

RESOLUTION NUMBER R- 307082

DATE OF FINAL PASSAGE OCT 18 2011

A RESOLUTION DENYING THE APPEAL AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 852981 AND SITE DEVELOPMENT PERMIT NO. 852978 FOR THE TIJUANA RIVER VALLEY EMERGENCY PROJECT NO. 230815.

WHEREAS, the County of San Diego, Owner, and the City of San Diego Development Services, Owner/Permittee, submitted an application to the City of San Diego for a Coastal Development Permit (CDP) and Site Development Permit (SDP) to permit previous emergency work completed and permit long term maintenance of the Tijuana River Valley Pilot and Smuggler's Gulch channels in order to restore storm water conveyance capacities and to reduce the risk of flooding to the surrounding properties (as described in and by reference to the approved Exhibit "A" and corresponding conditions of approval for the associated CDP No. 852981 and SDP No. 852978) on portions of a 19.77 acre site; and

WHEREAS, on September 8, 2011, the Planning Commission of the City of San Diego considered CDP No. 852981 and SDP No. 852978 and pursuant to Resolution No. 4721-PC voted to approve the Permit; and

WHEREAS, on September 9, 2011, San Diegans for Open Government appealed the Planning Commission decision to the Council of the City of San Diego, and

WHEREAS, the matter was set for public hearing on October 18, 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; 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, where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit No. 852981 and Site Development Permit No. 852978:

A. COASTAL DEVELOPMENT PERMIT - SECTION 126.0708

1. 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.

The proposed maintenance activities in the Pilot and Smuggler's Gulch channels would not adversely affect public accessways or views; but protect the public's safety and reduce flooding risk by removing the accumulated sediment, vegetation, trash and debris within these flood control facilities. Both channels are located within the LUP. They are also located within the County of San Diego's Regional Park where a network of recreation trails, primarily for equestrian uses; interconnect throughout the entire Tijuana River Valley. No public views are identified in the land use plan for the river valley.

The channels primary function is for flood control however they also serve as an access routes for US Border Patrol and other recreational users. Some trails within the vicinity would be temporally closed to avoid conflicts with the implementation of the project, but would not permanently adversely affect the existing trail system and public access.

2. The proposed coastal development will not adversely affect environmentally sensitive lands.

The Pilot and Smuggler's Gulch channels were constructed to provide flood protection to residential and agriculture areas within Tijuana River Valley as well as the Otay-Nestor Community to the north. The majority of storm and urban runoff originate south of the USA/Mexico Border via the Pilot and Smuggler's Gulch channels which can carry pollutants, sediment, uprooted vegetation, trash and debris downstream during storm events. The Pilot channel was constructed in 1993, on an emergency action taken by City Council, after the El Nino storms in 1993. The Pilot channel (which runs east to west) diverts from the main Tijuana River approximately 500 feet east of Hollister Street bridge to carry low flows southwest and ultimately to the ocean. Smuggler's Gulch, is an historical agricultural ditch located on City and County of San Diego owned-property. The channel runs from USA/Mexico border to the north,

where it confluences with the Pilot channel approximately 1,300 feet west of the Hollister Street bridge. Smuggler's Gulch also conveys runoff from the U.S. Department of Homeland Security Tactical Infrastructure Project (Border Fence Project) which has altered the hydrology of the area and its barren slopes contribute to the sediment load during significant rain events.

The Pilot and Smuggler's Gulch channels are located within the Federal Emergency Management Agency's (FEMA) 100-year floodplain, Special Flood Hazard Area, and the City of San Diego Multi-Habitat Planning Area (MHPA). The proposed maintenance activities within both channels would adversely affect environmentally sensitive lands. A deviation to the 100 foot buffer around all wetlands and to sensitive biological resources is being requested since storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them will impact sensitive biological resources. To address the impacts from emergency work as well as the long term maintenance the City has mitigated the associated impacts by creating approximately 11.02 acres of riparian habitat for the state and federally listed least Bell's vireo. The mitigation parcel is located south of the Pilot channel and west of Smuggler's Gulch in close proximity to the project area enhancing habitat connectivity. Furthermore, the project will implement additional compensatory wetland mitigation required by the Resource Agencies via exotic plant species removal and eradication as proposed in the Conceptual Wetlands Mitigation Plan (Dudek, August 2010).

