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RESOLUTION NUMBER R- 307068

DATE OF FINAL PASSAGE OCT 24 2011

RESOLUTION DENYING THE APPEAL AND MODIFYING THE PLANNING COMMISSION'S DECISION BY APPROVING MODIFIED COASTAL DEVELOPMENT PERMIT NO. 714232 AND MODIFIED SITE DEVELOPMENT PERMIT NO. 714233 FOR THE MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM PROJECT NO. 42891

WHEREAS, the City of San Diego Transportation and Storm Water Department (T&SWD), Owner/Permittee, filed an application with the City of San Diego for a permit to clean and maintain existing storm water facilities as described in and by reference to the approved Exhibit "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 714232 and Site Development Permit No. 714233; and

WHEREAS, the project site is defined as located within the City's 342.4 square mile metropolitan area and within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial zones and the Clairemont Mesa, College Area, Encanto Neighborhood, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay River Valley, and Torrey Pines Community Planning areas as described in the original Master Storm Water System Maintenance Program (Master Program) (March 2010); and

WHEREAS, on May 13, 2010, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 714232 and Site Development Permit No. 714233 and pursuant to Resolution No. 4586-PC voted to approve the Project; and

WHEREAS, an appeal of the Planning Commission's decision was submitted jointly by San Diego Coastkeeper, Coastal Environmental Rights Foundation, San Diego Audubon Society,

Friends of Rose Canyon, San Diego Chapter of the Sierra Club, San Diego Canyonlands, and the California Native Plant Society; and

WHEREAS, in response to comments from and meetings with appellants during the public review period for the original PEIR and following the appeal of the Planning Commission decision, the T&SWD incorporated a number of modifications to the original Master Program as was approved by the Planning Commission, which the T&SWD considers a good faith effort to respond to appellants' concerns and recommends that the City Council approve as modified; and

WHEREAS, the modifications included, among other things: (1) reducing the number of storm water facilities included in the Master Program by removing many of the storm facilities within open space, the number of miles was reduced from 50 to 32 miles and 113 rather than 160 facilities; (2) adding measures to further reduce impacts to biology and water quality; (3) identifying specific areas to be used for staging, stockpiling and storage for each facility to be maintained; (4) estimating biological impacts based on disturbance generally being limited to the the channel bottom plus two feet on either side rather than the full channel, as assumed in the original PEIR; (5) clarifying the Master Program objectives; (6) providing increased opportunities for public input through pro-active notification and presentations of City Council and Community Planning Chair committee meetings; adopting the City's Substantial Conformance Review process rather than the originally proposed Consistency Determination process; and (7) refining Master Program protocols to improve specificity and enforceability; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the

decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on October 24, 2011, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego that it modifies the Planning Commission decision and adopts the following modified findings with respect to Coastal Development Permit No. 714232 and Site Development Permit No. 714233:

A. SITE DEVELOPMENT PERMIT

1. Findings for all Site Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. The 32 miles of storm water facilities to be maintained by T&SWD are designed to convey storm water flows in order to protect the life and safety of its citizens and to control flooding. These facilities also convey urban runoff from development, protect water quality, and support natural resources. The long-term performance of storm water facilities is dependent upon ongoing and proper maintenance. To maintain the effectiveness of storm water facilities, the T&SWD has prepared the Master Program. The purpose of the Master Program is to permit and implement a comprehensive, annual approach to the maintenance of existing storm water facilities.

The Master Program maintenance activities are subject to the City's General Plan (March 2008), the Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Plans. The applicable environmental goals, objectives and guidelines identified in the General Plan and the applicable community plans can be generally characterized as follows: (1) maintain natural drainages; (2) minimize disturbance to natural habitat and the wildlife it supports; (3) protect water quality; and (4) create and maintain recreation opportunities associated with natural drainages. In order to assess the relationship of storm water maintenance to the environmental goals, objectives and guidelines, the following discussion is based on these four over-arching goals and objectives.

Maintain Natural Drainages

Maintenance activities would not alter the configuration of the natural drainage courses included in the Master Program. While the Master Program does provide for removal of accumulated sediment and overgrown vegetation that interfere with conveyance of floodwater, it would not allow any physical modifications of the underlying drainage. Furthermore, the removal of riparian vegetation would not significantly impact the character of the natural drainages. In general, mature trees spaced at least 50 feet apart would be allowed to remain in place during maintenance. Given the fact that typical riparian tree canopy widths have a radius of 10-20 feet, this would allow the appearance of a continuous tree canopy following maintenance which would retain the visual character of these drainages. The dominant understory vegetation would be expected to re-establish within six to 12 months of maintenance. Thus, the affect of removing this understory vegetation would be temporary in nature, and would not adversely affect the implementation of this land use policy.

