

ORDINANCE NUMBER O- 21201 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 23 2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING COASTAL DEVELOPMENT
PERMIT NO. 2392208 AND SITE DEVELOPMENT PERMIT
NO. 2392210; APPROVING A PROCEDURE FOR
SUBSTANTIAL CONFORMANCE REVIEWS; ALL RELATED
TO THE CITY'S MUNICIPAL WATERWAYS
MAINTENANCE PLAN - PROJECT - NO. 616992.

WHEREAS, the City of San Diego Transportation & Storm Water Department,
Owner/Permittee, filed an application with the City of San Diego for a Coastal Development
Permit No. 2392208 and Site Development Permit No. 2392210 to provide a comprehensive
approach to identify and regulate the maintenance and repair of existing storm water facilities
located within the City's 342.4 square mile metropolitan area, as described in the Municipal
Waterways Maintenance Plan (MWMP) (Exhibit A); and

WHEREAS, the storm water facilities are located within portions of the Coastal Overlay,
Open Space, Open Space, Agricultural, Residential, Commercial and Industrial Zones and within
Clairemont Mesa, College Area, Encanto Neighborhoods, Kearny Mesa, Mid-City, Mira Mesa,
Mission Valley, Navajo, Otay Mesa, Rancho Bernardo, Rancho Penasquitos, Skyline-Paradise
Hills, Southeastern San Diego, Uptown, La Jolla, Otay-Mesa Nestor, Pacific Beach, San Ysidro,
Tijuana River Valley, and Torrey Pines Community Plan(s) and Local Coastal Program Land
Use Plan(s); and

WHEREAS, on April 16, 2020, the Planning Commission of the City of San Diego
considered Site Development Permit (SDP) No. 2392210 and Coastal Development Permit
(CDP) No. 2392208, and pursuant to Resolution No. 5080-PC, the Planning Commission voted
to recommend approval/denial of the Permits; 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 and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on June 9, 2020, 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 the following findings with respect to Site Development Permit (SDP) No. 2392210 and Coastal Development Permit (CDP) No. 2392208 are hereby adopted:

**A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)
SECTION 126.0505**

1. Findings for all Site Development Permits:

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

The MWMP proposes the maintenance and repair of existing storm water facilities; specifically, open channels, detention basins, and drain structures that the City's Transportation & Storm Water Department has the responsibility to maintain and repair to provide flood control. The MWMP allows the City to promptly address newly identified flood risks while also streamlining approvals for routine preventive maintenance that reduces flood risks. To accomplish this, the MWMP identifies the following:

1. A range of plan-wide activities that may occur throughout the storm water system where flood risks may arise which are to be conducted in accordance with a regulatory framework identified under the MWMP and associated permits.

2. A list of Facility Maintenance Plan facilities and channels (FMPs) that provide specific details and requirements for the majority of facilities and channels that are likely to require routine maintenance and repair.

Plan-wide activities include minor maintenance or repair; changed conditions for new or substantially amended FMPs; compensatory mitigation sites; and emergency maintenance or repair. Project-level activities (i.e., site-specific FMP) maintenance and repair activities include, but are not limited to, vegetation management; sediment removal; drain structural clearing (outlets and inlets); invasive plant species management; concrete repair and replacement; and bank repair. Together these two Plan and Project level components provide operational flexibility while also providing specific, detailed analysis for the majority of anticipated maintenance and repair activities to streamline the review and approval process.

The MWMP covers maintenance activities within the City's storm water conveyance system which consists of facilities distributed throughout the 342-square-mile metropolitan area. While the MWMP is not a land use or development plan, various MWMP activities are subject to applicable General Plan policies and the MWMP facilities exist within the planning framework established by their respective community plans. The community plans contain the more detailed land use designations and describe the distribution of land uses more specifically than is possible at the citywide document level and they therefore serve as the applicable land use plans. The City's park master plans serve a similar function by providing land use and other recommendations within regional and resource-based parks. MWMP facilities are located within 21 community plans (including seven that are also Local Coastal Program Land Use Plans), and five park master plans.

The applicable Community Plans are as follows:

- Clairemont Mesa
- College Area
- Encanto Neighborhoods
- Kearny Mesa
- Mid-City (City Heights, Eastern Area, and Kensington-Talmadge Communities)
- Mira Mesa
- Mission Valley
- Navajo
- Otay Mesa
- Rancho Bernardo
- Skyline-Paradise Hills
- Southern San Diego
- Uptown

The applicable Community Plan and Local Coastal Program Land Use Plans are as follows:

- La Jolla
- Otay Mesa-Nestor
- Pacific Beach
- Peninsula
- San Ysidro
- Tijuana River Valley
- Torrey Pines

The applicable Park Master Plans are as follows:

- Balboa Park Master Plan
- Famosa Slough Enhancement Plan
- Los Penatitos Canyon Preserve Master Plan
- Mission Bay Park Master Plan
- Mission Trails Regional Park Master Plan Update
- San Diego River Park Master Plan

The MWMP's plan-wide and site-specific maintenance and repair activities will not adversely affect the applicable land use and park plans where facilities are located because the activities largely conform to or are compatible with applicable goals and policies of the General Plan, with applicable community plans and park plans, or will not preclude their attainment. The MWMP proposes no new development or construction, and the maintenance and repair activities

covered by the MWMP will not require or result in changes to land uses or zoning designations. Overall, the proposed MWMP, which is considered maintenance rather than a development plan, will not conflict with designated land uses or land use recommendations within any applicable adopted land use plan.

The proposed maintenance and repair activities are intended to ensure the reliability of the City's storm water system to convey floodwaters downstream. The MWMP was reviewed for applicability of, and conformity with, the goals, policies, and recommendations of the General Plan and applicable community and park plans as discussed in its associated Environmental Impact Report for Project No. 616992, SCH NO. 2017071022, dated March 6, 2020 (inclusive of errata issued April 2, 2020) (EIR). The analysis determined that the MWMP directly supports or conforms with several General Plan goals and policies (e.g., General Plan Public Facilities, Services and Safety Element Policies PF-G.2, PF-G.3, PF-G.4, PF-G.5, and PF-G.6), and is compatible with other goals and policies as evaluated in EIR Table 5.8-1, General, Community, and Park Plan Policy Evaluation.