3. 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 Storm Water Department proposes to remove accumulated sediment, vegetation, trash and debris within the Pilot and Smuggler's Gulch channels to reduce flooding risks to life and property in the Tijuana River Valley. The San Diego City Council declared a State of Emergency in the Tijuana River Valley due to the potential for severe flooding and to alleviate that risk prior to the upcoming rainy season; crews must maintain the flood capacity of the City-maintained channels (i.e., Pilot and Smuggler's Gulch channels). The previous emergency work was authorized by the City Council in September 2009 and requires an after the fact discretionary permit. The long term maintenance of the Pilot and Smuggler's Gulch channels also requires a discretionary permit.

The purpose of the emergency work and the goal of the long term maintenance is to restore storm water conveyance capacities and to reduce the risk of flooding to the surrounding properties. The project includes four interrelated components: dredging and excavation of the Pilot channel (5,400 feet length); the northern and southern legs of the Smuggler's Gulch channel (3,040 feet length); two staging areas and three access routes.

The project site is located in the LUP and involves lands designated as Multi-Species Conservation Open Space, Other Community Open Space/Agriculture, and Utility. The primary land use emphasis of the Plan is to support the preservation, enhancement and restoration of the natural features of the area. One of the overall goals of the Plan is to "provide flood protection commensurate with economic cost benefits for urbanized portions of south San Diego and Tijuana, Mexico,..."

The purpose of the Land Use and Community Planning Element of the General Plan is to “guide future growth and development into a sustainable citywide development pattern, while maintaining or enhancing quality of life in our communities.” The Element provides policy direction for coastal planning and includes the goal of “preservation and enhancement of coastal resources.” The Element also establishes community plans as integral components of the General Plan.

The Tijuana River Valley planning area is located within the California Coastal Zone and, as such, is subject to the regulations of the California Coastal Act of 1976. The primary focus of the Tijuana River Valley Local Coastal Program Land Use Plan (LUP) is to preserve, enhance and restore the natural features of the area. The Plan does not contain individual “elements” mirroring the General Plan however the plan identifies four land use designations: Multi-species Conservation Open Space, Other Community Open Space/Agriculture, Utility and Military.

The Goals and Objectives of the Multiple Species Conservation Open Space designation include “intermix the natural habitat with compatible agricultural, recreational and water quality improvement activities, all functioning in concert to maintain and enhance natural ecosystems and the quality of life and environment.” Specific Recommendations for Flood Control include “limiting flood control to existing agreements with wildlife agencies...where such protection is necessary for public safety...” Other recommendations for Environmentally Sensitive Habitat Areas include “the...dredging of open coastal waters...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...”. The Goals and Objectives of the Other Community Open Space and Agriculture designation include “Establish an open space system which provides...protection of public health and safety...” Specific Recommendations for Other Community Open Space include “respect the natural environment to the maximum extent possible when installing public...improvements in designated open space areas.”

Specific Recommendations of the Utility designation include “temporary construction areas and roads, staging areas...must not disturb existing habitat unless determined to be unavoidable. All such activities must occur...in other disturbed areas rather than in habitat”, and “ensure appropriate storage of materials (e.g., hazardous or toxic, chemicals, equipment, etc.) per applicable regulations in any areas that may impact the MHPA, especially due to potential leakage.”

The project would restore storm water conveyance capacities and reduce the risk of flooding to the surrounding properties. The proposed maintenance project includes the annual excavation of approximately 10,000 - 30,000 cubic yards (CY) of materials (i.e., sediment and trash debris), occupying 4.48-acres of jurisdictional waters. The proposed project would help implement the goals, objectives and recommendations of the Plan by limiting the scope of the dredging, minimizing impacts to habitat, locating storage areas on previously disturbed grounds, and following Best Management Practices to minimize potential leakage.

The purpose of the General Plan's Conservation Element is to provide for the long-term conservation and sustainable management of the rich natural resources that help define the City's identity, contribute to its economy, and improve its quality of life. The element includes policy direction for Coastal Resources and for Border/International Conservation.

Protecting and enhancing Coastal Resources is a goal of the Conservation Element. The element also identifies the Tijuana slough as one of San Diego's remaining coastal wetlands/lagoons and a prominent feature. A specific policy is to control sedimentation entering coastal lagoons and waters from upstream urbanization.

The General Plan's goal for Border/International Conservation is a sustainable, safe, and healthy San Diego-Baja California border environment. A specific policy in the Conservation element (CE-M.3.c) states in part, "stop...silt from crossing the border and polluting the Tijuana River Valley."

The proposed project would remove 10,000 to 30,000 cubic yards of sediment and other materials annually. Recommendations contained in the General Plan states in part that "dredging is allowed and limited to minor incidental public service projects". Therefore, the proposed project would help control sedimentation from entering a coastal lagoon and would help implement General Plan's goals and recommendations.

