

ORDINANCE NUMBER O- 20291 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 28 2013

ITEM # 333
7/23/13

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING MODIFICATIONS TO THE CITY'S MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM AND APPROVING SITE DEVELOPMENT PERMIT NO. 1134892, WHICH AMENDS AND SUPERSEDES SITE DEVELOPMENT PERMIT NO. 714233/COASTAL DEVELOPMENT PERMIT NO. 714232; APPROVING A PROCEDURE FOR SUBSTANTIAL CONFORMANCE REVIEWS; AND WAIVING THE REQUIREMENT OF A PLANNING COMMISSION RECOMMENDATION PRIOR TO PASSAGE OF THIS ORDINANCE, ALL RELATED TO THE CITY'S MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM.

WHEREAS, on May 13, 2010, the Planning Commission of the City of San Diego (Planning Commission) considered and approved Coastal Development Permit (CDP) No. 714232 and Site Development Permit (SDP) No. 714233 related to the Master Storm Water System Maintenance Program (Master Maintenance Program) pursuant to Resolution No. 4586-PC, which decision was subsequently appealed jointly by San Diego Coastkeeper, the 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, on October 24, 2011, pursuant to Resolution 307068, the City Council of the City of San Diego (City Council) modified the Planning Commission's findings and denied the appeal, thus approving CDP No. 714232/SDP No. 714233 for the Master Maintenance Program with modifications, and certified the Program Environmental Impact Report (PEIR); and

WHEREAS, on November 23, 2011, San Diegans for Open Government and the Coastal Environmental Rights Foundation filed a lawsuit under the California Environmental Quality Act (CEQA), and appealed the CDP to the California Coastal Commission (Coastal Commission); and

WHEREAS, on November 15, 2012, the Coastal Commission approved a CDP (A-6-NOC-11-086) that covers Coastal Zone channels in the Tijuana River Valley, Sorrento Valley, and Mission Bay High School areas, which action superseded City-issued CDP No. 714232 and called for modifications to the Master Maintenance Program; and

WHEREAS, on April 23, 2013, all parties to the litigation entered into a Settlement Agreement and Release (Case 37-2011-00101571) (Settlement Agreement), in which Petitioners agreed to dismiss their lawsuit with prejudice on the condition that the City make additional modifications to the Master Maintenance Program, which Settlement Agreement had been authorized by the City by a vote in Closed Session on April 16, 2013; and

WHEREAS, in accordance with that Settlement Agreement, the City of San Diego Transportation & Storm Water Department (T&SWD), Owner/Permittee, filed an application with the City in order to modify the Master Maintenance Program; and

WHEREAS, the Master Maintenance Program, as modified, incorporates and fulfills the conditions outlined in the Coastal Commission-issued CDP and the Settlement Agreement; and

WHEREAS, the modifications to the Master Maintenance Program include reducing the SDP term to five years, modifying the annual Process One Substantial Conformance Review to a city-wide Process Two Substantial Conformance Review appealable directly to the City Council, and implementing additional water quality measures and biological mitigation requirements; and

WHEREAS, 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 and 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 Planning areas as described in the original Master Storm Water System Maintenance Program (March 2010); and

WHEREAS, the City's Environmental Analysis staff reviewed the current project and has determined that: it is consistent with the PEIR prepared for the Master Maintenance Program; it is part of a series of subsequent discretionary actions such that, pursuant to CEQA Guidelines section 15378(c), it is not a separate project under CEQA; and that, pursuant to CEQA section 21166, there is no change in circumstance, additional information, or project changes that warrant additional environmental review; and

WHEREAS, under Charter section 280(a)(2) this ordinance is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the City Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, an urgent need to bring this item before City Council for approval exists because the City's activities under the Master Maintenance Program are designed to protect life and property from flooding events; as a result of bird breeding season and weather constraints, maintenance activities are generally constrained to the period between September 15 and the onset of significant winter rain events; and because any delay in processing would jeopardize the

opportunity to perform maintenance within the Tijuana River Valley Channels for a third year;
and

WHEREAS, the matter was set for public hearing on July 23, 2013, 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 ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That it adopts the following findings with respect to Site Development Permit No. 1134892:

SITE DEVELOPMENT PERMIT- SAN DIEGO MUNICIPAL CODE SECTION 126.0504

A. Findings for all Site Development Permits

1. 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 Maintenance Program. The purpose of the Master Storm Water System Maintenance Program (Master Maintenance Program) is to permit and implement a comprehensive, annual approach to the maintenance of existing storm water facilities.