However, activities under the MWMP that will necessitate native vegetation removal, some of which will be wetland or riparian habitat, potentially conflict with goals and policies intended to preserve and protect sensitive biological resources (e.g., General Plan Conservation Element Policies CE-C.1 and CE-H.8). The potential inconsistency with goals and policies intended to preserve and protect sensitive biological resources is addressed by approval of the project's Site Development Permit (SDP) which addresses compliance with the City's Environmentally Sensitive Lands (ESL) Regulations. The ESL Regulations serve as implementation of General Plan policies intended to preserve and protect sensitive biological resources as well as implementation of the Multiple Species Conservation Plan (MSCP) Subarea Plan. The MWMP also includes specific Environmental Protocols (EPs) in the areas of

Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The EIR also identifies specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further mitigate direct impacts or potential adverse effects to sensitive biological resources. The EIR's EPs and mitigation measures provide an additional compliance mechanism that will ensure minimization and adequate mitigation of any impacts to sensitive biological resources as a result of MWMP activities. Both the project's SDP and EP's serve to effectively implement goals and policies relevant to preservation and protection of sensitive biological resources of the General Plan and applicable land use plans, including lands within the MSCP Multi-Habitat Planning Area. The project addresses any potential policy inconsistencies so that the policies, goals and objectives the General Plan and applicable land use plans are not adversely affected.

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

The MWMP is not a development plan and the maintenance activities covered by the MWMP will not be detrimental to the public health, safety, and welfare as a primary objective of the MWMP is intended to address potential risks to public, health, safety, and welfare due to flood hazards. The primary objectives of the MWMP which address public health, safety, and welfare in some manner are described as:

1. Public safety and flood risk reduction.
 - Protect life and property adjacent to, downstream, and upstream of affected channels from flooding and environmental degradation.
2. Responsiveness to reduce flood risk.

- Provide for timely and consistent routine operations and maintenance in the affected channels and associated storm water conveyance infrastructure.
3. Avoid, minimize, and/or mitigate potential effects to environmental resources.
- Avoid, minimize, and/or mitigate significant adverse environmental effects resulting from routine maintenance of storm water facilities.
 - Incorporate and adapt to water quality management strategies intended to protect water quality and address flooding impacts.
4. Proactive and timely review and approval process.
- Provide project-level analysis in advance at Program level to expedite subsequent authorizations for routine and preventive maintenance activities within storm water facilities.
 - Identify a review and approval process to include additional storm water facilities and maintenance activities that follow the protocols and requirements of the MWMP.
 - Reduce the need to conduct emergency maintenance during sudden and/or significant storm events by implementing preventive maintenance activities.

These objectives allow the City to be responsive to newly identified flood risks while also anticipating and advance preparing to meet the need for approvals for routine, preventive maintenance that reduces flood risks. Under City of San Diego (City) Charter Section 26.1 and Council Policy 800-04 (City of San Diego 2012), the City is responsible for maintaining adequate drainage facilities to remove storm water runoff in an efficient, economic, and environmentally and aesthetically acceptable manner for the protection of property and life. Per

this Council Policy the City generally accepts responsibility for maintenance of public drainage facilities that are designed and constructed to City standards and located within a public street or drainage easement dedicated to the City. This also includes facilities within City-owned or managed properties.

The City's storm water conveyance system serves to convey storm water flows to protect the life and property of its citizens from potential flooding within the City. The City's storm water conveyance system also serves to convey urban runoff from pervious and impervious surfaces and development, such as irrigated landscape areas, driveways, and streets that flow into drainage facilities and channels and ultimately to the ocean. Additionally, the City's storm water conveyance system helps to protect water quality and open facilities such as channels can support natural resources including wetland habitat. To maintain the system's effectiveness while balancing water quality objectives, the proposed MWMP identifies specific activities, methods, and procedures that will guide ongoing maintenance and repair of facilities. The MWMP provides a comprehensive approach to identify and regulate maintenance and repair activities, primarily within open storm water facilities (i.e., those facilities located above ground and not within closed systems, such as pipes).

Many storm water facilities were originally designed to require ongoing maintenance and repair. For example, concrete-lined trapezoidal channels are often designed to convey the 100-year storm event. However, if sediment accumulates in the channels, and vegetation establishes within the sediment, the conveyance capacity is often reduced, and adjacent developed properties are at greater risk of flooding, and the City becomes exposed to legal liability. In other cases, storm water facilities damaged during large storm events require repair (e.g., replacement of broken concrete lining or dislodged riprap) to continue to provide safe storm water conveyance according to the original facility design. Finally, there are areas of the City where development

or conditions have changed within the watershed, resulting in greater or faster storm water flows than predicted during the facility design, or the original design does not meet current standards. In these cases, a Capital Improvement Program (CIP) project is often needed to address the potential flood risk that exists or erosion potential due to a design that no longer meets the needs of the surrounding area; however, pending the finance, design, permitting and construction of a CIP project, maintenance (removal of accumulated vegetation and sediment) may alleviate the flood risk on an interim basis. Maintenance and repairs are an important component of operating the storm water conveyance system and providing reliable flood risk reduction throughout the City.

Furthermore, the MWMP includes specific EPs in the area of Health and Safety/Hazards that will minimize potential impacts related to exposure of workers, the public, and the environment to hazardous materials. Specifically, *EP-HAZ-1*, *EP-HAZ-2*, and *EP-HAZ-3* prescribe monitoring, handling, disposal, and reporting procedures for potentially contaminated materials that ensure implementation of the MWMP will not result in adverse effects to health or safety. Therefore, the MWMP will not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

Vegetation management activity proposed by the MWMP such as clearing, grubbing, managing brush, or disturbing existing vegetation is defined as “development” by the Land Development Code, San Diego Municipal Code section 113.0103. However, the MWMP proposes no new construction. The MWMP proposes the maintenance and repair of existing storm water facilities; specifically, open channels, detention basins, and drain structures that the City’s Transportation & Storm Water Department has the responsibility to maintain and repair to provide flood control. Plan-wide activities include minor maintenance or repair; changed

conditions for new or substantially amended FMPs; compensatory mitigation sites; and emergency maintenance or repair. Whereas in distinction project-level maintenance and repair activities (i.e., a site-specific FMP) include, but are not limited to, vegetation management; sediment removal; drain structural clearing (outlets and inlets); invasive plant species management; concrete repair and replacement; and bank repair.