Minimize Disturbance To Natural Habitat And The Wildlife It Supports

Maintenance activities would disturb wetland vegetation found within the storm water facilities and the wildlife it supports. Due to the impedance to flood water associated with wetland habitat, achieving the primary goal of the Master Program to control flooding, maintenance is expected to remove portions of wetland vegetation located within storm water facilities included in the Master Program. However, protocols in the Master Program, combined with biological mitigation required by Recirculated Program Environmental Impact Report (PEIR) No. 42891/SCH No. 200401032 and the Mitigation Monitoring and Reporting Program, would minimize impacts to natural habitat and wildlife in several ways.

First, individual hydrologic and hydraulic assessments (IHHA's) would be completed prior to maintenance to identify the minimum amount of vegetation that needs to be removed and still result in effective storm water conveyance. In most cases, it is anticipated that removal of vegetation on the banks of storm water facilities would not be necessary to effectively convey flood water. As indicated earlier, trees spaced a minimum of 50 feet apart on the bottom of storm water facilities would remain after maintenance. The retention of mature trees and the ability of understory vegetation to naturally re-establish within a short period of time will help achieve the goal of minimizing impacts to natural habitat and wildlife. Lastly, impacts to wetland habitat would be mitigated by enhancing, restoring or creating new wetland habitat. Whenever feasible, this mitigation would occur within the same watershed as the impact. This mitigation would further minimize the net impact of maintenance on natural habitat and associated wildlife. Thus, the proposed Master Program would achieve the goal of minimizing disturbance to natural habitat.

Protect Water Quality

Maintenance of storm water facilities could adversely affect water quality by reducing the ability of sediment and vegetation within those facilities to remove and retain urban pollutants from surface water. The removal of sediment and/or vegetation in the course of maintenance would diminish the pollutant removal function of these components until they naturally re-

establish between maintenance events. On the other hand, maintenance can improve water quality by eliminating the pollutants that have accumulated in a channel. Removal of the pollutants retained in sediment and plants would avoid the potential for them to be transported downstream during high runoff flows. Maintenance would also improve water quality by removing illegally dumped materials such as trash, appliances, furniture, shopping carts, and tires. The Master Program requires BMPs and an analysis of net benefits or impacts to water quality that may result from maintenance activity. If adverse impacts are found, mitigation will be required in accordance with the Recirculated Program Environmental Impact Report (PEIR) No. 42891/SCH No. 200401032 and adopted Mitigation Monitoring and Reporting Program. Therefore, the Master Program would not adversely affect the planning goals and objectives to protect water quality.

Create and Maintain Recreation Opportunities Associated with Natural Drainages

The Master Program would not interfere with the scenic, natural or cultural resources within resource-based parks. Drainages within resource-based parks are not bordered by development which requires flood control. Thus, these areas are not included in the Master Program. The Master Program would not alter the natural landforms and would not result in the loss of open space. The configuration and continuity of the drainage system would be unchanged by maintenance activities. No filling or reconfiguration of the storm water facilities would occur as part of the Master Program. Thus, the Master Program would comply with the goal of maintaining natural drainage systems.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The purpose of the Master Program is to assure that the storm water facilities managed by T&SWD minimize the risk of flooding on adjacent property. The Master Program describes the maintenance technique to be employed as well as the protocols to be followed to minimize the impacts to environmental resources. The primary objectives of the Master Program are:

- Fulfill the mandate of Section 26.1 of the San Diego City Charter to provide essential public works and public health services by maintaining the storm water conveyance system for the purpose of reducing flood risk;
- Develop a comprehensive program that will govern the future maintenance of the City's storm water system in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life in accordance with Council Policy 800-04;
- Ensure implementation of Best Management Practices (BMPs) and maintenance protocols during maintenance activities to avoid and/or minimize effects to environmental resources, and incorporate the analysis of the operational and pollution prevention benefits of each proposed project; and
- Create an integrated comprehensive review process for annual maintenance activities that will facilitate authorizations from local, state and federal regulatory agencies.

