of a Final Plans to ensure no unforeseen to habitat occurred as a

part of the project and submittal of a final Habitat Management and Monitoring Plan which will eliminate, minimize or mitigate for 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

- City of San Diego LCP
- CDP No. G-6-20-0024
- City of San Diego Emergency Coastal Development Permit No. 2385399
- City of San Diego Emergency Site Development Permit No. 2385466