The MWMP generally complies with the regulations set forth in the LDC; however, proposed activities could require the removal of wetland vegetation to restore or repair the facility's conveyance capacities or as-built condition. Since maintenance and repair activities within storm water drainage facilities may be located within ESL and likely impact wetlands, a deviation from the City's ESL Regulations will be required and is supported by this finding.

The MWMP is considered an essential public project as defined by ESL Regulations in San Diego Municipal Code Section 143.0150(d) because it will involve the maintenance of existing public infrastructure. Maintenance and repair activities of facilities located within the Coastal Zone will also be necessary to reduce flood risks, restore conveyance capacities, and repair damaged infrastructure. No feasible alternatives exist that will fully comply with ESL Regulations involving the negligible loss of wetland vegetation and still meet the project objectives.

Project-level MWMP activities that deviate from the ESL Regulations, such as an unavoidable impact to wetlands, will be mitigated through implementation of compensatory wetland mitigation and restrictions on grading during the bird breeding season. Vegetation must be removed to prevent flooding and improve the overall intended functionality of these storm water facilities since vegetation diminishes the ability of the storm water facilities to safely convey floodwaters. Therefore, where wetland impacts are unavoidable (determined on a case-by-case basis), they will be minimized to the maximum extent practicable and mitigated per the

City of San Diego Biology Guidelines (SDBG). In addition, significant indirect impacts to breeding birds protected by the City's ESL Regulations may occur if maintenance produces noise or other types of disturbance in proximity to active nests, potentially resulting in abandonment of nests or other breeding failure. Per LDC Section 143.0141(a)(2), grading during wildlife breeding season shall be consistent with the requirements of the MSCP Subarea Plan. Whenever possible, maintenance activities under the MWMP will be conducted outside of the breeding season for sensitive wildlife species. If maintenance is required to be conducted during the breeding season of sensitive wildlife, and suitable habitat is present within or adjacent to the facility segment planned for maintenance, required mitigation measures will be taken to reduce indirect noise impacts.

For activities that occur within the Coastal 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 SDBG 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 Zone impacts to wetlands shall be limited to only those uses identified in LDC Section 143.0130(d) which include aquaculture facilities, nature study project or similar resource dependent uses, wetland restoration and incidental public service projects.

Therefore, the MWMP will comply with the regulations of the LDC including any allowable deviations pursuant to the LDC.

2. Supplemental Findings – Environmentally Sensitive Lands

a. 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.

While some vegetation management activity proposed by the MWMP is defined as development by the City's LDC, the MWMP proposes no new construction. MWMP maintenance activities occur on sites constructed with facilities that are part of the existing storm water conveyance system. Implementation of the MWMP will ensure that the design, siting, and operation of future storm water maintenance activities will minimize, to the extent possible, disturbance to ESL. On an annual basis, the City's Transportation & Storm Water Department prioritizes maintenance activities in specific channels that have the highest probability and safety consequence of flooding. The FMPs for the 66 facility groups provide the site-specific information that allows the minimum disturbance to ESL. The hydrology and hydraulic analyses contained in the EIR for these facilities specifically identified areas that could be avoided or do not need maintenance if there was no flood risk benefit (i.e., the level of service remains the same or there is no improvement to the level of service if maintenance is conducted). Furthermore, the MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The EIR also identifies specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL.

The MWMP also includes a review process for subsequent activities (i.e., Substantial Conformance Review), that will allow the regulatory agencies, including the City's Development Services Department, to review the maintenance plans and determine compliance with the associated permits and consistency with the MWMP and the EIR. The Substantial Conformance Review will ensure activities are suitable for the design and siting at each facility location; as

well as hold the City accountable for implementing the permit conditions, EPs, and EIR mitigation measures to minimize potential impacts to ESL.

b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

While some vegetation management activity proposed by the MWMP is defined as development by the City's LDC, the MWMP proposes no new construction. The MWMP proposes maintenance and repair or reconstruction of storm water facilities to existing or as-built design to restore flood conveyance capacities and infrastructure function. The MWMP's primary objectives include: (1) Public safety and flood risk reduction; (2) Responsiveness to reduce flood risk; (3) Avoid, minimize, and/or mitigate potential effects to environmental resources; and (4) Proactive and timely approval process. These objectives balance the City's need to be responsive to identified flood risks while avoiding, minimizing or mitigating the effects that MWMP activities may have on the environment.

The MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Program Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to Environmentally Sensitive Lands. The EIR also identifies mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality. Implementation of these EPs and mitigation measures ensures the City will minimize any alterations to natural landforms and preclude impacts that will result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

Specifically, the City will prepare a geotechnical report in compliance with *EP-GEO-1* for maintenance/repair activities that involve earthen bank repair activities; prepare and submit a

Water Pollution Control Plan (WPCP), consistent with *EP-WQ-1*, that outlines the best management practices (BMPs) and pollution prevention measures to be implemented prior to and during maintenance; and implement post-maintenance erosion control measures required by *EP-HYD-1* for facility segments in which velocities in the recommended maintenance condition are greater than the pre-maintenance condition and greater than recommended permissible velocities. City crews also take extra precautions during Santa Ana conditions and Red Flag warning days when operating any outdoor equipment to reduce the chance of creating a spark that could result in a wildfire. The City maintenance crews perform work with fire safety measures in compliance with Chapter 14 of the California Fire Code; additionally, gasoline-powered or diesel-powered machinery used during maintenance and repair activities will be equipped with standard exhaust controls and muffling devices that will also act as spark arrestors. Fire containment and extinguishing equipment will be located on site and will be accessible during maintenance and repair activities. Maintenance crews are trained to use fire suppression equipment and will not be permitted to idle vehicles at maintenance sites when not in use. The City also sends notifications during Santa Ana conditions and the high fire season to alert employees and work crews of the potentially dangerous conditions, and to remind them to operate outdoor equipment properly to reduce the chance of creating a spark that could result in a wildfire. Furthermore, removal of vegetation (fire load) may also prevent fire hazards to residents and businesses adjacent to storm water facilities.

Therefore, the MWMP incorporates specific protocols and mitigation measures that will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

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

While some vegetation management activity proposed by the MWMP is defined as development by the City's LDC, the MWMP proposes no new construction. The MWMP proposes maintenance and repair of storm water facilities to existing or as-built design to restore flood conveyance capacities and infrastructure function. Similar to the siting and design finding above, implementation of the MWMP has ensured that maintenance and repair activities have been sited and designed to prevent adverse impacts on any adjacent ESLs to the extent possible. On an annual basis, the City's Transportation & Storm Water Department prioritizes maintenance activities in specific channels that have the highest probability and safety consequence of flooding. The FMPs for the 66 facility groups provide the site-specific information that allow the minimum disturbance to ESL and identify adjacent land uses. The hydrology and hydraulic analyses in the EIR for these facilities specifically identified areas that could be avoided or do not need maintenance if there was no flood risk benefit (i.e., the level of service remains the same or there is no improvement to the level of service if maintenance is conducted). Furthermore, the MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESLs. The EIR also identifies specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL.