The Master Maintenance 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 of the General Plan and applicable Community Plans, the following discussion is based on the Master Maintenance Program's 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 Maintenance Program. While the Master Maintenance 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 the land use policies intended to maintain natural drainages.

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 Maintenance Program to control flooding, maintenance is expected to remove portions of wetland vegetation located within storm water facilities included in the Master Maintenance Program. However, protocols in the Master Maintenance Program, combined with biological mitigation required by Recirculated Program Environmental Impact Report (PEIR) No. 42891/SCH No. 2004101032 and the associated Mitigation Monitoring and Reporting Program (MMRP) would minimize impacts to natural habitat and wildlife in several ways.

First, individual hydrologic and hydraulic assessments (IHHAs) 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 and/or creating 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 Maintenance Program would achieve the land use policies intended to minimize 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 Maintenance Program requires Best Management Practices (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 PEIR and associated MMRP.

Irrespective of results of the net benefit/impact analysis under the PEIR, the SDP as amended requires water quality measures to be implemented when channel maintenance activities are conducted. The BMP measures integrate many of the City's on-going water quality programs (e.g. Street Sweeping), and include a suite of options which could be implemented. The T&SWD may implement any one of the following options in each maintenance area:

- (a) For every segment for which at least 100 linear feet of vegetation is removed (except for removal of invasive species, e.g., Arundo), and for every 100 additional linear feet thereafter, the City ensures landscape retrofits are implemented at one residential property, with the Watershed Management Area (WMA) of the segment with one of the following options: (1) Install a rain barrel

or other rainwater harvesting device at least 50 gallons in size; (2) Redirect at least 100 square feet of rooftop surface area currently directed to the street to onsite landscaping (i.e., redirect rain gutter downspouts); (3) Replace at least 400 square feet of natural grass turf, or 100% of front yard turf if it is less than 400 square feet in size, with plants that have low watering requirements; (4) Replace non-weather based irrigation controller; or (5) Replace existing in-ground and operable overhead spray irrigation servicing at least 200 square feet of landscape area to drip, micro-spray, in-line tubing, or other low-volume micro-irrigation components; or

- (b) Except for the three areas approved in Coastal Development Permit No. A-6-NOC-11-086 for which the City may satisfy this condition by implementing the additional street sweeping approved by the Coastal Commission, the Permittee shall increase street sweeping frequency by prioritizing high traffic commercial routes adjacent to maintained channel with vacuum-assisted sweeper for every 400 linear feet of vegetation that is removed (except for removal of invasive species, e.g., Arundo) within a drainage area. Sweeping shall be conducted in median areas that are not subject to regular sweeping routes, and shall occur at a frequency of at least once per quarter for one calendar year after maintenance; or
- (c) For every 200 linear feet of vegetation (except for removal of invasive species, e.g., Arundo) removed per fiscal year per Watershed Management Area (WMA), the Permittee shall construct and maintain in perpetuity one of the following within the WMA: (1) install 100 square feet biofiltration system; (2) replace 100 square feet of impermeable pavement with permeable surfaces; (3) Install 100

- square feet vegetated swale; or (4) restore 100 square feet of wetlands (such as stabilizing eroded drainage and planting with native riparian vegetation); or
- (d) Permittee shall increase frequency of catch basin inspection and as-needed cleaning for one year after maintenance. For every segment that is cleared, the Permittee shall conduct an inspection and cleaning (if necessary) of every catch basin with 100 feet of the maintained segment, and conduct additional inspections and cleaning (if necessary) every three (3) months.