The purpose of the Public Facilities, Services and Safety Element is to provide the public facilities and services needed to serve the existing population and new growth. One of the many public facilities and services identified in the element is the City's storm water infrastructure. The goal for storm water infrastructure is a storm water conveyance system that effectively reduces pollutants in urban runoff and storm water to the maximum extent practicable. One of the storm water infrastructure policies is to install infrastructure that includes components to capture, minimize, and/or prevent pollutants in urban runoff from reaching receiving waters and potable water supplies.

The Tijuana slough receives runoff from the upstream watershed. The proposed project would enhance an existing storm water conveyance system and would help minimize the amount of pollutants reaching the Tijuana slough. The LUP states "dredging is allowed and limited to minor incidental public service projects". Therefore, the proposed project would help reduce pollutants in urban runoff and storm water to the maximum extent practicable and would help implement City and LUP goals and recommendations.

Therefore the previous emergency work and the proposed long term maintenance project will not adversely affect the applicable LUP.

4. 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 proposed maintenance activities within the Pilot and Smuggler's Gulch channels would conform to the public access and public recreation policies of the California Coastal Act. The site is located within the Coastal Overlay Zone and LUP. The Pacific Ocean is located approximately two miles from the project site. The nearest public roadway is Monument Road to the south and an unimproved portion of Saturn Boulevard to the west. Both channels primary function are for flood control however they also serve as an access routes for US Border Patrol and other recreational users. Accumulated sediment, vegetation, trash/debris within the flood control channels will be removed as part of the project improving the general quality of the area. Some trails within the vicinity would be temporally closed to avoid conflicts with the implementation of the project, but would not permanently adversely affect the existing trail system, public access or public recreational activities in the area.

B. SUPPLEMENTAL FINDINGS--ENVIRONMENTALLY SENSITIVE LANDS WITHIN THE COASTAL OVERLAY ZONE

1. 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.

Pursuant to Section 143.0130(d) of the LDC, incidental public service projects, such as storm water facilities, are permitted uses. The Land Development Code generally requires a 100 foot buffer to be maintained around all wetlands, therefore, the use and maintenance of the storm water facilities would not be allowed if the deviation is not provided because this storm water facility is, by its very nature, within wetlands. The maintenance of the facility requires entry into the buffer area, and lack of maintenance would not be economically viable due to the cost to the City in damages and inverse condemnation claims due to flooding of adjacent property.

2. 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 impact sensitive biological resources within the Coastal Overlay Zone. Since the City has made the investment of constructing storm water facilities strict application of ESL would preclude 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 can be directly correlated to the frequent or infrequent maintenance activities (dredging and excavation) for

affected channels whose conveyance capacities are diminished by the accumulated material that settles within the channel.

3. The use proposed by the applicant is consistent with the applicable zoning.

The Pilot channel is located within the OF-1-1 (Open Space-Flood Plain) zone; and Smuggler's Gulch channel is located within both OF-1-1 and AR-1-1 (Agriculture-Residential) zones. Flood control facilities are permitted uses within these zones.

Within the Coastal Overlay Zone, ESL requires that impacts to wetlands be avoided unless the activities meet specific exemption criteria established in the ESL ordinance. For a project occurring within the Coastal Overlay Zone impacts are allowed for incidental public service projects. The ESL regulations for development occurring within the Coastal Overlay Zone also require a 100-foot buffer be maintained around all wetlands, as appropriate, to protect the functions and values of the wetlands. The 100-foot buffer will not be possible because the two channels to be maintained are located within wetlands.

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 wetland 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.

4. The use and project design, siting, and size are the minimum necessary to provide the applicant with an economically viable use of the premises.

Pursuant to Section 143.0130(d) of the LDC, incidental public service projects, such as storm water facilities, are permitted uses; therefore a viable use of the applicant's property is allowed.

The primary purpose of both channels is to convey storm water runoff downstream to prevent flooding to the surrounding area. Thus, any dredging or excavation proposed would actually restore the base flood elevations to their designed capacities. Historically, the Tijuana River Valley has flooded during significant storm events threatening life and property and closure of roads. Annually, both channels quickly fill with accumulated sediment, vegetation (riparian and disturbed habitat), and trash/debris that has been transported downstream from the upper watershed. The accumulated materials within these flood control facilities reduce the channels' conveyance capacities and increase the City's flood risk. The City of San Diego and Regulatory Agencies recognized the imminent danger to life and property and authorized emergency maintenance in 2009 and 2010. However, an early onset of rains had prevented City crews to excavate the entire lengths of the channels and therefore annual maintenance must be permitted

In accordance with City Council Policy 800-04, adequate drainage facilities are required to remove storm water runoff in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life. To prevent and mitigate for any further loss and damages to property and life, as documented by previous storm events, maintenance within these channels must be performed to reduce the frequency of flooding to the adjacent properties.

