



THE CITY OF SAN DIEGO

Report to the Hearing Officer

DATE ISSUED: September 12, 2018 REPORT NO. HO-18-079

HEARING DATE: September 19, 2018

SUBJECT: Nestor MMP Map 134 CDP and SCR -Process Three Decision

PROJECT NUMBER: [610537](#)

REFERENCE: [PTS 320787 Modifications to the Master Storm Water Maintenance System Maintenance Program Ordinance O-20291 \(August 28, 2013\).](#)

OWNER/APPLICANT: City of San Diego Transportation & Storm Water Department – Roger Wammack

SUMMARY

Issue(s): Should the Hearing Officer approve after-the-fact approvals for storm water emergency channel maintenance and future maintenance of a segment of Nestor Creek (MMP Map 134) within Otay-Nestor Community Planning area?

Staff Recommendation(s):

1. Approve Coastal Development Permit No. 2161345;
2. Approve Substantial Conformance Review No. 2161346, under amended Site Development Permit No. 2034245.

Community Planning Group Recommendation: The Otay-Nestor Community Planning Group declined a recommendation vote of the project since it was for maintenance.

Environmental Review: This activity has been reviewed for consistency with the Program Environmental Impact Report (PEIR) prepared for the Master Storm Water System Maintenance Program (Project No. 42891/SCH No. 2004101032, October 4, 2011) certified and adopted by City Council Resolution No. R-307067 on October 24, 2011 and associated PEIR Addendum No. 528126 dated August 4, 2017 adopted by City Council Resolution R-311548 on February 13, 2018. This activity is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of California Environmental Quality Act (CEQA) review as defined in State CEQA Guidelines Section

15378(c). Pursuant to Section 21166 of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review for this action.

BACKGROUND

The City of San Diego's storm water system is designed to convey drainage flows primarily associated with urban runoff and rain events to protect life and property from potential flooding. Storm water facilities include, but are not limited to, a network of underground storm drain pipes, culverts, outfalls/inlets, detention basins, and open flood control channels. As in the case with open channels, these facilities can support natural resources, such as wetlands, which are highly regulated by various federal, state and local agencies. In an effort to perform maintenance of storm water facilities while responding to these agencies' permitting and environmental requirements, the Transportation & Storm Water Department (T&SWD) developed a program known as the Master Storm Water System Maintenance Program (MSWSMP or MMP). The MMP allows for a comprehensive annual approach to the maintenance of existing storm water facilities by balancing the need to restore conveyance capacity and the ability to implement strategies to protect environmental resources, such as water quality and biological resources.

In 2011, the City adopted the MMP with the approval of Site Development Permit (SDP) No. 714233/Coastal Development Permit (CDP) No. 714232 and certification of PEIR No. 42891/SCH No. 2004101032. The MMP includes a series of maintenance protocols designed to minimize adverse effects of storm water facility maintenance on biological, historical and water resources. The PEIR evaluated the potential environmental impacts of implementing the MMP and identified appropriate mitigation measures to reduce or avoid impacts. The MMP also incorporates the applicable mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) associated with the PEIR. SDP No. 714233/CDP No. 714232 was amended and then superseded by SDP No. 1134892, which in turn was amended by SDP No. 2034245, which is the current permit authorizing the MMP.

The City-issued CDP No. 714232 was appealed to the California Coastal Commission (Commission) and later rescinded. At the De Novo hearing held November 15, 2012, the Commission issued CDP No A-6-NOC-11-086 to permit maintenance only with the coastal segments of 1) Sorrento, Soledad, and Los Penasquitos Creeks; 2) Mission Bay High School/Pacific Beach Drive/Olney Street channels and 3) the Tijuana River Pilot and Smuggler Gulch channels. The Commission issued CDP No. A-6-NOC-11-086 did not, however, include or authorize maintenance within any of the coastal segments of Nestor Creek (MMP Map 134). The PEIR No. 42891/SCH No. 2004101032, certified October 4, 2011, has remained unchanged.

The MMP provides for a Substantial Conformance Review (SCR) (which is a modified Process Two, (Development Services Approval-appealable directly to Council)) to ensure that the maintenance protocols in the MMP and MMRP mitigation measures are implemented during maintenance activities. Individual assessments addressing biological resources, historical resources, hydrologic and hydraulic resources, water quality and noise are prepared for each maintenance activity, which are evaluated by staff as part of the SCR process to ensure conformance. The approval of this SCR addresses the requirements of the MMP for the emergency work which occurred in 2010 and 2016 and the future maintenance proposed for FY 2019.