Therefore, the Master Maintenance Program would not adversely affect the land use policies intended to protect water quality and this finding can be made.

Create and Maintain Recreation Opportunities Associated With Natural Drainages

The Master Maintenance 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 protection. Thus, these areas are not included in the Master Maintenance Program. The Master Maintenance 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 Maintenance Program. Therefore, the Master Maintenance Program would not adversely affect the land use policies intended to maintain and create recreation opportunities associated with drainages.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The purpose of the Master Maintenance Program is to assure that the storm water facilities managed by T&SWD minimize the risk of flooding on adjacent property. The Master Maintenance Program describes the maintenance techniques to be employed as well as

the protocols to be followed to minimize the impacts to environmental resources. The primary objectives of the Master Maintenance 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 Maintenance 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.

3. The proposed development will comply with the applicable regulations of the Land Development Code. The Master Maintenance Program is subject to the City's 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 Maintenance Program is requesting deviations to the 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 comply 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.

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. Implementation of the Master Maintenance Program will ensure that the design and siting 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) will be prepared to define the limits, approach to maintenance and appropriate protocols to control impacts of the maintenance on biological resources, historic resources and/or water quality. Based on the IMP, biology, historic, and noise studies would be conducted to determine what 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 Maintenance Program 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 Maintenance Program and that environmental impacts would be mitigated pursuant to the MMRP.

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 Master Maintenance 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 Maintenance 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 Maintenance Program would also reduce flood hazards within the affected areas by removing sedimentation, which often carries 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 Maintenance 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).

3. 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 Maintenance Program specifically excludes any expansion or modifications to the storm water facilities beyond their original configuration. With respect to biologically sensitive lands, the Master Maintenance 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 Maintenance 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 Maintenance Program 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.

4. 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 Maintenance 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 Maintenance 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

5. 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.

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. 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. In addition, the SDP as amended incorporates the mitigation ratios included in the CDP issued by the Coastal Commission. 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 and the SDP as amended. 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.

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. 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 Maintenance Program requires a rigorous effort to reduce biological impacts associated with maintenance. As discussed earlier, the Master Maintenance 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.

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. 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.

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

Section 2. That, based on the findings hereinbefore adopted by the Council of the City of San Diego, Site Development Permit No. 1134892 is granted to the City of San Diego Transportation & Storm Water Department, Owner/Permittee, under the terms and conditions set

forth in that permit, which by this reference is made a part of this ordinance, which permit amends and supersedes SDP No. 714233/CDP No. 714232.

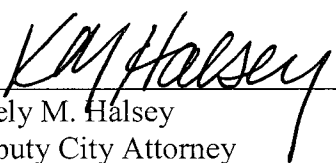
Section 3. That, notwithstanding San Diego Municipal Code section 126.0112, which dictates procedures for Substantial Conformance Review decisions, all Substantial Conformance Review decisions related to SDP No. 1134892 shall be made in accordance with Process Two except that they shall be appealable directly to the City Council rather than to the Planning Commission.

Section 4. That, notwithstanding San Diego Municipal Code section 112.0509, which provides for a Planning Commission hearing and recommendation prior to certain City Council actions, no Planning Commission hearing or recommendation is required related to the actions being authorized pursuant to this ordinance.