The project would also include avoidance and minimization measures to reduce and minimize adverse effects to environmentally sensitive lands. Best Management Practices and required on-site biological monitoring would reduce and minimize adverse effects to environmental sensitive lands. These measures include a biological monitor on-site during any excavation activity, implementation of Best Management Practices to control erosion and protect water quality, and limiting excavation activities outside the sensitive bird breeding season.

5. 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 project is consistent with the provisions of the certified Local Coastal Program. According to the LUP utilities are allowed. The primary land use emphasis of the LUP is to support the preservation, enhancement and restoration of the natural features of the area. One of the overall goals of the LUP is to “provide flood protection commensurate with economic cost benefits for urbanized portions of south San Diego and Tijuana, Mexico...”

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 deviation the project is consistent with all provisions of the certified Local Coastal Program.

The purpose of the emergency work and the goal of the long term maintenance is to restore storm water conveyance capacities in the Pilot and Smuggler’s Gulch channels and to reduce the risk of flooding. Since flood control is their intended function, removal of wetland plant species and sediment within the channels is the least environmentally damaging alternative. Storm and urban runoff, which primarily originates from south of the USA/Mexico Border via the Pilot and Smuggler’s Gulch channels, carries pollutants, sediment, uprooted vegetation, trash and debris downstream during storm events. When not maintained on a regular basis, the sediment continues to build up and the channels become mixed with trash and debris and become ineffective. By removing the sediment, invasive plant species, trash and debris through dredging or excavation, the emergency work and the long term maintenance would restore the base flood elevations to their designed capacities and minimize the amount of pollutants reaching the Tijuana slough. The proposed project would therefore preserve the biological functions and values of the wetland resources within the Tijuana River Valley and is consistent with the overall goals of the LUP.

A. SITE DEVELOPMENT PERMIT-SECTION 126.0504

1. The proposed development will not adversely affect the applicable land use plan;

The Storm Water Department proposes to remove accumulated sediment, vegetation, trash and debris within the Tijuana River Valley Pilot (Pilot) and Smuggler's Gulch channels to reduce flooding risks to life and property in the Tijuana River Valley. In September 2009, the San Diego City Council declared a State of Emergency in the Tijuana River Valley due to the potential for severe flooding. It permitted emergency maintenance within the City-maintained channels (i.e., Pilot and Smuggler's Gulch channels). The previous emergency work requires an after the fact discretionary permit. The long term maintenance of the Pilot and Smuggler's Gulch channels also requires a discretionary permit and is included with this permit application.

The purpose of the emergency work and the goal of the long term maintenance is to restore storm water conveyance capacities and to reduce the risk of flooding to the surrounding properties. The project includes four interrelated components: dredging and excavation of the Pilot channel (5,400 feet length); the northern and southern legs of Smuggler's Gulch channel (3,040 feet length); two staging areas and three access routes.

The project site is located in the Tijuana River Valley Local Coastal Program Land Use Plan (LUP) and involves lands designated as Multi-Species Conservation Open Space, Other Community Open Space/Agriculture, and Utility. The primary land use emphasis of the LUP is to support the preservation, enhancement and restoration of the natural features of the area. One of the overall goals of the LUP is to "provide flood protection commensurate with economic cost benefits for urbanized portions of south San Diego and Tijuana, Mexico..."

The purpose of the Land Use and Community Planning Element of the General Plan is to "guide future growth and development into a sustainable citywide development pattern, while maintaining or enhancing quality of life in our communities." The Element provides policy direction for coastal planning and includes the goal of "preservation and enhancement of coastal resources." The Element also establishes community plans as integral components of the General Plan.

The LUP area is located within the California Coastal Zone and, as such, is subject to the regulations of the California Coastal Act of 1976. The primary focus of the LUP is to preserve, enhance and restore the natural features of the area. The LUP does not contain individual "elements" mirroring the General Plan however the plan identifies four land use designations: Multi-species Conservation Open Space, Other Community Open Space/Agriculture, Utility and Military.

