

RESOLUTION NUMBER R- 314549DATE OF FINAL PASSAGE DEC 13 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING COASTAL DEVELOPMENT PERMIT NO. 2590298 FOR THE SMYTHE AND VIA DE LA BANDOLA HABITAT MITIGATION TO REHABILITATE APPROXIMATELY 1.17-ACRES, ENHANCE 4.38-ACRES, AND MAINTAIN A 0.40-ACRE WEED FREE BUFFER ZONE WITHIN CITY-JURISDICTIONAL RIPARIAN HABITAT.

WHEREAS, the City of San Diego Public Utilities Department, Owner, and City of San Diego Stormwater Department, Permittee, filed an application with the City of San Diego for a Coastal Development Permit to rehabilitate approximately 1.17-acres, enhance 4.38-acres, and maintain a 0.40-acre weed free buffer zone within City-jurisdictional riparian habitat known as the Smythe and Via de la Bandola Habitat Mitigation (Project), located west of 2140 Monument Road, and legally described as a portion of Lot 78 of Rancho Mission of San Diego, situated in Section 25 Township 15 S 3 West County of San Diego, CA in the Tijuana River Valley Community Plan area, in the OF-1-1 zone (Open Space Flood Plain), Coastal (appealable), First Public Roadway, Multiple Habitat Planning Area (MHPA) Overlay zone(s) of the Tijuana River Valley Local Coastal Program Land Use Plan; and

WHEREAS, the matter was set for public hearing on December 13, 2022; testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego Charter section 280(a)(2), this resolution 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; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit No. 2590298:

**COASTAL DEVELOPMENT PERMIT (SDMC Section 126.0708)**

**A. Findings for all Coastal Development Permits:**

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

The Project is located almost 2 miles from the Pacific Ocean and will not encroach upon any existing physical accessway. The mitigation project is adjacent to but would not modify an existing multi-use trail within the Tijuana River Valley Regional Park. The Tijuana River Valley Community Plan and Local Coastal Program (Community Plan) only identifies steep hillsides as visual resources, and the project is not located within viewing distance of identified/designated public vantage points. The ocean is not visible from the Project site given its distance from the coast, amount of vegetation and low, flat terrain. The mitigation Project would not substantially alter existing view conditions from the Project site although views may be temporarily enhanced following invasive plant clearing and prior to establishment of native vegetation communities. As such, the proposed coastal development will not encroach upon any existing physical access way 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.

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

The Project site is regulated by the City's Municipal Waterways Maintenance Plan (MWMP) Site Development Permit (SDP) No. 2392210, Project No. 616992 approved by City Council on June 23, 2020, via Ordinance No. O-21201. The Project is in

substantial conformance with the approved SDP and the MWMP Group 2 Smythe/Via de la Bandola Channel Habitat Mitigation Monitoring Plan. The mitigation Project involves removal and control of invasive plant species through physical and chemical means, followed by native plant establishment including planting, irrigation, and temporary maintenance, monitoring, and management. Access and staging will occur in existing disturbed areas outside of environmentally sensitive lands. The potential for adverse indirect impacts during invasive plant removal or native plant establishment, such as erosion, pollutant discharge, or noise, will be minimized through implementation of multiple environmental protocols and mitigation measures such that environmentally sensitive lands will not be adversely affected.

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

The Community Plan designates the project site as Multi-Species Conservation Open Space (Figure 1, Land Use Plan, Page 6), which represents the area in the Tijuana River Valley that has been included within the City of San Diego's MSCP Subarea Plan (Subarea Plan). The Subarea Plan delineates core biological resource areas and corridors targeted for conservation in the Multiple Habitat Planning Area (page 9). The proposed habitat restoration would be consistent with the community plan land use designation. The Project would conform to the applicable Local Coastal Program and land use plans and generally comply with the certified Implementation Program (i.e., LDC).

Removal of wetland vegetation would require a deviation from the City's Environmental Sensitive Land (ESL) regulations, as approved in the MWMP SDP No. 2392210. Implementation of compensatory mitigation requires a deviation from the Environmentally Sensitive Lands Regulations to allow for temporary restoration activities (e.g., invasive plant removal and native plant establishment) to be conducted within wetlands. Without a deviation to temporarily impact wetlands on this Project site, the City would still be obligated to identify another property where similar temporary impacts to wetlands would be required to successfully implement required compensatory mitigation.

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

The mitigation site is located between the Pacific Ocean to the west and Saturn Boulevard, a first public roadway. No public access is allowed within the project site, but an existing multi-use trail is immediately adjacent to the site. Any incidental work performed as part of the project that will encroach into the public access path will be considered temporary and of relatively short duration. As such, the work proposed to

be performed will not 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.