On September 15, 2010, the City issued an Emergency Coastal Development Permit No. 783819 (PTS 220166) to remove accumulated sediment, vegetation, trash and debris from the concrete-lined drainage facility intersecting Palm Avenue at 18th Street and Thermal Avenue. This concrete-lined segment is mapped City's Coastal Overlay Zone (COZ) (appealable area) and also referred to as Reach 1b of MMP Map 134 as referenced in the project's Individual Maintenance Plan (IMP). It is directly adjacent and upstream of the earthen segment (Reach 1a) referenced below. The sediment, vegetation, trash and debris accumulating within the drainage facility impedes the speed and capacity of storm water runoff to be adequately conveyed through the facility causing adjacent properties and roadways to flood (MMP Map 134) (Attachment 1).

On January 25, 2016 the City issued an Emergency Authorization 1638969 (PTS 468373) to remove 62 cubic yards of sediment and vegetation that had built up within an earthen rip rap channel segment that was approximately 65 linear feet in length; a bottom width between 15 to 22 feet; and top width of 28 feet. This earthen segment of Nestor Creek is also mapped within the City's COZ (appealable area) and referred to as Reach 1a of MMP Map 134, as referenced in the project's the Individual Maintenance Plan (IMP). It is directly adjacent and downstream of the concrete-lined segment (Reach 1b) referenced above.

DISCUSSION

The Nestor MMP Map 134 (Reach 1) area is zoned RM-1-1 (Residential-Multiple Unit) and CC-4-2 (Commercial-Community). The proposed loading and staging areas are designated as AR-1-2 (Agricultural-Residential) and IL-3-1 (Industrial-Light). The project and the segment of Nestor Creek north of Palm Avenue is located within the City's COZ (appealable area) and the Otay Mesa- Nestor community plan area (Attachment 2).

The project is located within a segment of Nestor Creek (MMP Map 134 north of Palm Avenue) that consists of a single Reach that is separated into Reaches 1a and 1b. Beginning at the upstream end of MMP Map 134 north of Palm Avenue, Reach 1b consists of a rectangular concrete-lined channel which begins at Palm Avenue and extends approximately 565 feet in a northern direction along Thermal Avenue before turning west along Cedar Street. Reach 1 receives storm flows from Reach 2 of Nestor Creek via the culvert under Palm Avenue and from adjacent developed lands. The maintenance area is approximately 525 meters (1,825 feet or 0.3 mile) upstream of the San Diego Bay National Wildlife Refuge, and flows from the Nestor Creek maintenance area and eventually discharges into the Refuge and the Otay River.

Reach 1a of MMP Map 134 is located within the Egger Highlands neighborhood of the Otay Mesa- Nestor Community Plan Area and runs north from Palm Avenue between the parking lots of a Super 8 Motel and an auto repair shop, then turns westward along the northern edge of businesses fronting Palm Avenue. The channel is bordered on both sides by development along its entire length.

The concrete portion of Reach 1b is 28 feet wide and 8 to 9 feet deep and currently contains patches of cattails (*Typha*) and bulrush (*Schoenoplectus*). The channel then transitions into Reach 1a which consists of an earthen trapezoidal channel that extends 400 feet downstream. At the upstream end of Reach 1a, where the channel transitions from concrete to earthen, the banks are lined with rip rap for 65 feet. The maintenance area is only proposed within this 65-foot segment of the earthen channel lined with rip rap. The earthen portion of the reach is 15 to 22 feet wide at the bottom, 28 feet wide at the top, and 8 to 9 feet deep. This area borders development to the south and undeveloped lands to the north.

Consistent with the MMP, the future maintenance in MMP Map 134 would cover the same areas of Reaches 1a and 1b that were previously maintained in 2010 and 2016. The work will include the mechanized removal of sediment, vegetation, trash and debris using equipment operated within and adjacent to the affected creek segments on a recurring basis. The project proposes to remove approximately 800 cubic yards of material. The maintenance is intended to restore the original conveyance capacity of these channels and provide flood control for the protection of life and property. The maintenance would not include any modification that would change the character, scope, or size of the original channel design, and would not increase the conveyance capacity of the channels beyond their as-built condition.

The MMP PEIR No. 42891/SCH No. 2004101032, certified October 4, 2011, has remained unchanged and the amended SDPs have only added new channels to the program. The MMP states that the SCR process may be used for "after-the-fact" permits issued for emergency maintenance in which the mitigation measures identified in the PEIR and amended SDP will be applicable to the emergency maintenance activities. The IMPs, biological, historical, hydrologic and hydraulic water quality and noise assessments have been reviewed by staff and determined to be consistent with the requirements of the MMP, PEIR, and applicable associated permits.