The MWMP also includes a review process for subsequent activities (i.e., Substantial Conformance Review), that will allow the regulatory agencies, including the City's Development Services Department, to review the maintenance plans and determine compliance with the associated permits and consistency with the MWMP and EIR. The Substantial Conformance Review will ensure activities are suitable for the design and siting at each facility location; as

well as hold the City accountable for implementing the permit conditions, EPs and EIR mitigation measures to minimize and mitigate potential impacts to ESL. These requirements will prevent adverse impacts on any adjacent ESL.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan and Vernal Pool Habitat Conservation Plan (VPHCP).

Several MWMP facility segments are located within and adjacent to the MSCP Subarea Plan's Multi-Habitat Planning Area (MHPA). The EIR analyzed consistency with the MSCP Subarea Plan, including compliance with the MSCP Land Use Adjacency Guidelines. EIR Table 5.8-2, Project Consistency Determination with MSCP Land Use Considerations, documents compliance with the MSCP. There are no MWMP facilities mapped within vernal pool habitat and therefore consistency with the Vernal Pool Habitat Conservation Plan will not apply.

The MWMP proposes the maintenance and repair of essential public facilities (i.e., storm water conveyance systems and maintenance of existing public infrastructure as defined by the City's LDC section 143.0510(d)). Essential public utility infrastructure in the MHPA is a conditionally compatible use within the MHPA, subject to siting and design policies that minimize impacts to sensitive biological resources, including avoidance of wetlands, unless infeasible. Storm water conveyance systems work with the flow of water and follow low points within their respective geographic landscapes. They are typically located within drainages or streambeds and can also be located within the MHPA or associated with core biological resource areas. Because of this association with watercourses, complete avoidance of wetlands is infeasible. Similarly, the MHPA includes canyon bottoms and upland areas, so avoidance of the MHPA is infeasible.

However, the EIR contains site-specific hydrology and hydraulic analyses for facilities where maintenance is anticipated. The hydrology and hydraulic analyses ensure that maintenance

activities that impact wetlands and other biological resources within the MHPA are minimized to only those areas where a flood risk reduction or infrastructure maintenance or repair is necessary, and where biological impacts can be mitigated to below a level of significance. Although encroachment into the MHPA is proposed as part of the MWMP, the proposed maintenance activities are considered essential public facilities. Essential public facilities are conditionally compatible with the biological objectives of the MSCP Subarea Plan. Therefore, the MWMP will not conflict with the land use consideration of the MSCP Subarea Plan.

In addition, because there are MWMP facility maintenance areas that occur within and adjacent to the MHPA, compliance with the MSCP Land Use Adjacency Guidelines is required. The City is required to prepare maintenance plans and subsequent review documents that implement EP, *EP-LU-1*, to ensure compliance with the associated discretionary permit conditions, MWMP, and the MSCP's MHPA Land Use Adjacency Guidelines.

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

The MWMP proposes no new construction. Storm water facility maintenance and repair will not contribute to erosion of public beaches or impact the supply of beach sand. Although maintenance often involves the removal of sediment that may be conveyed downstream to local beaches, the sediment is mainly comprised of silt and clay material rather than sand. Thus, the removal of sediment will not deprive local beaches of a sand source or adversely impact local shoreline sand supply.

f. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

Maintenance and repair activities authorized under the MWMP are required to comply with and implement specific EPs and mitigation measures (MMs) included in the EIR and

accompanying Mitigation, Monitoring, and Report Program (MMRP). The EPs and MMs are specifically designed to avoid, minimize and alleviate negative impacts and provide adequate compensation for impacts resulting from storm water facility maintenance.

3. Supplemental Findings—Environmentally Sensitive Lands Deviations

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

The MWMP proposes the maintenance and repair of essential public facilities (i.e., storm water conveyance systems and maintenance of existing public infrastructure as defined by the City's LDC section 143.0510(d)). Storm water conveyance systems work with the gravitational and hydraulic flow of water and follow low points within their respective geographic landscapes. They are typically located within drainages or streambeds mapped within Special Flood Hazard Areas (i.e., FEMA floodways) and can also be located within the MHPA or associated with core biological resource areas. Because of this association with watercourses, complete avoidance of ESL, such as wetlands and FEMA floodways, are considered infeasible. To meet the project's objective to be responsive and reduce flood risk, accumulated vegetation, sediment, trash and debris must be removed within these storm water facilities to restore conveyance capacities to prevent flooding and to improve the overall intended functionality of the system. Where impacts to wetlands or wetland buffers cannot be avoided, a deviation to the City's Wetlands Regulations LDC Section 143.0141(b) is requested and supported by this finding. The City is also required to comply with the MWMP's EIR mitigation measure, MM-BIO-1a, which requires compensatory mitigation for significant impacts to wetlands consistent with the SDBG.

The EIR contains site-specific hydrology and hydraulic analyses for facilities where maintenance is anticipated. The hydrology and hydraulic analyses ensure that maintenance activities that impact wetlands and other biological resources within drainage areas are

minimized to only those areas where a flood risk reduction or infrastructure maintenance or repair is necessary, and where biological impacts can be mitigated to below a level of significance. Furthermore, the MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The EIR also mandates implementation of specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL

The MWMP EIR includes an alternatives analysis that compared the environmental effects of the proposed MWMP to five other alternatives. These project alternatives include: (1) No Project/No Action; (2) Reduced In-stream Maintenance; (3) Limited Sediment Removal; (4) Alternative Sediment Management Approach, and (5) Reduced Project. A primary factor in the selection of alternatives must be the ability to reduce or substantially reduce one or more significant impacts that will result from a project. Significant impacts considered in the alternatives selection for the MWMP included: Air Quality and Odor; Biological Resources; Historical, Archaeological, and Tribal Cultural Resources; Noise; Solid Waste; and Water Quality. In addition, although no significant impacts were identified for Hydrology, it was also included in the consideration of alternatives because it is integral to the purpose and objectives of the MWMP. After evaluating each of these alternatives, no feasible alternatives exist that will fully comply with ESL Regulations involving the minimal loss of wetland vegetation and still meet the project objectives. Therefore, there are no other feasible measures that can further minimize the potential adverse effects on ESL, specifically wetland and wetland buffers that the MWMP is already required to comply with and implement.

b. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making.