Section 5. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the Council and the public prior to the day of its passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Keely M. Halsey
Deputy City Attorney

KMH:als
07/08/13
Or.Dept:DSD
Doc. No. 588973_3

Attachment: Site Development Permit No. 1134892

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Internal Order No. 21002863

SITE DEVELOPMENT PERMIT NO 1134892 AMENDING AND SUPERSEDING
SITE DEVELOPMENT PERMIT NO. 714233/
COASTAL DEVELOPMENT PERMIT NO. 714232
MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM
PROJECT NO. 320787 (MMRP)
CITY COUNCIL

This Site Development Permit No. 1134892, which amends and supersedes Site Development Permit No. 714233/Coastal Development Permit No. 714232, is granted by the City Council of the City of San Diego to the City of San Diego Transportation & Storm Water Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0501. The approximate 32 miles of natural and man-made (concrete/earthen) channels, detention basins and storm drain outfalls are located with the City's 342.4-square mile metropolitan area, and within the City's public right-of-way or storm water easements dedicated to the City of San Diego and maintained by the City of San Diego's Transportation & Storm Water Department. These storm water facilities are also located within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial Zones and within 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 Planning areas within the City of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner/Permittee for cleaning and long term maintenance of storm water facilities subject to the Master Storm Water System Maintenance Program (dated June 2009 and last revised July 2013) (Exhibit "A") and Program Environmental Impact Report SCH No. 2004101032; Project No. 42891, on file in the Development Services Department.

This Permit provides the City of San Diego Transportation & Storm Water Department the authority to:

- a. 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;
- b. Implement 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;
- c. Ensure implementation of Best Management Practices (BMPs) and maintenance protocols during maintenance activities to avoid and/or minimize effects on environmental resources; and
- d. Implement a comprehensive review process for annual maintenance activities; and
- e. Allow Process Two Substantial Conformance Reviews City-wide; and
- f. Construct public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for the subject storm water facilities in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

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. This permit must be utilized by November 4, 2014.
2. This Permit shall expire in five years from the Effective Date of the Settlement Agreement and Release regarding *San Diegans for Open Government, et al. v. City of San Diego*, San Diego Superior Court case no. 37-2011-00101571.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. 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.).

7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

10. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

11. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Program Environmental Impact Report (PEIR) No. 42891/SCH No. 2004101032, shall be noted on the maintenance plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

12. The Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in PEIR No. 42891/SCH No. 2004101032, satisfactory to the Development Services Department and the City Engineer. Prior to the issuance of the "Notice to Proceed" with maintenance, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Biological Resources; Historical Resources; Water Quality; Land Use Policies and Paleontological Resources.

13. The Permittee shall comply with Exhibit "A", the Master Storm Water System Maintenance Program satisfactory to the Development Services Department.

14. Prior to the Development Services Department approval of any work, other than emergency actions, the Permittee shall submit an application for a Substantial Conformance Review Process Two to the Development Services Department for proposed site specific work consistent with Exhibit "A", the Master Storm Water System Maintenance Program. Concurrent processing or proof of outside review by the California Coastal Commission is required on all Substantial Conformance Reviews within the Coastal zone.

ADDITIONAL REQUIREMENTS:

15. The Permittee shall comply with the Special Conditions 9.a, 9.c, 9.d, 9.e, 9.f, 10 and 11 as referenced in California Coastal Commission's Coastal Development Permit No. A-6-NOC-11-086 (Exhibit "B") in the entire Master Storm Water System Maintenance Program, except: (a) submission to and approval from the Executive Director of Coastal Commission shall not be required outside the coastal zone; (b) for impacts outside the coastal zone, mitigation under the Master Storm Water System Maintenance Program will be initiated within one year of the maintenance project instead of the nine months required by the Coastal Development Permit; and (c) impacts outside the coastal zone need not be mitigated inside the Coastal Zone.

16. Impacts to biological resources shall be mitigated through new enhancement, creation, or mitigation credit acquisition, except for the Tijuana River Valley (Master Storm Water System Maintenance Program Maps 138a, 138b, 138, 139), and Sorrento Valley (Master Storm Water System Maintenance Program Maps 7, 8, 9, 10, 11, 12). For all other channels, new mitigation shall be performed the first time channel maintenance is implemented under the Master Storm Water System Maintenance Program but need not be repeated for subsequent maintenance of the same project footprint so long as performance criteria continue to be met pursuant to condition 17 below, and no new impacts will result from subsequent maintenance activities.