Maintenance of concrete-lined and earthen channels, storm drain outlets/inlets, and detention basins may include the removal of vegetation (cover), sedimentation, and trash/debris that attract vagrants, high concentrations of pollutants, and other vector-controlled insects/mammals such as mosquitoes and rats. On an annual basis, the T&SWD receives numerous documented telephone calls and several damage claims against the City from property owners and businesses adjacent to unmaintained channels that are directly affected by associated storm event flooding, vectors, odors, and vagrancy nuisances.

Implementation of the Master Program will protect and promote the public's health, safety, and welfare by providing the means to eliminate detrimental health and safety concerns that result from improperly maintained storm water facilities.

c. The proposed development will comply with the applicable regulations of the Land Development Code. The Master Program is subject to the Environmentally Sensitive Lands (ESL) regulations, Section 143.0101 et seq. of the Land Development Code (LDC) because maintenance would occur within sensitive biological and historical resources, wetlands and floodplains. The Master Program is requesting deviations to the Land Development Code (LDC) to impact sensitive biological and historical resources and to not maintain a 100-foot buffer around all wetlands.

For projects occurring within the Coastal Overlay Zone impacts are allowed for incidental public service projects, such as maintenance of storm water facilities. As an incidental public service project, the maintenance activities proposed complies with the City's Biology Guidelines where unavoidable impacts include those necessary to allow reasonable use of a parcel entirely constrained by wetlands; roads where the only access to the developable portion of the site results in impacts to wetlands, and essential public facilities where no feasible alternative exists. Furthermore, within the Coastal Overlay Zone impacts to wetlands shall be limited to only those uses identified in Section 143.0130(d) for the ESL which is limited to aquaculture, nature study project or similar resource dependent uses, wetland restoration and incidental public service projects. The ESL regulations for development occurring within the Coastal Overlay Zone also require that a 100-foot buffer be maintained around all wetlands, as appropriate, to protect the functions and values of the wetlands. This project will comply with all applicable regulations of the Land Development Code with the approval of a deviation to enter within the 100-foot wetland buffer to perform maintenance.

2. Supplemental Findings--Environmentally Sensitive Lands

a. The site is physically suitable for the design and sitting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands. Implementation of the Master Plan will ensure that the design and sitting of future storm water maintenance activities will minimize, to the extent possible, disturbance to environmentally sensitive lands. On an annual basis, the T&SWD will identify specific maintenance activities to be undertaken the next fiscal year. A detailed hydrology and hydraulic study will be conducted for each storm water facility to determine the minimum amount of vegetation and sediment removal needed to achieve the desired flood conveyance capacity. Once this is determined, an Individual Maintenance Plan (IMP) would be prepared to

define the limits, approach to maintenance and appropriate protocols to control impacts of the maintenance on biological resources and water quality. Based on the IMP, biology, historic, and noise studies would be conducted to determine what, if any, mitigation would be required by the Mitigation Monitoring and Reporting Program to offset impacts associated with the proposed maintenance.

These activities would then be subject to a Substantial Conformance Review (SCR) process to assure that the applicable Master Plan protocols and MMRP mitigation measures are incorporated into each individual maintenance activity. The "SCR Package" would include an Individual Maintenance Plan (IMP); Individual Biological Assessment (IBA); Individual Historical Assessment (IHA); Individual Hydrologic and Hydraulic Assessment (IHHA); and an Individual Noise Assessment (INA). An SCR package would be prepared for each storm water facility prior to maintenance to evaluate the current capacity and the condition and extent of sensitive resources within the facility, and maintenance activity details such as method(s) and equipment to be used, maintenance requirements, and schedule. The SCR Package would be evaluated by designated City departments as well as state and federal agencies to confirm that the proposed maintenance activities would be consistent with the Master Program and that environmental impacts would be mitigated pursuant to the MMRP.

b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. The proposed Master Program only allows maintenance of storm water facilities. It does not allow for expansion or modification of the underlying drainages. Therefore, the proposed maintenance activities will not alter the natural landform or geology. The Master Program also establishes a series of protocols to be carried out during maintenance activities to minimize impacts related to soil and erosion. Therefore, the maintenance activities will not result in undue geologic or erosional forces.

Implementation of the Master Program would also reduce flood hazards within the affected areas by removing sedimentation often carrying pollutants that have either dropped within the channel bottoms from surface run-off and/or wetland vegetation which interferes with the efficient conveyance of storm. Furthermore, removal of vegetation, under the Master Program, may also prevent fire hazards to residents and businesses adjacent to channels that could be prone to fire hazards because of the fire load (vegetation).

c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. Maintenance activities will take place within storm water facilities which have been maintained in the past. The Master Plan specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to biologically sensitive lands, the Master Program includes a series of protocols specifically designed to minimize the impact of maintenance on environmentally sensitive lands within as well as adjacent to maintenance activities. A series of water quality protocols are included in the Master Program to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality. Biology protocols will require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHHAs are required by the Master Plan to identify the minimum

amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water.