The Goals and Objectives of the Multiple Species Conservation Open Space designation include "intermix the natural habitat with compatible agricultural, recreational and water quality improvement activities, all functioning in concert to maintain and enhance natural ecosystems and the quality of life and environment." Specific Recommendations for Flood Control include "limiting flood control to existing agreements with wildlife agencies...where such protection is

necessary for public safety...” Other recommendations for Environmentally Sensitive Habitat Areas include “the...dredging of open coastal waters...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...”. The Goals and Objectives of the Other Community Open Space and Agriculture Designation include “Establish an open space system which provides...protection of public health and safety...” Specific Recommendations for Other Community Open Space include “respect the natural environment to the maximum extent possible when installing public...improvements in designated open space areas.”

Specific Recommendations of the Utility designation include “temporary construction areas and roads, staging areas...must not disturb existing habitat unless determined to be unavoidable. All such activities must occur...in other disturbed areas rather than in habitat”, and “ensure appropriate storage of materials (e.g., hazardous or toxic, chemicals, equipment, etc.) per applicable regulations in any areas that may impact the MHPA, especially due to potential leakage.”

The project would restore storm water conveyance capacities and reduce the risk of flooding to the surrounding properties. The proposed maintenance project includes the annual excavation of approximately 10,000 - 30,000 cubic yards (CY) of materials (i.e., sediment and trash debris), occupying 4.48-acres of jurisdictional waters. The proposed project would help implement the goals, objectives and recommendations of the LUP by limiting the scope of the dredging, minimizing impacts to habitat, locating storage areas on previously disturbed grounds, and following Best Management Practices to minimize potential leakage.

The purpose of the General Plan’s Conservation Element is to provide for the long-term conservation and sustainable management of the rich natural resources that help define the City’s identity, contribute to its economy, and improve its quality of life. The Element includes policy direction for Coastal Resources and for Border/International Conservation.

Protecting and enhancing Coastal Resources is a goal of the Conservation Element. The Element also identifies the Tijuana slough as one of San Diego’s remaining coastal wetlands/lagoons and a prominent feature. A specific policy is to control sedimentation entering coastal lagoons and waters from upstream urbanization.

The General Plan’s goal for Border/International Conservation is a sustainable, safe, and healthy San Diego-Baja California border environment. A specific policy in the Conservation element (CE-M.3.c) states in part, “stop...silt from crossing the border and polluting the Tijuana River Valley.”

The proposed project would remove 10,000 to 30,000 cubic yards of sediment and other materials annually. Recommendations contained in the General Plan states in part that “dredging is allowed and limited to minor incidental public service projects”. Therefore, the proposed project would help control sedimentation from entering a coastal lagoon and would help implement the General Plan goals and recommendations.

The purpose of the Public Facilities, Services and Safety Element is to provide the public facilities and services needed to serve the existing population and new growth. One of the many public facilities and services identified in the element is the City's storm water infrastructure. The goal for storm water infrastructure is a storm water conveyance system that effectively reduces pollutants in urban runoff and storm water to the maximum extent practicable. One of the storm water infrastructure policies is to install infrastructure that includes components to capture, minimize, and/or prevent pollutants in urban runoff from reaching receiving waters and potable water supplies.

The Tijuana slough receives runoff from the upstream watershed. The proposed project would enhance an existing storm water conveyance system and would help minimize the amount of pollutants reaching the Tijuana slough. The LUP states "dredging is allowed and limited to minor incidental public service projects". Therefore, the proposed project would help reduce pollutants in urban runoff and storm water to the maximum extent practicable and would help implement City and Plan goals and recommendations.

Therefore the previous emergency work and the proposed long term maintenance project will not adversely affect the applicable LUP or the General Plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The primary purpose of both channels is to convey storm water runoff downstream to prevent flooding to the surrounding area. Thus, the dredging or excavation proposed would restore the base flood elevations to their designed capacities. Historically, the Tijuana River Valley has flooded during significant storm events threatening life and property and closure of roads. Annually, both channels quickly fill with accumulated sediment, vegetation (riparian and disturbed habitat), and trash/debris that has been transported downstream from the upper watershed. The accumulated materials within these flood control facilities reduce the channels' conveyance capacities and increase the City's flood risk. The City of San Diego and Regulatory Agencies recognized the imminent danger to life and property and authorized emergency maintenance in 2009 and 2010.

Therefore proposed maintenance activities in the Pilot and Smuggler's Gulch channels would not be detrimental to the public health, safety and welfare; but protect the public's safety and reduce flooding risk by removing the accumulated sediment, vegetation, trash and debris within these flood control facilities.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The proposed maintenance activities in the Pilot and Smuggler's Gulch channels are subject to the Environmentally Sensitive Lands (ESL) regulations, Section 143.0101 of the Land Development Code (LDC) because they occur within sensitive biological resources, wetlands and a floodplain. The project conforms to the applicable regulations of the LDC, except for a deviation to the Development Regulations to Sensitive Biological Resources (LDC Section 143.0141) which states: "impacts to wetlands shall be avoided."