Council Policy 800-04 states that the City generally only accepts responsibility for maintenance or repair of public drainage facilities that are designed and constructed to City standards and are located within a public street or drainage easement dedicated to the City. This also includes facilities within City-owned or managed properties. The MWMP is intended to only include storm water facilities, specifically open channels, detention basins, and drain structures that the City has the responsibility to maintain. In addition, Council Policy 700-44 encourages and establishes the responsibility for private property owners to implement flood control measures, such as the use of sandbags, to prevent and protect their property from flood damage. To meet the project's objective to be responsive and reduce flood risk; accumulated vegetation, sediment, trash and debris must be removed within these storm water facilities to restore conveyance capacities to prevent flooding and to improve the overall intended functionality of the system. Deviations to the 100-foot buffer around all wetlands and to impact sensitive biological resources are requested and supported by this finding. 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 their effective function could potentially impact sensitive biological and historical resources. The City is also required to comply with the MWMP's EIR mitigation measure, MM-BIO-1a, which requires compensatory mitigation for significant impacts to wetlands consistent with the SDBG.

The EIR contains site-specific hydrology and hydraulic analyses for facilities where maintenance is anticipated. The hydrology and hydraulic analyses ensure that maintenance activities that impact wetlands and other biological resources within drainage areas are minimized to only those areas where a flood risk reduction or infrastructure maintenance or

repair is necessary, and where biological impacts can be mitigated to below a level of significance. Furthermore, the MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The EIR also mandates implementation of specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL.

The MWMP also includes a review process for subsequent activities (i.e., Substantial Conformance Review), that will allow the regulatory agencies, including the City's Development Services Department, to review the maintenance plans and determine compliance with the associated permits and consistency with the MWMP and EIR. The Substantial Conformance Review will ensure activities are the minimum necessary to afford relief from special circumstances or conditions of the land, as well as hold the City accountable for implementing the permit conditions, EPs and EIR mitigation measures to minimize potential impacts to ESL. Therefore, the proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the City's making.

B. COASTAL DEVELOPMENT PERMIT- SAN DIEGO MUNICIPAL CODE(SDMC) SECTION 126.0708

1. Findings for all Coastal Development Permits:

a. The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public access way 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.

Both project-level and program-level maintenance and repair activities under the MWMP can occur in facilities located within the Coastal Zone. Project-level maintenance and repair

activities can include vegetation management; sediment removal; drain structural clearing (outlets and inlets); invasive plant species management; concrete repair and replacement; and bank repair. Plan-level activities include minor maintenance or repair; changed conditions for new or substantially amended FMPs; compensatory mitigation sites; and emergency maintenance or repair. For the facility groups located within the Coastal Zone where project-level maintenance and repair is anticipated (i.e., FMPs), these occur within seven adopted Local Coastal Program (LCP) land use plans (La Jolla, Otay Mesa-Nestor, Pacific Beach, Peninsula, San Ysidro, Tijuana River Valley and Torrey Pines).

The MWMP's EIR Table 5.1-1, Community Plans and Identified Vistas, Scenic Views, and Public Vantage Points, assesses scenic resources and views identified in the community plans, including LCP land use plans, except for the Tijuana River Valley community plan/LCP. This plan only identifies steep hillsides as visual resources, and no MWMP facilities are not located within the viewing distance of identified/designated public vantage points.

During maintenance and repair activities, mechanized equipment and vehicles could be used in or adjacent to MWMP facilities that may temporarily block or obstruct views from vistas or public vantage point identified in a community plan or LCP. Equipment and vehicles, including cranes, excavators, hydraulic dredgers, and dump trucks, may be used during MWMP maintenance and repair, and could be visible from public vantage points near facilities.

MWMP facilities, including channels and ditches, basins, and drainage structures, are occasionally located near public vistas, vantage points, or view sensitive areas identified as such in a LCP land use plan. However, the temporary presence of construction equipment and vehicles in public views will not constitute a particularly substantial view obstruction. Repair activities such as concrete repair may take a few days or several weeks to be completed, and temporary stockpiling may last from several days to several months. Once maintenance and

repair activities are completed, equipment and vehicles will not be present in public views. Proposed activities will be temporary, and equipment, vehicles, and storage of equipment and materials will be experienced by viewers over a short-term duration.

In addition to the potential view effects described above for MWMP activities, the storage of equipment within a City right-of-way or existing trails/access ways may also occur during typical maintenance and repair activities. However, this construction practice routinely occurs throughout the City and is a visual occurrence expected to be familiar to pedestrians, cyclists, and motorists. Further, the temporary presence of equipment alongside roads and other rights-of-way will not constitute a long-term view obstruction. Lastly, implementation of the MWMP and the ongoing maintenance of existing channels, ditches, basins, and other MWMP facilities will not conflict with applicable zoning or other regulations regarding scenic quality.

Therefore, MWMP activities that could encroach upon any existing physical access path that is legally used by the public or any proposed public access way identified in a LCP land use plan will not substantially interrupt or obstruct any scenic vista, view, or public vantage point. In addition, since maintenance and repair activities will occur in existing storm water facilities and be temporary in nature, subsequent projects will not likely enhance or protect public views to and along the ocean and other scenic coastal areas as specified in the LCP land use plan.

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

Implementation of the MWMP will ensure that the design and siting of future storm water maintenance activities within the Coastal Zone will not adversely affect ESL. The hydrology and hydraulic analyses for the 14 channel/ditch facility groups and one basin facility group located in the Coastal Zone specifically identified areas that could be avoided or do not need maintenance if there was no flood risk benefit (i.e., the level of service remains the same or

there is no improvement to the level of service if maintenance is conducted). Furthermore, the MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The associated EIR also identifies specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL.