Although significant historic resources are not expected to be encountered during maintenance, the MMRP requires monitoring whenever the PEIR identifies a moderate to high potential for buried historic resources to occur within proposed maintenance areas. This monitoring will assure that any significant resources present within or adjacent to maintenance will be detected and mitigation carried out to retain valuable information associated with historic resources.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The PEIR's analysis of the consistency of the Master Program with the MSCP Subarea Plan (Table 4.1-3) concluded that maintenance would be consistent with the various general planning policies as well as adjacency guidelines. With respect to general MSCP policies, it is concluded that the maintenance activities would be consistent for the following reasons:

- The natural configuration of the storm water facilities would not be modified other than to remove accumulated sediment and vegetation would be expected to reestablish between maintenance intervals.
- Except for short-term erosion control, maintenance would not introduce new berming, rip rap, channelization or similar features within natural drainages.
- Access routes will use existing roadways or be designed to minimize disturbance within MHPA areas.
- Maintenance activities would be of limited durations and would occur during daylight hours when wildlife movement is limited.
- Wherever possible, maintenance activities would avoid breeding seasons for sensitive bird species. Where avoidance during the breeding season is not possible, noise reductions measures would be incorporated into the maintenance activities.
- The Master Program contains maintenance protocols which prohibit the use of invasive plants in revegetation efforts as well as measures to limit the spread of existing invasive species into downstream areas during maintenance. In addition, invasive species would be removed during maintenance.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Storm water facility maintenance will not contribute to erosion of public beaches or impact the supply of beach sand. Although maintenance often involves the removal of sediment, the sediment is comprised of silt and clay material rather than sand. Thus, the removal of sediment would not deprive local beaches of a sand source. Lastly, the velocity of storm water in areas which require routine maintenance are

by nature non-erosive which contributes to the fact that sediment from surrounding sources tends to accumulate in these areas.

On an annual basis, the City will determine the amount of vegetation impacts based on the final IMPs. Based on these calculations, the City will define and implement compensation actions in accordance with the mitigation measures identified in the PEIR. The mitigation program will also be reviewed by the State and Federal regulatory agencies to assure that adequate compensation is carried out.

With respect to historical resources, the monitoring and subsequent data recovery required by the PEIR and MMRP will be specifically designed to mitigate for significant historic resources encountered during maintenance.

f. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. The biological mitigation measures included in the Recirculated PEIR and accompanying MMRP are specifically designed to provide adequate compensation for impacts resulting from storm water facility maintenance. In particular, the mitigation ratios required by the PEIR and MMRP are consistent with the requirements of the City's Biological Guidelines and mitigation traditionally imposed by state and federal agencies with regulatory authority over the biological resources potentially impacted by maintenance. The adequacy of mitigation measures for biological resources will be reviewed by state and federal resource agencies as well as DSD staff to assure that the proposed mitigation is sufficient to reduce maintenance impacts to below a level of significance.

On an annual basis, the City will determine the amount of vegetation impacts based on the final IMPs. Based on these calculations, the City will define and implement compensation actions in accordance with the mitigation measures identified in the PEIR. The mitigation program will also be reviewed by the State and Federal regulatory agencies to assure that adequate compensation is carried out.

With respect to historical resources, the monitoring and subsequent data recovery required by the PEIR and MMRP will be specifically designed to mitigate for significant historic resources encountered during maintenance.

3. Supplemental Findings--Environmentally Sensitive Lands Deviations

a. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands. The PEIR includes a specific discussion of alternatives to minimize the flood risk to adjacent life and property including: widening existing channels, constructing berms and walls on top of the existing banks and implementing measures outside of the storm water facilities to reduce the amount of runoff entering the facilities. After evaluating each of these alternatives, the PEIR concluded that none of these alternatives were feasible. In general these alternatives were considered infeasible due the cost and/or difficulties associated with acquiring and using adjacent private property.

The Master Program requires a rigorous effort to reduce biological impacts associated with maintenance. As discussed earlier, the Master Program requires detailed hydrology and hydraulic studies are performed before maintenance plans are prepared to make sure that the minimum amount of vegetation is removed to achieve flood control objectives. Mature trees spaced more than 50 feet apart are required to be retained during maintenance.