Within the Coastal Overlay Zone, ESL requires that impacts to wetlands be avoided unless the activities meet specific exemption criteria established in the ESL ordinance. For projects occurring within the Coastal Overlay Zone impacts are allowed for incidental public service projects. The ESL regulations for development occurring within the Coastal Overlay Zone also require a 100-foot buffer be maintained around all wetlands, as appropriate, to protect the functions and values of the wetlands. The 100-foot buffer will not be possible because the two channels to be maintained are located within wetlands.

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 wetland 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.

This request is to permit both the emergency work already performed and the long term maintenance requires both a Coastal and Site Development Permit which is required by the Land Development Code. A deviation is permitted to be requested for the impacts to biology and the lack of the 100 foot buffer (as described) and justified by the fact that the project is characterized as an incidental public service project. All other requests associated with the project are in conformance with the Land Development Code.

B. SUPPLEMENTAL FINDINGS--ENVIRONMENTALLY SENSITIVE LANDS

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

The Pilot and Smuggler's Gulch channels were constructed to provide flood protection to residential and agriculture areas within Tijuana River Valley as well as the Otay-Nestor Community to the north. The majority of storm and urban runoff originates south of the USA/Mexico Border via the Pilot and Smuggler's Gulch channels which can carry pollutants, sediment, uprooted vegetation, trash and debris downstream during storm events. The Tijuana River Pilot channel was constructed in 1993, on an emergency action taken by City Council, after the El Nino storms in 1993. The Pilot channel (which runs east to west) and diverts from the main Tijuana River approximately 500 feet east of Hollister Street bridge to carry low flows southwest and ultimately to the ocean. Smuggler's Gulch, is an historical agricultural ditch located on City and County of San Diego owned-property. The channel runs from USA/Mexico border to the north, where it confluences with the Pilot channel approximately 1,300 feet west of the Hollister Street bridge. Smuggler's Gulch also conveys runoff from the U.S. Department of Homeland Security Tactical Infrastructure Project (Border Fence Project) which has altered the hydrology of the area and its barren slopes contribute to the sediment load during significant rain events.

The Pilot and Smuggler's Gulch channels are located within the Federal Emergency Management Agency's (FEMA) 100-year floodplain, Special Flood Hazard Area, and the City of San Diego Multi-Habitat Planning Area (MHPA). The proposed maintenance activities within both channels would adversely affect environmentally sensitive lands. Impacts to disturbed wetland habitat are anticipated and unavoidable. To address the impacts from emergency work as well as the long term maintenance the City has mitigated the associated impacts by creating approximately 11.02 acres of riparian habitat for the state and federally listed least Bell's vireo. The mitigation parcel is located south of the Pilot channel and west of Smuggler's Gulch in close proximity to the project area enhancing habitat connectivity. Furthermore, the project will implement additional compensatory wetland mitigation required by the Resource Agencies via exotic plant species removal and eradication as proposed in the Conceptual Wetlands Mitigation Plan (Dudek, August 2010).

The primary purpose of both channels is to convey storm water runoff downstream to prevent flooding to the surrounding area. The dredging and/or excavation proposed would restore the base flood elevations to their designed capacities.

2. 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 Pilot and Smuggler's Gulch channels were constructed to provide flood protection to residential and agriculture areas within Tijuana River Valley, as well as the Otay-Nestor Community to the north. The majority of storm and urban runoff originate south of the USA/Mexico Border via the Tijuana River and Smuggler's Gulch channel which can carry pollutants, sediment, uprooted vegetation, trash and debris downstream during storm events. The emergency work performed and the proposed long term maintenance activities lower the base flood elevations within the channel itself and reduce the frequency and flood risk to the surrounding properties. Therefore, such activities will not alter natural land forms or result in undue risk from geologic and erosional forces, flood hazards, or fires.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

The Pilot and Smuggler's Gulch channels were constructed to provide flood protection to residential and agriculture areas within Tijuana River Valley as well as the Otay-Nestor Community to the north. The majority of storm and urban runoff originate south of the USA/Mexico Border via the Pilot and Smuggler's Gulch channels which can carry pollutants, sediment, uprooted vegetation, trash and debris downstream during storm events. The Pilot channel was constructed in 1993, on an emergency action taken by City Council, after the El Nino storms in 1993. The Pilot channel (which runs east to west) diverts from the main Tijuana River approximately 500 feet east of Hollister Street bridge to carry low flows southwest and ultimately to the ocean. Smuggler's Gulch, is an historical agricultural ditch located on City and County of San Diego owned-property. The Smuggler's Gulch channel runs from USA/Mexico border to the north, where it confluences with the Pilot channel approximately 1,300 feet west of the Hollister Street bridge. Smuggler's Gulch also conveys runoff from the U.S. Department of

Homeland Security Tactical Infrastructure Project (Border Fence Project) which has altered the hydrology of the area and its barren slopes contribute to the sediment load during significant rain events.