The MWMP also includes a review process for subsequent activities (i.e., Substantial Conformance Review), that will allow the regulatory agencies, including the City's Development Services Department, to review the maintenance plans and determine compliance with the associated permits and consistency with the MWMP and EIR. The Substantial Conformance Review will ensure activities are suitable for the design and siting at each facility location; as well as hold the City accountable for implementing the permit conditions, EPs and EIR mitigation measures to minimize potential impacts to ESL.

c. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

The maintenance and repair activities associated with the MWMP will conform to the applicable Local Coastal Program (LCP) land use plans and generally comply with the certified Implementation Program (i.e., LDC). However, proposed maintenance activities could require the removal of wetland vegetation to restore or repair the facility's conveyance capacities or as-built condition. Since maintenance and repair activities within storm water drainage facilities will be located within ESL and likely impact wetlands, a deviation from the City's ESL Regulations are requested and supported by this finding. The City is also required to comply with the MWMP's EIR mitigation measure, MM-BIO-1a, which requires compensatory mitigation for

significant impacts to wetlands consistent with the SDBG. As analyzed in EIR Table 5.8-1, General, Community, and Park Plan Policy Evaluation, the General Plan and several LCP land use plans identify conservation and public facility policies that are related to flood control; maintaining natural drainages; minimize disturbance to open spaces areas and avoiding the loss of wetlands; and protecting water quality.

The MWMP is considered an essential public project as defined by ESL Regulations Section 143.0150(d) because it will involve the maintenance of existing public infrastructure. Maintenance and repair activities within facilities located within the Coastal Zone will also be economically necessary to reduce flood risks, restore conveyance capacities, and repair damaged infrastructure. No feasible alternatives exist that will fully comply with ESL Regulations involving the minimal loss of wetland vegetation and still meet the project objectives.

For activities that occur within the Coastal 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 SDBG 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 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 facilities, nature study projects or similar resource dependent uses, wetland restoration and incidental public service projects.

d. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Zone, the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Although there are no MWMP project-level facilities (i.e., FMPs) located between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Zone; program-level activities (e.g., minor maintenance and repair, emergency maintenance and repair) could occur in such areas. However, any work performed in these areas that will encroach into a public access path, such as a designated trail or right-of-way, will be considered temporary and typically conducted during a relatively short time-frame (one day to several weeks). As such, any work performed will not likely have an effect upon public access and the recreation policies of Chapter 3 of the California Coastal Act and is in conformance with such Act.

2. Supplemental Findings – Environmentally Sensitive Lands Supplemental Findings – Deviations to Environmentally Sensitive Lands Within the Coastal Overlay Zone

a. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations will not provide any economically viable use of the applicant's property.

Council Policy 800-04 states that the City generally only accepts responsibility for maintenance or repair of public drainage facilities that are designed and constructed to City standards and are located within a public street or drainage easement dedicated to the City. Many properties located in the City discharge directly or indirectly to the City's system. The MWMP is intended to only include storm water facilities, specifically open channels, detention basins, and drain structures that the City has the responsibility to maintain. This also includes facilities within City-owned or managed properties. In addition, Council Policy 700-44 encourages and establishes the responsibility for private property owners to implement flood control measures, such as the use of sandbags, to prevent and protect their property from flood damage. To meet the project's objective to be responsive and reduce flood risk, accumulated vegetation, sediment, trash and debris must be removed within these storm water facilities to restore conveyance capacities to prevent flooding and to improve the overall intended functionality of the system.

Deviations to the 100-foot buffer around all wetlands and to impact sensitive biological resources are requested and supported by this finding. 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 resources. The City is also required to comply with EIR mitigation measure, MM-BIO-1a, which requires compensatory mitigation for significant impacts to wetlands consistent with the SDBG.

While storm water facilities are permitted as incidental public services projects, the City will be denied the only economically viable use of property as a drainage easement or infrastructure whose purpose is to convey storm water runoff and protect life and property. Therefore, the City's only economically viable use of the property is to use the facility for storm water conveyance due to current easements restricting the use and the presence within wetland areas.

b. Application of the Environmentally Sensitive Lands Regulations will interfere with the applicant's reasonable investment-backed expectations.

Under City of San Diego (City) Charter Section 26.1 and Council Policy 800-04, the City is responsible for maintaining adequate drainage facilities to remove storm water runoff in an efficient, economic, and environmentally and aesthetically acceptable manner for the protection of property and life. The strict application of the ESL Regulations will not allow the City to maintain or repair any existing storm water facilities where work will impact sensitive biological resources, such as wetlands. The City has invested time and money to plan, acquire, design, construct, and maintain/repair storm water facilities to adequately carry storm water runoff downstream and reduce flood risks to private and public properties and persons. Strict application of the ESL will require the City to avoid all wetlands and wetland buffers,

prohibiting maintenance within drainages where wetlands and wetland buffers are identified. This will interfere with the public's expectation and in some cases legal entitlement for the City to maintain and repair its storm water infrastructure in a manner that protects life and property. The City's economic expectations in owning drainage easements or infrastructure are based on being able to use the facilities to provide essential public drainage for protection of common health and welfare. Strict application of the ESL regulations will interfere with this reasonable investment backed expectation.

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

The MWMP includes Plan-wide and project-level FMP activities that are located throughout the City of San Diego. These facilities are located within portions of the Coastal, Open Space, Agricultural, Residential, Commercial and Industrial zones. Incidental public service projects, such as storm water facilities, are permitted uses in all zones and therefore the proposed use by the City is consistent with the applicable zoning.

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

Implementation of the MWMP will ensure that the design and siting of future storm water maintenance activities are the minimum necessary to provide the City with an economically viable use as a storm water facility. On an annual basis, the City's Transportation & Storm Water Department prioritizes maintenance activities in specific channels that have the highest probability and consequence of flooding. The FMPs for the 66 facility groups provide the site-specific information that allow the minimum disturbance to ESL. The hydrology and hydraulic analyses for these facilities specifically identified areas that could be avoided or do not need maintenance if there was no flood risk benefit (i.e., the level of service remains the same or there is no improvement to the level of service if maintenance is conducted). Furthermore, the

MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Program Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The EIR also identifies specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL.

The MWMP also includes a review process for subsequent activities (i.e., Substantial Conformance Review), that will allow the regulatory agencies, including the City's Development Services Department, to review the maintenance plans and determine compliance with the associated permits and consistency with the MWMP and EIR. The Substantial Conformance Review will ensure activities are suitable for the design and siting at each facility location, as well as hold the City accountable for implementing the permit conditions, EPs and EIR provided mitigation measures to minimize potential impacts to ESL.

The long-term performance and economic viability of these storm water facilities is dependent upon ongoing and proper maintenance.

e. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested.