In addition, the PEIR identifies a broad range of mitigation measures intended to reduce potential impacts to biological and/or historic resources associated with storm water facilities. No other feasible mitigation measures were identified during public review or testimony which would be more effective than those included in the MMRP.

b. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making. Within the Coastal Overlay Zone two deviations from the ESL regulations are requested. Deviations to the 100-foot buffer around all wetlands and to impact sensitive biological and historical resources are requested. The proposed deviations are unavoidable because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean and maintain them could potentially impact sensitive biological and historical resources.

B. COASTAL DEVELOPMENT PERMIT

1. Findings for all Coastal Development Permits:

a. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. Maintenance activities would occur within existing drainage courses which are not considered coastal access ways. Furthermore, access routes required to transport maintenance equipment into the storm water facilities would not impede coastal access nor would they impede coastal views.

b. The proposed coastal development will not adversely affect environmentally sensitive lands. Maintenance activities will take place within storm water facilities located within the coastal zone which have been maintained in the past. The Master Plan specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to biologically sensitive lands, the Master Program includes a series of maintenance protocols specifically designed to minimize the impact of maintenance on environmentally sensitive lands within the coastal zone. A series of water quality protocols are included in the Master Program to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality within the coastal zone. Biology protocols will require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHAs are required by the Master Plan to identify the minimum amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water.

Although significant historic resources are not expected to be encountered during maintenance within the coastal zone, the MMRP requires monitoring whenever the PEIR identifies a moderate to high potential for buried historic resources to occur within proposed maintenance areas. This monitoring will assure that any significant resources present within or adjacent to maintenance will be detected and mitigation carried out to retain valuable information associated with historic resources.

c. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program. The maintenance activities associated with the Master Program would conform to the Local Coastal Program (LCP) and Implementation Program. The City's Land Development Code provides part of the City's LCP for development in the Coastal Overlay Zone. For the reasons stated on page 5, this project would comply with the applicable regulations of the Land Development Code. The policies and recommendations that make up the City's adopted Local Coastal Programs (LCPs) are also included and incorporated into the goals, objectives, and recommendations of the community plans and/or other area planning documents for the areas within the Master Program.

The community plans which incorporate the LCP set forth a number of conservation policies which are related to storm water maintenance. The applicable environmental goals, objectives and guidelines can be generally characterized as follows: (1) maintain natural drainages; (2) minimize disturbance to natural habitat and the wildlife it supports; (3) protect water quality; and (4) create and maintain recreation opportunities associated with natural drainages.

Maintenance activities would not alter the configuration of the natural drainage courses included in the Master Program. The Master Program does not allow any physical modifications of the underlying drainage.

While maintenance activities would disturb wetland vegetation found within the storm water facilities and the wildlife it supports, protocols in the Master Program, combined with biological mitigation required by the MMRP, would minimize impacts to natural habitat and wildlife.

Maintenance protocols and mitigation measures would be implemented in accordance with the Master Program and PEIR to prevent significant degradation of water quality related to maintenance. Furthermore, removal of the pollutants retained in sediment and plants would improve local water quality and prevent these pollutants from being transported downstream during high flow events.

Lastly, the Master Program would not interfere with the scenic, natural or cultural resources within resource-based parks. The Master Program would not alter the natural landforms and would not result in the loss of open space. No filling or reconfiguration of the storm water facilities would occur as part of the Master Program. Therefore, the Master Program would not adversely affect the land use policies intended to maintain and create recreation opportunities.

d. **For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.** The cleaning and maintenance activities of the Master Program would occur within existing storm water facilities. These facilities are not considered to be for public access or public recreational uses, therefore the Master Program is in conformance with the policies of California Coastal Act.

2. **Supplemental Findings--Environmentally Sensitive Lands Within the Coastal Overlay Zone**

a. **Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the applicant's property.** While storm water facilities are permitted as incidental public services projects, under the ESL regulations encroachment into the 100-foot wetland buffer is not allowed without an approval of a deviation. As use of the facilities to effectively convey storm water requires routine maintenance, the T&SWD would be denied the only economically viable use of the facilities if it were not allowed entry into the wetland buffer area for cleaning and maintenance. Therefore, the applicant's only economically viable use of the property is to use the facilities for storm water conveyance due to current easements restricting the use and the presence within wetland areas.

b. **Application of the Environmentally Sensitive Lands Regulations would interfere with the applicant's reasonable investment-backed expectations.** The strict application of the ESL regulations would not allow for maintenance of existing storm water facilities because they are located within wetlands and could potentially impact sensitive biological and historical resources within the Coastal Overlay Zone. Since the City has made the investment of constructing storm water facilities strict application of ESL would preclude cleaning and maintenance and would therefore, interfere with their reasonable investment-back expectations, as well as protecting life and property from flooding.