The Pilot and Smuggler's Gulch channels are located within the Federal Emergency Management Agency's (FEMA) 100-year floodplain, Special Flood Hazard Area, and the City of San Diego Multi-Habitat Planning Area (MHPA). The proposed maintenance activities within both channels would adversely affect environmentally sensitive lands. Impacts to disturbed wetland habitat are anticipated and unavoidable. To address the impacts from emergency work as well as the long term maintenance the City has mitigated the associated impacts by creating approximately 11.02 acres of riparian habitat for the state and federally listed least Bell's vireo. The mitigation parcel is located south of the Pilot channel and west of Smuggler's Gulch in close proximity to the project area enhancing habitat connectivity. Furthermore, the project will implement additional compensatory wetland mitigation required by the Resource Agencies via exotic plant species removal and eradication as proposed in the Conceptual Wetlands Mitigation Plan (Dudek, August 2010).

The Pilot and Smuggler's Gulch channels by their very nature and function are located within wetlands and the removal of vegetation to clean them will potentially impact sensitive biological resources. The primary purpose of both channels is to convey storm water runoff downstream to prevent flooding to the surrounding area. Dredging or excavation proposed would restore the base flood elevations to their designed capacities. Mitigation for impacts to the biology has been provided in accordance with the City's Biology Guidelines and the applicable resource agencies permit requirements. Access to the worksite will be taken via existing paths and roads. Considering the site constrictions and the nature of the work proposed the project has been sited and designed to the best extent possible to prevent any unnecessary adverse impacts on any adjacent environmentally sensitive lands.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.

The proposed maintenance activities in the Pilot and Smuggler's Gulch channels would be consistent with the City's MSCP Subarea Plan. The project is located with the MSCP subarea and Multi-Habitat Planning Area (MHPA). A biological resources report analyzed the project's conformity to the plan and land use adjacency guidelines. The report includes the site-specific minimization and mitigation measures incorporated in the project that would reduce potentially adverse affects to the MHPA.

These include limiting excavation activities outside the sensitive bird breeding season, requiring a qualified biologist on-site to monitor work, implementing Best Management Practices to control erosion and toxics that could affect the wildlife and habitat in the MHPA.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and

The proposed maintenance activities in the Pilot and Smuggler's Gulch channels would not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The Pacific Ocean and a public beach is approximately two miles west of the project site. The Tijuana River National Estuarine Research Reserve lies between the project site and the Pacific Ocean/beach where the freshwater from the Tijuana River (including the Pilot and Smuggler's Gulch channels) meet and mix with the saltwater from the Pacific Ocean. Replenishment of beach sand within these drainage areas would occur naturally and maintenance activities would not increase flow velocities that could erode downstream public beaches.

6. 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.

A Mitigated Negative Declaration was prepared and identified specific mitigation measures designed to assure adequate compensation for impacts to biological resources associated with the emergency work and the proposed long term maintenance. The City has previously mitigated for impacts associated with the construction of the Pilot channel and on-going maintenance by creating approximately 11.02 acres of riparian habitat for the state and federally listed least Bell's vireo. The mitigation parcel is located south of the Pilot channel and west of Smuggler's Gulch in close proximity to the project area enhancing habitat connectivity. Furthermore, the project will implement additional compensatory wetland mitigation required by the Resource Agencies via exotic plant species removal and eradication as proposed in the Conceptual Wetlands Mitigation Plan (Dudek, August 2010).

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. The mitigation is reasonably related to and calculated to alleviate the negative impacts created by the necessity of the emergency work and the proposed long term maintenance.

C. SUPPLEMENTAL FINDINGS--ENVIRONMENTALLY SENSITIVE LANDS DEVIATIONS

1. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands; and

The primary purpose of both channels is to convey storm water runoff downstream to prevent flooding to the surrounding area. By their very nature storm water facilities are located within biologically sensitive areas where impacts are unavoidable. As an incidental public service project, the maintenance activities proposed are the minimum necessary and no feasible alternative exists. Furthermore, within the Coastal Overlay Zone impacts to wetland shall be

limited to only those uses indentified 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.