**B. Supplemental Findings-Deviations to Environmentally Sensitive Lands within the Coastal Overlay Zone:**

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

The Smythe and Via de la Bandola Habitat Mitigation Project (Project) is a permittee-responsible mitigation project intended to provide mitigation for permanent impacts resulting from maintenance of the Smythe and Via de la Bandola stormwater channels. The mitigation site supports sensitive biological resources (wetlands and wetland buffer area) and is in a special flood hazard area (floodway). Under Section 143.0130 of the Environmentally Sensitive Lands Regulations, allowed uses are limited to aquaculture/wetlands research/wetlands education, wetlands restoration, or incidental public service projects and must be compliant with the Open Space Floodplain Zone (OF) zone. The project proposes wetlands restoration to mitigate for impacts associated with incidental public service projects (i.e., stormwater facility maintenance) and is compliant with the zoning. Given that zoning does not allow building of structures, it is unlikely that aquaculture/wetlands research/wetlands education would be feasible. Therefore, no other economically viable uses other than those proposed under the mitigation project are provided for in the Environmentally Sensitive Lands Regulations. Given the zoning and the sensitive nature of the site, the proposed project is an allowed use and would enhance the existing wetland habitat. The site would continue to function with the existing use and be preserved as an open space area. Application of the regulations would result in denial of all economically viable use of the property and allow invasive species to continue to exist and expand. Furthermore, an alternative but similar site would need to be found to mitigate for previous maintenance impacts to wetlands in public infrastructure.

- 2. Application of the Environmentally Sensitive Lands Regulations would interfere with the applicant's reasonable investment-backed expectations.**

The City is required to implement compensatory mitigation for significant impacts to wetlands at the Smythe and Via de la Bandola channels, consistent with approvals under the Land Development Code, Biology Guidelines, and Federal Clean Water Act. Implementation of compensatory mitigation requires a deviation from the Environmentally Sensitive Lands Regulations to allow for temporary restoration activities (e.g., invasive plant removal and native plant establishment) to be conducted within wetlands.

Without a deviation to temporarily impact wetlands on this project site, the City would still be obligated to identify another property where similar temporary impacts to wetlands would be required to successfully implement required compensatory mitigation. Where feasible, the City seeks to complete mitigation obligations on City-owned property under a reasonable investment-backed expectation.

Application of the Environmentally Sensitive Lands Regulations would ultimately impact the City's ability to provide essential public drainage for protection of health and welfare since implementation of compensatory mitigation in wetlands is required to manage essential public drainage facilities under local, state, and federal regulations.

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

The mitigation project proposes only restoration and ongoing open space preservation consistent with the Natural Resource Preservation use permitted in the Open Space Floodplain Zone (OF-1-1). The proposed wetland enhancement project would be consistent by continuing to preserve the natural character of the floodplain. The removal of invasive plants would not impede the flow of flood waters, the movement of wildlife or establishment of native habitat. The implementation of this project would protect public health, safety and welfare by mitigating for impacts caused by emergency channel maintenance and, by establishing mitigation, it would allow for future maintenance events to occur.

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

The mitigation Project is designed to provide the minimum necessary compensatory mitigation acreage, including contingency, required to mitigate permanent impacts of maintenance of the Smythe and Via de la Bandola channels. Successful implementation of the mitigation Project would allow for future maintenance of these essential drainage facilities, in accordance with the City's economically viable use.

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

The mitigation Project is the least environmentally damaging alternative to provide required compensatory mitigation (under local, state, and federal permits). All other feasible alternatives considered for the Project would either not remove the invasive species (i.e., no project alternative) or would only remove a portion of the invasives on the site (i.e., reduced project alternatives). Any alternative that would leave invasive species in place would have the potential to damage the environmentally sensitive lands on site and downstream through recruitment of invasive species into these sensitive areas. The mitigation project is consistent with the provisions of the certified Local Coastal Program with the exception of the deviation for temporary impacts to wetlands to remove invasive species and to establish native plant communities. Implementation of compensatory mitigation requires a deviation from

the Environmentally Sensitive Lands Regulations to allow for temporary restoration activities (e.g., invasive plant removal and native plant establishment) to be conducted within wetlands. Without a deviation to temporarily impact wetlands on this project site, the City would still be obligated to identify another property where similar temporary impacts to wetlands would be required to successfully implement required compensatory mitigation.

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

BE IT FURTHER RESOLVED, that Coastal Development Permit No. 2590298 is granted to City of San Diego Public Utilities Department, Owner, and City of San Diego Stormwater Department, Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Corrine L. Neuffer  
Corrine L. Neuffer  
Chief Deputy City Attorney

CLN:nf  
November 18, 2022  
Or.Dept: Development Services  
Doc. No. 3146107

**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: 21004934

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COASTAL DEVELOPMENT PERMIT NO. 2590298  
SMYTHE AND VIA DE LA BANDOLA HABITAT MITIGATION  
PROJECT NO. 699253 (MMRP)  
CITY COUNCIL**