17. The Permittee shall confirm, as part of a Substantial Conformance Review, that performance criteria continue to be met for any past mitigation upon which the Permittee has relied.

18. The Permittee shall conduct photo documentation of each segment before and after maintenance, to be modeled after the State Water Resources Control Board Standard Operating Procedures 4.2.1.4: Stream Photo Documentation Procedure. Photo documentation must include GPS coordinates for each photo points referenced. Pre-maintenance photos must be taken no more than 30 days before maintenance and post-maintenance photos must be taken no more than 30 days after maintenance is complete.

19. The Permittee shall select and implement one of the following four options for each area to be maintained:

- (a) For every segment for which at least 100 linear feet of vegetation is removed (except for removal of invasive species, e.g., *Arundo*), and for every 100 additional linear feet thereafter, the City ensures landscape retrofits are implemented at one residential property, within the Watershed Management Area (WMA) of the segment with one of the following options: 1) Install a rain barrel or other rainwater harvesting device at least 50 gallons in size; 2) Redirect at least 100 square feet of rooftop surface area currently directed to the street to onsite landscaping (i.e., redirect rain gutter downspouts); 3) Replace at least 400 square feet of natural grass turf, or 100% of front yard turf if it is less than 400 square feet in size, with plants that have low watering requirements; 4) Replace non-weather based irrigation controller; or 5) Replace existing in-ground and operable overhead spray irrigation servicing at least 200 square feet of landscape area to drip, micro-spray, in-line tubing, or other low-volume micro-irrigation components; or

- (b) Except for the three areas approved in State Coastal Development Permit No. A-6-NOC-11-086 for which the City may satisfy this condition by implementing the additional street sweeping approved by the Coastal Commission, the Permittee shall increase street sweeping frequency by prioritizing high traffic commercial routes adjacent to maintained channel with vacuum-assisted sweeper for every 400 linear feet of vegetation that is removed (except for removal of invasive species, e.g., Arundo) within a drainage area. Sweeping shall be conducted in median areas that are not subject to regular sweeping routes, and shall occur at a frequency of at least once per quarter for one calendar year after maintenance; or
- (c) For every 200 linear feet of vegetation (except for removal of invasive species, e.g., Arundo) removed per fiscal year per Watershed Management Area (WMA), the Permittee shall construct and maintain in perpetuity one of the following within the WMA: 1) install 100 square feet biofiltration system; 2) replace 100 square feet of impermeable pavement with permeable surfaces; 3) Install 100 square feet vegetated swale; or 4) restore 100 square feet of wetlands (such as stabilizing eroded drainage and planting with native riparian vegetation); or
- (d) Permittee shall increase frequency of catch basin inspection and as-needed cleaning for one year after maintenance. For every segment that is cleared, the Permittee shall conduct an inspection and cleaning (if necessary) of every catch basin with 100 feet of the maintained segment, and conduct additional inspections and cleaning (if necessary) every three (3) months.


INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development 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 §66020.

APPROVED by the City Council of the City of San Diego on AUG 28 2013 .

Site Development Permit /PTS Approval No. 1134892
Date of Approval: July 23, 2013

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

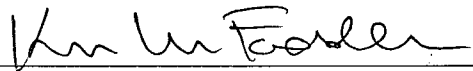


Helene Deisher
Development Project Manager

**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 Transportation & Storm Water Department
Owner/Permittee

By 

NAME Kris McFadden
TITLE Deputy Director

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego }

On Aug. 28, 2013 before me, Stacie L. Maxwell Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Holene Deisher and Kris McFadden
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Master Storm Water System Maintenance Program

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Individual

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

[Empty box for thumbprint]

Signer's Name: _____

Corporate Officer — Title(s): _____

Individual

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

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Passed by the Council of The City of San Diego on AUG 28 2013, by the following vote:

Councilmembers	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"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 28 2013

AUTHENTICATED BY:

BOB FILNER

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 23 2013

, and on

AUG 28 2013

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-

20291