Additionally as a General Fund department, the Transportation and Stormwater Department of the City of San Diego has paid tax-payer's dollars in claims against the City by residents and business owners for the loss of property and damage caused by flooding. This has been correlated to lack of frequent maintenance activities (dredging and excavation) for affected channels whose conveyance capacities are diminished by the accumulated material that settles within the channel.

c. **The use proposed by the applicant is consistent with the applicable zoning.** The project is located within the City's 342.4 square mile metropolitan area and within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial zones. Incidental public service projects, such as storm water facilities, are permitted uses in all zones and therefore the proposed use by the applicant is consistent with the applicable zoning.

d. The use and project design, sitting, and size are the minimum necessary to provide the applicant with an economically viable use of the premises. The 32 miles of storm water facilities to be maintained by T&SWD are designed to convey storm water flows in order to protect the life and safety of its citizens and to control flooding. These facilities also convey urban runoff from development, protect water quality, and support natural resources. This project was revised to include maintenance of 32 rather than 50 miles of channels and 113 rather than 160 facilities in order to design the project to the minimum channels and facilities that would reasonably need maintenance for the life of the project. The sites are existing storm channels and facilities. No enlargement of facilities or new facilities are proposed by the project. Based on IHHA's, vegetation removal will be limited to that necessary to achieve desired conveyance of storm water and specific limits have been established such that vegetation will not be removed from the sides of channels that are over 20 feet wide. The long-term performance and economic viability of these storm water facilities is dependent upon ongoing and proper maintenance. Implementation of the Master Program will aid in maintaining the economic viability and effectiveness of storm water facilities.

e. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested. The Master Plan is the least damaging alternative and specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to impacts to biologically sensitive lands, the Master Program includes a series of maintenance protocols specifically designed to minimize the impacts to them as well as adjacent to maintenance activities. A series of water quality protocols are included in the Master Program to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality. Biology protocols will require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHHA's are required by the Master Plan to identify the minimum amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water.

Although significant historic resources are not expected to be encountered during maintenance, the MMRP requires monitoring whenever the PEIR identifies a moderate to high potential for buried historic resources to occur within proposed maintenance areas. This monitoring will assure that any significant resources present within or adjacent to maintenance will be detected and mitigation carried out to retain valuable information associated with historic resources.

A deviation related to the requirement for a 100-foot buffer around biological resources in the coastal zone is appropriate because maintenance does not constitute the type of development warranting a buffer. Furthermore, the storm water facilities are typically located in highly urbanized areas where adjacent development precludes 100-foot buffers.

The project is consistent with the provisions of the certified Local Coastal Program. According to the LUP's utilities, such as storm water facilities are allowed. A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of

vegetation to clean them impacts sensitive biological resources. Therefore, with the exception of the deviations the project is consistent with all provisions of the certified Local Coastal Program.

The above findings are supported by the minutes, maps, and exhibits, all of which are incorporated herein by this reference.

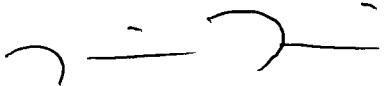
BE IT FURTHER RESOLVED, that the appeal of the San Diego Coastkeeper, Coastal Environmental Rights Foundation, San Diego Audubon Society, Friends of Rose Canyon, San Diego Chapter of the Sierra Club, San Diego Canyonlands, and the California Native Plant Society is denied; the decision of the Planning Commission is modified; and modified Coastal Development Permit No. 426369 and modified Site Development Permit 714233 is granted to the City of San Diego Storm Water Department, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

BE IT FURTHER RESOLVED, that the City of San Diego Transportation and Storm Water Department is directed to provide a comprehensive review of the Master Storm Water System Maintenance Program every four years to coincide with review by regulatory agencies.

BE IT FURTHER RESOLVED, that the City Auditor is requested to prepare a performance review of this Program within its first three years.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF;jls
9/23/2011
11/01/2011 REVISED COPY
11/29/2011 COR. COPY
Or.Dept: SWD
R-2012-131REV.
PL#2010-00871

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 24 2011

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Passed by the Council of The City of San Diego on OCT 24 2011, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OCT 24 2011

Date of final passage _____

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *[Signature]*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 307068