CONCLUSION:

The approval being requested with today's action is for an after-the-fact CDP for work which occurred in 2010 and 2016 as described above and for future maintenance in the same general area of the channel as described. The future maintenance is planned for the fall of 2019. This portion of the channel segment of Nestor Creek is located within the COZ appealable area and was not included in the CDP No. A-6-NOC-11-086 that was issued by CCC on November 15, 2012. The SCR is a Process Two (staff level) decision. The after-the-fact SCR addresses the requirements of the MMP for the emergency work which occurred in 2010 and 2016 and the future maintenance proposed for FY 2019 which has been consolidated under this approval. City staff recommends approval of the CDP which is supported by the findings and the SCR as the work substantially conforms to the requirements of SDP No. 2034245, MMP, and associated PEIR.

ALTERNATIVES

1. Approve Coastal Development Permit No. 2161345 and Substantial Conformance Review No. 2161346, with modifications.
2. Deny Coastal Development Permit No. 2161345 and Substantial Conformance Review No. 2161346, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



Helene Deisher, Development Project Manager

Attachments:

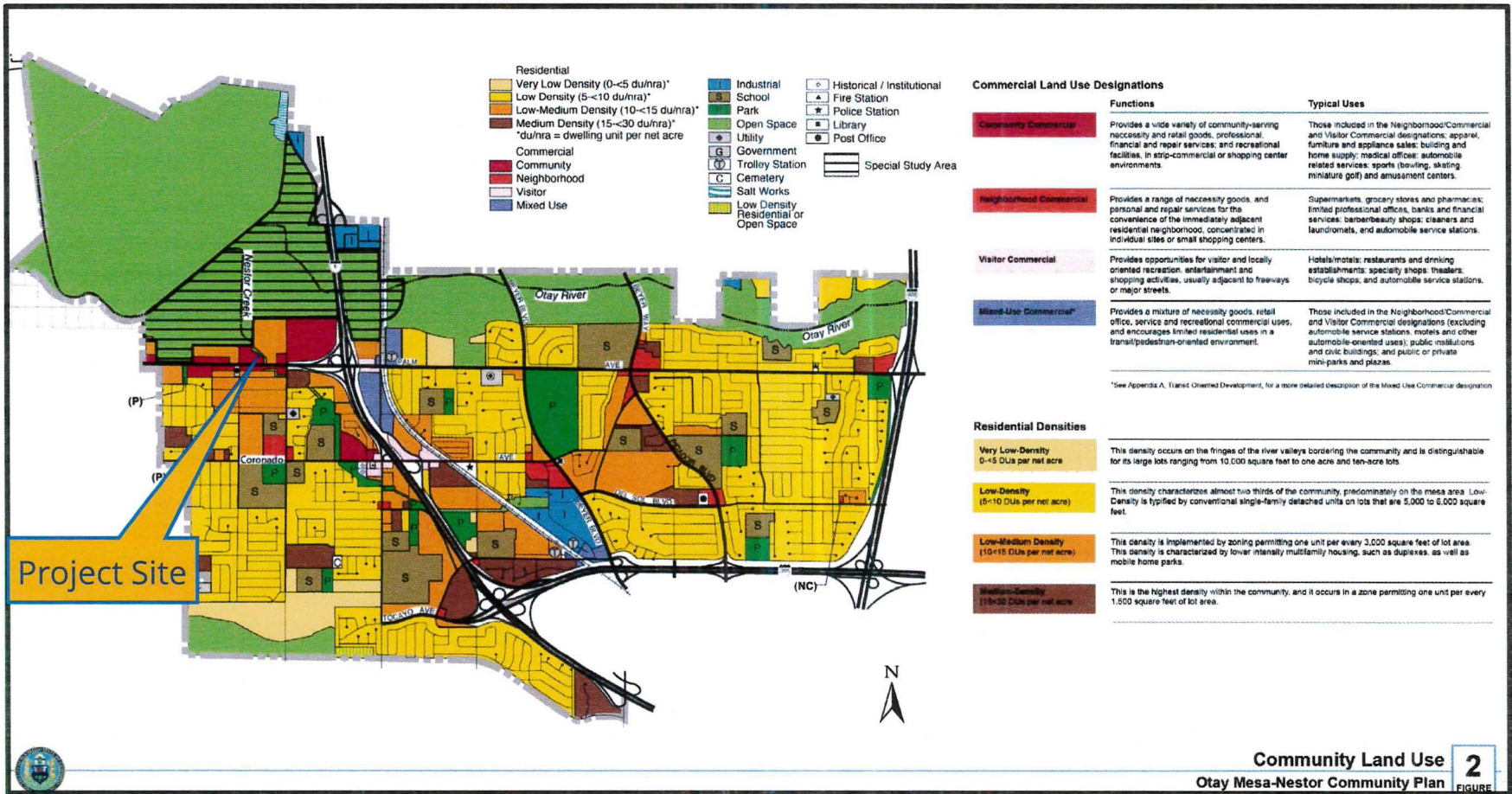
1. Project Location Map with Aerial
2. Community Plan Land Use Map
3. Site Photos
4. Draft Resolution with Findings
5. Draft Permit with Conditions