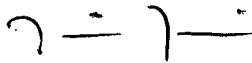
Although impacts to disturbed wetland habitat are anticipated and unavoidable, the City has previously mitigated for the impacts associated with the construction of the Pilot channel and on-going maintenance by creating approximately 11.02 acres of riparian habitat for the state and federally listed least Bell’s vireo. The mitigation parcel is located south of the Pilot channel and west of Smuggler’s Gulch in close proximity to the project area enhancing habitat connectivity. In addition, the project will implement additional compensatory wetland mitigation required by the Resource Agencies via exotic plant species removal and eradication as proposed in the Conceptual Wetlands Mitigation Plan (Dudek, August 2010). The City proposes to eradicate approximately 9.96 acres of exotic invasive plant species (Arundo donax) within the Tijuana River Valley watershed.

2. 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 deviations from the ESL regulations are requested. A deviation to the 100 foot buffer around all wetlands and to impact 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 could potentially impact sensitive biological resources.

BE IT FURTHER RESOLVED, that the appeal of the San Diegans for Open Government is denied; the decision of the Planning Commission is sustained; and Coastal Development Permit No. 852981 and Site Development Permit No. 852978 is granted to the County of San Diego, Owner, and the City of San Diego Development Services, Owner/Permittee, under the terms and conditions set forth in the attached permits which are made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney


By 

Nina M. Fain
Deputy City Attorney

NMF:jl
10/20/2011
Or.Dept: DSD
R-2012-190

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 18 2011 .

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 21000287

COASTAL DEVELOPMENT PERMIT NO. 852981
SITE DEVELOPMENT PERMIT NO. 852978
TJ RIVER VALLEY EMERGENCY PROJECT NO. – 230815 [MMRP]

CITY COUNCIL

This Coastal Development Permit No. 852981 and Site Development Permit No. 852978, is granted by the City Council of the City of San Diego to the County of San Diego (Owner) and the City of San Diego (Owner/Permittee), pursuant to San Diego Municipal Code [SDMC] sections 126.0701 and 126.0501. The 19.77-acre site is located between Hollister Street and Monument Road and within the OF-1-1 (Open Space-Floodplain) and AR-1-1 (Agricultural/Residential) and in the Tijuana River Valley Local Coastal Program Land Use Plan. The project site is generally located north of Monument Road, south of Sunset Avenue and west of Hollister Road, east of the Pacific Ocean.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for previous emergency work and long term maintenance of the Tijuana River Pilot and Smugglers Gulch channels described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated October 18, 2011, on file in the Development Services Department.

The project shall include:

- a. Dredging and maintenance of the Tijuana River Pilot and Smugglers Gulch channels to ensure adequate channel width and depth ;
- b. Annual excavation of approximately 10,000 – 30,000 cubic yards (CY) of materials (i.e., sediment and trash debris);

- c. Grading and reconstruction of the channel banks with compacted soil material (using on-site soil materials) as needed;
- d. Cleaning and maintenance of existing culverts under Monument Road and Disney Crossing;
- e. Existing gabion maintenance and repair;
- f. Manual and mechanical separation of spoil material to sort sediment from trash and vegetation (to occur at staging areas only);
- g. Relocation of soil materials as delineated in the environmental document;
- h. Maintain access routes as needed from vegetation;
- i. Eradicate approximately 9.96 acres of exotic invasive plant species and maintain as needed; and

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action, or following all appeals.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs.

In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

11. This Permit may be implemented in phases.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

13. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration, No. 230815, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration, No. 230815, to the satisfaction of the Development Services Department and the City Engineer. Prior to the issuance of the "Notice to Proceed" with construction, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Cultural Resources (Archaeology), Land Use (MSCP/MHPA) and Biological Resources.

ENGINEERING REQUIREMENTS:

15. This project shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications satisfactory to the City Engineer.

16. This project shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix G of the City's Storm Water Standards, satisfactory to the City Engineer.

17. This project proposes to export 10,000 to 30,000 cubic yards of material from the project site. All export material shall be reclaimed pursuant to the environmental document or discharged into a legal disposal site. The approval of this project does not allow the sale of the export material unless the underlying zone allows a construction and demolition debris recycling facility with an approved Neighborhood Use Permit or Conditional Use Permit per LDC Section 141.0620(i).

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on October 18, 2011, Resolution

No. R-307082

Coastal Development Permit No. 852981
Site Development Permit No. 852978
Project No. 230815
Approved October 18, 2011

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Helene Deisher
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

City of San Diego
Owner/Permittee

By _____
NAME
TITLE

County of San Diego
Owner/Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**