The MWMP proposes the maintenance and repair of essential public facilities (i.e., storm water conveyance systems and maintenance of existing public infrastructure as defined by the City's LDC Section 143.0510(d)). Storm water conveyance systems work with the gravitational and hydraulic flow of water and follow low points within their respective geographic landscapes. They are typically located within drainages or streambeds mapped within Special Flood Hazard Areas (i.e., FEMA floodways) and can also be located within the MHPA or associated with core biological resource areas. Because of this association with watercourses, complete avoidance of

ESL, such as wetlands and FEMA floodways, are considered infeasible. To meet the MWMP's objective to be responsive and reduce flood risk to properties and persons, accumulated vegetation, sediment, trash and debris must be sufficiently removed within these storm water facilities to restore conveyance capacities to prevent flooding and to improve the overall intended functionality of the system. Where impacts to wetlands or wetland buffers cannot be avoided, a deviation to the City's Wetlands Regulations LDC Section 143.0141(b) is requested and supported by this finding.

The City has prepared site-specific hydrology and hydraulic analyses for facilities where maintenance is anticipated. The hydrology and hydraulic analyses ensure that maintenance activities that impact wetlands and other biological resources within drainage areas are minimized to only those areas where a flood risk reduction or infrastructure maintenance or repair is necessary, and where biological impacts can be mitigated to below a level of significance. Furthermore, the MWMP includes specific EPs in the areas of Biological Resources, Geologic Conditions, Health and Safety/Hazards, Hydrology, Land Use (MSCP Land Use Adjacency Guidelines), Paleontological Resources, Solid Waste and Water Quality that will minimize adverse effects to ESL. The EIR also identifies specific mitigation measures related to Air Quality and Odor, Biological Resources, Historical, Archaeological, and Tribal Cultural Resources, Noise and Water Quality that will further minimize impacts to ESL.

The MWMP EIR includes an alternatives analysis that compared the environmental effects of the proposed MWMP to five other alternatives. These project alternatives include: (1) No Project/No Action; (2) Reduced In-stream Maintenance; (3) Limited Sediment Removal; (4) Alternative Sediment Management Approach, and (5) Reduced Project. A primary factor in the selection of alternatives must be the ability to reduce or substantially reduce one or more significant impacts that will result from a project. Significant impacts considered in the

alternatives selection for the MWMP included: Air Quality and Odor; Biological Resources; Historical, Archaeological, and Tribal Cultural Resources; Noise; Solid Waste; and Water Quality. Although no significant impacts were identified for Hydrology, it was also included in the consideration of alternatives because it is integral to the purpose and objectives of the MWMP. After evaluating each of these alternatives, the Reduced Project will be the environmentally superior alternative; however, impacts associated with hydrology and water quality will have some increases under this alternative compared to the proposed MWMP. By avoiding maintenance within the identified four facility groups, this alternative will increase the flood risk in areas surrounding these facilities. Life and property will be at risk in these locations during flood events, and the potential for water quality degradation will be increased when flood waters exceed the channel capacity and potentially transport pollutants downstream. Therefore, this alternative will not fully achieve the objectives of the MWMP, which are aimed to reduce flooding and protect life and property. Furthermore, no feasible alternatives exist that will fully comply with ESL Regulations involving the minimal loss of wetland vegetation and still meet the project objectives.

Therefore, the MWMP will still be the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception for the deviations to the City's Wetlands Regulations.

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. 2392210 and Coastal Development Permit No. 2392208 are granted to the City of San Diego Transportation & Storm Water Department,

Owner/Permittee, under the terms and conditions set forth in that permit, which is reference is made as part of this ordinance.

Section 3. That pursuant to the provisions of San Diego Municipal Code sections 126.0112, and 112.0503 which provide procedures for Substantial Conformance Review decisions, Substantial Conformance Review for Project (FMP) level decisions for MWMP projects in the Coastal Zone which are subject to Coastal Development Permit No. 2392208, and decisions for MWMP Plan level programmatic activities including amendments to the MWMP and material changes to FMPs, compensatory mitigation sites, or for permits following emergency projects, shall be made in accordance with Process Two, except that notwithstanding section 112.0504(a), they shall be appealable directly to the City Council rather than to the Planning Commission first. For Project (FMP) level decisions for MWMP projects located entirely outside the Coastal Zone, the Substantial Conformance Review procedures shall be Process One as provided in San Diego Municipal Code section 112.0502.

Section 4. That, notwithstanding the provisions of San Diego Municipal Code section 112.0504(a), which provides for a Planning Commission hearing and recommendation prior to certain City Council actions, no Planning Commission hearing and recommendation is required related to the future actions being authorized pursuant to this ordinance.

Section 5. That a full reading of this ordinance is dispensed with prior to passage, a written 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: MARA W. ELLIOTT, City Attorney

By/s/ Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

FMO:als
05/13/2020
06/10/2020 Cor. Copy
06/22/2020 Cor. Copy 2
Or.Dept: Storm Water Dept.
Doc. No.: 2360727_4

Attachment: Coastal Development Permit No. 2392208 and Site Development Permit
No. 2392210

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

**WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A**

INTERNAL ORDER NUMBER: 11003765 SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COASTAL DEVELOPMENT PERMIT NO. 2392208
SITE DEVELOPMENT PERMIT NO. 23922101
MUNICIPAL WATERWAYS MAINTENANCE PLAN
PROJECT No. 616992 (MMRP)
CITY COUNCIL**

This Coastal Development Permit No. 2392208 and Site Development Permit No. 23922101 is granted by the City Council of the City of San Diego to the City of San Diego Transportation and Storm Water Department, Owner and Permittee, pursuant to San Diego Municipal Code (SDMC) section 126.0501 and 126.0701. The Municipal Waterways Maintenance Plan (MWMP) addresses the various methods for maintenance and repair of public drainage facilities throughout the City where potential local, state, and federally regulated resources may be impacted. This programmatic City-wide approach provides the operational flexibility to be responsive to newly identified flood risks while also streamlining approvals for routine, preventive maintenance at existing facilities located throughout the City of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to manage the regular maintenance and repair of existing MS4 facilities owned or operated by the City and subject to the MWMP (March 2020) and Final Environmental Impact Report Project No. 616992/SCH No. 2017071022; [Exhibit "A"] dated June 23, 2020, on file in the Development Services Department.