This Coastal Development Permit No. 2590298 is granted by the City Council of the City of San Diego to the Public Utilities Department, Owner, and the Stormwater Department, Permittee, pursuant to San Diego Municipal Code (SDMC) section 126.0707(c)(2). The approximately six-acre site is located west of 2140 Monument Road, in the OF-1-1 zone (Open Space Flood Plain), Special Flood Hazard area (floodway), Coastal (appealable) Overlay, First Public Roadway Overlay, and is within the Multiple Habitat Planning Area (MHPA) and the Tijuana River Valley Local Coastal Program Land Use Plan. The project site is legally described as: A portion of Lot 78 of Rancho Mission of San Diego, situated in Section 25 Township 15 S 3 West County of San Diego, CA.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to rehabilitate approximately 1.17-acres, enhance 4.38-acres, and maintain a 0.40-acre weed free buffer zone within City-jurisdictional riparian habitat subject to the City's land use regulations) described and identified by size, dimension, quantity, type, and location on the approved exhibits (Exhibit "A") dated December 13, 2022, on file in the Development Services Department.

The project shall include:

- a. The removal and control of invasive plant species through physical and chemical means, followed by native plant community restoration and native wildlife habitat enhancement including planting, irrigation, and temporary maintenance, monitoring, and management;
- b. A deviation to temporarily impact wetlands on the project site;
- c. Landscaping (planting, irrigation, and landscape related improvements);
- d. Installation and maintenance of temporary fencing in the form of rope fastened to T-posts around the mitigation site during the five-year maintenance and monitoring period; and

- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site 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 shall be void if six years (72 months) have passed from the date on which all rights of appeal have expired and the City is unable to establish, with evidence in accordance with Section 126.0108(c), that at least one of the circumstances identified in Section 126.0108(b) occurred, then, notwithstanding Section 126.0111(a), an extension not to exceed 36 months shall be obtained by the City pursuant to Section 126.0111. This permit shall be void after December 13, 2028.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action or following all appeals.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (ESA) and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. 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.

10. 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/MITIGATION REQUIREMENTS:**

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

12. The mitigation measures specified in the MMRP and outlined in the **FINAL ENVIRONMENTAL IMPACT REPORT** (EIR) for the Municipal Waterways Maintenance Plan (Project No. 616992 / SCH No. 2017071022) certified by the San Diego City Council on June 9, 2020 (Resolution No. R-313080), shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

13. The Owner/Permittee shall comply with the MMRP as specified in **FINAL ENVIRONMENTAL IMPACT REPORT** (EIR) for the Municipal Waterways Maintenance Plan (Project No. 616992 / SCH No. 2017071022) certified by the San Diego City Council on June 9, 2020 (Resolution No. R-313080), to the satisfaction of the Development Services Department and the City Engineer. Prior to the issuance of the "Notice to Proceed" with construction, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

**Aesthetics/Visual Effects and Neighborhood Character**  
**Biological Resources**  
**Geologic Conditions**  
**Health and Safety/Hazards**  
**Historical, Archaeological, and Tribal Cultural Resources**  
**Land Use**  
**Noise**

**CLIMATE ACTION PLAN REQUIREMENTS:**

14. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.

### **PARKS RECREATION REQUIREMENTS**

15. Any existing populations of the Multiple Species Conservation Program (MSCP) Listed Rare Plant; Orcutt's Birdsbeak (*Dicranostegia orcuttiana*) found within the project footprint should be documented and reported. The Project Biologist shall provide photo documentation, location coordinates and/or GIS data of the population to Parks and Recreation Open Space Division Natural Resource Manager.

### **ENGINEERING REQUIREMENTS:**

16. All Public Improvements shall be constructed per approved Exhibit 'A' and satisfactory to the City Engineer.

17. The City Engineer shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.

18. Prior to the commencement of any restoration activities, a Water Pollution Control Plan (WPCP) shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

### **PLANNING/DESIGN REQUIREMENTS:**

19. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

20. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

### **PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:**

21. The Permittee shall execute a Memorandum of Understanding (MOU) between Public Utilities Department and Stormwater Department for the use of Enterprise Fund land related to the habitat mitigation site maintenance and monitoring and channel maintenance on the lands known on Department of Real Estate and Airport Management City-Owned Lands files as Site Z602MM, Tijuana River Pump Plant and Site Z605MM, Smugglers Gulch.

### **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.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on December 13, 2022 and (Approved Resolution Number).

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.

**CITY OF SAN DIEGO  
PUBLIC UTILITIES DEPARTMENT  
Owner**

By \_\_\_\_\_  
Keli Balo  
Assistant Deputy Director

**CITY OF SAN DIEGO  
STORMWATER DEPARTMENT  
Permittee**

By \_\_\_\_\_  
Eddie Salinas  
Interim 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 DEC 13 2022, by the following vote:

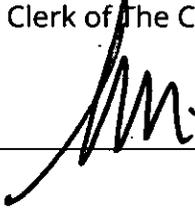
Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<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"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 13 2022

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY: TODD GLORIA  
Mayor of The City of San Diego, California.

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

By , Deputy



Office of the City Clerk, San Diego, California  
  
Resolution Number R- 314549