This permit authorizes the City of San Diego Transportation & Storm Water Department:

- a. Project-level maintenance or repair activities within an approved site-specific MWMP Facility Maintenance Plan (FMP);
- b. Emergency maintenance or repair activities limited to City facilities to allow the minimum activity necessary to alleviate the threat to life or property;
- c. Program-level analysis to identify additional MWMP activities not captured under a site-specific FMP;

- d. Development of new or substantially amended FMPs to incorporate additional facilities or activities;
- e. Approval of compensatory habitat mitigation areas for proposed facilities analyzed at the project level without an approved FMP.
- f. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for the storm water facilities in accordance with the adopted community plans, the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the City Engineer's requirements, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within ten years for projects outside the Coastal Overlay Zone or utilized within six years for projects inside the Coastal Overlay Zone, 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 ten-year or six-year period. Respectively, 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 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.

ENVIRONMENTAL PROTOCOLS/MITIGATION REQUIREMENTS:

10. Environmental Protocols (EP) and Mitigation Measures (MMs) identified in the Mitigation, Monitoring, and Reporting Program (MMRP) shall apply to this Permit. These EP/MMRP conditions are hereby incorporated into this Permit by reference.

11. The EPs and MMs specified in the MMRP and outlined in "ENVIRONMENTAL IMPACT REPORT" No. 616992/SCH NO. 2017071022, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

12. The Owner/Permittee shall comply with the MMRP as specified in "ENVIRONMENTAL IMPACT REPORT" NO. 616992/SCH NO. 2017071022, 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. The MMRP also includes a Mitigation Framework for covered maintenance activities and subsequent project-level and program-level activities that are consistent with the MWMP through a Substantial Conformance Review Process (SCR). All EPs and mitigation measures, as specifically outlined in the MMRP shall be implemented for the following issue areas:

Environmental Protocols: Biological Resources; Geologic Conditions; Health and Safety Hazards; Hydrology; Land Use; Paleontological Resources; Solid Waste; and Water Quality

Mitigation Measures: Air Quality and Odor; Biological Resources; Historical, Archaeological, and Tribal Cultural Resources; Noise; and Water Quality

Mitigation Framework for Program-Level Activities and Subsequent SCR Processing: Aesthetics/Visual Effects and Neighborhood Character; Air Quality and Odor; Biological Resources; Geologic Conditions; Greenhouse Gas Emissions; Health and Safety Hazards; Historical, Archaeological, and Tribal Cultural Resources;

Hydrology; Land Use; Noise; Paleontological Resources; Solid Waste; and Water Quality

CLIMATE ACTION PLAN REQUIREMENTS:

13. Owner/Permittee shall implement Environmental Protocols (EPs) EP-SW-1 through EP-SW-8 related to Solid Waste, to ensure that waste transferred to a landfill as a result of MWMP project-and program-level activities is diverted to the maximum extent feasible as specified in the MWMP (Exhibit ?) and Final EIR No. 616992/SCH No. 2017071022, to the satisfaction of the Development Services Department and the City Engineer to assure compliance with the Climate Action Plan (CAP) . Prior to issuance of any "Notice to Proceed" with construction, the applicable EPs as outlined in the MMRP (Exhibit A) shall be enforced and implemented to the satisfaction of the Development Services Department.

MULTIPLE SPECIES CONSERVATION PROGRAM:

14. The Owner/Permittee shall implement Environmental Protocols (EPs) EP-LU-1 and EP-LU-2 (when applicable for mitigation site protection mechanism) as specified in Final EIR "ENVIRONMENTAL IMPACT REPORT" No. 616992/SCH No. 2017071022, to the satisfaction of the Development Services Department and the City Engineer to assure compliance with the City's Multiple Species Conservation Program (MSCP) Subarea Plan and Multi-Habitat Planning Area (MHPA) Land Use Adjacency Guidelines. Prior to the issuance of the "Notice to Proceed" with construction, all EPs as outlined in the Mitigation Monitoring and Reporting Program (Exhibit A) shall be noted on the first three (3) sheets of the construction plans under the heading "MSCP Requirements" and shall be enforced and implemented to the satisfaction of the City Engineer.

PLANNING/DESIGN REQUIREMENTS:

15. MWMP facilities entirely within the City's jurisdiction (i.e. Appeal and Non-appealable Area 1 and 2) will be permitted under this CDP.

16. Facilities that have split jurisdiction will be permitted as follows:

- a. If a facility is split between a City (appealable) and Coastal Commission jurisdiction, the facility will be permitted under a Coastal Commission CDP.
- b. If a facility is split between a City (non-appealable) and Coastal Commission jurisdiction, the facility will be permitted under a Coastal Commission CDP.

17. If the split jurisdiction identifies only the access/staging in the Coastal Commission's jurisdiction and the facility itself is located within City's jurisdiction (appealable and/or non-appealable), the facility will be permitted under this CDP; and the entire facility (even if in non-appealable) is appealable to Coastal Commission.

18. All facilities located within the Tijuana River Valley Community Plan/Local Coastal Program are Appealable to Coastal Commission; and, therefore can be permitted under this CDP.

19. In the event this CDP approval gets appealed to Coastal Commission, only those facilities that are appealable will/can be heard by Coastal Commission.

20. Subsequent activities outside the Coastal Overlay Zone that are analyzed at the project level shall be authorized through Substantial Conformance Review Process One via Ordinance No. 0.21201.

21. Subsequent activities located inside the Coastal Overlay Zone (appealable and non-appealable) that are analyzed at the project level shall be authorized through Substantial Conformance Review Process Two, appealable to City Council, via Ordinance No. 0.21201.

22. An amendment to this permit for subsequent program-level activities that are consistent with the approved Municipal Waterways Maintenance Plan and certified Environmental Impact Report shall be authorized through a Substantial Conformance Review Process Two, appealable to the City Council via Ordinance No. 0.21201.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary 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.

APPROVED by the City Council of the City of San Diego on June 23, 2020, and by Ordinance No. 0.21201.

Permit Type/PTS Approval No.: CDP No. 2392208 and SDP No. 2392210
Date of Approval: June 23, 2020

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Catherine Rom
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.**

TRANSPORTATION & STORM WATER
Owner/Permittee

By _____
Bethany Bezak
Assistant Deputy Director

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

Passed by the Council of The City of San Diego on JUN 23 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<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"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 23 2020

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

JUN 09 2020

JUN 23 2020

, and on _____

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(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- <u>21201</u>