Comparison of Proposed and Previous Maintenance Areas (Map 134)

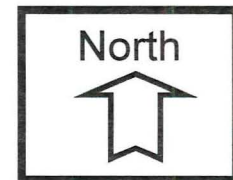
NESTOR CREEK CHANNEL MAINTENANCE PROJECT

Figure 4



Land Use Map

NESTOR CREEK MMP 134/ NEAR PALM AND THERMAL AVENUES
PROJECT NO. 610537



Nestor Map 134: Before/After 2010 & 2016 Emergency Maintenance and Current Conditions

Before 2010 Emergency Maintenance



At downstream end of Nestor Map 134 looking upstream, October 18, 2010



At midpoint of Nestor Map 134 looking downstream. October 18, 2010



Near upstream end of Nestor Map 134 looking upstream. October 18, 2010



Near upstream end of Nestor Map 134 looking downstream. October 18, 2010

After 2010 Emergency Maintenance



At downstream end of Nestor Map 134 looking upstream. November 12, 2010



At downstream end of Nestor Map 134, looking at access. November 12, 2010



At midpoint of Nestor Map 134, looking downstream. November 12, 2010



Near upstream end of Nestor Map 134, looking downstream. November 12, 2010



Near upstream end of Nestor Map 134, looking upstream. November 12, 2010

Before 2016 Emergency Maintenance



At midpoint of Nestor Map 134 looking downstream/northwest, November 13, 2015



At downstream end of Nestor Map 134 looking downstream/west, November 13, 2015

After 2016 Emergency Maintenance



At downstream end of Nestor Map 134 looking downstream/west, February 5, 2016

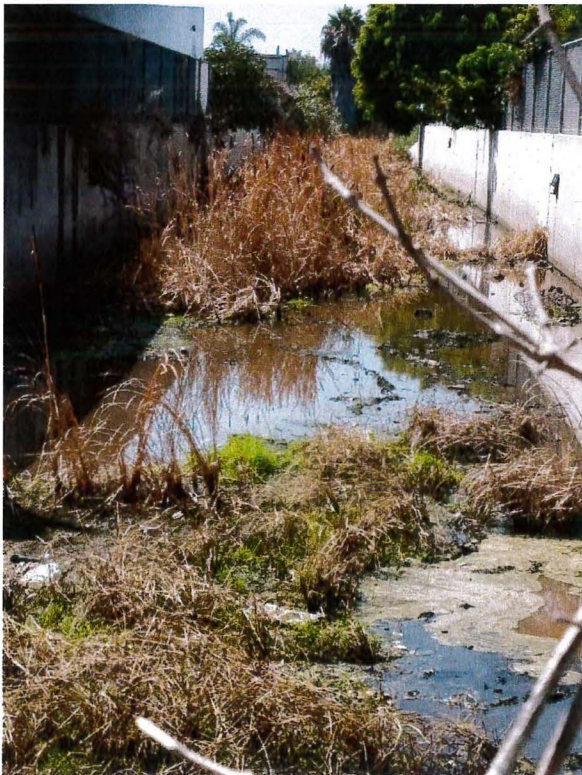


At downstream end of Nestor Map 134, facing upstream/southeast, February 6, 2016

Current conditions (8-21-18)



At downstream end of Nestor Map 134 looking upstream/southeast, August 21, 2018



At midpoint of Nestor Map 134 looking downstream/southwest, August 21, 2018



At upstream end of Nestor Map 134 looking downstream/north, August 21, 2018

HEARING OFFICER RESOLUTION NO. _____
COASTAL DEVELOPMENT PERMIT NO. 2161345
SUBSTANTIAL CONFORMANCE REVIEW NO. 2161346
NESTOR MAP 134 CDP AND SCR - PROJECT NO. 610537 [MMRP]

WHEREAS, the CITY OF SAN DIEGO TRANSPORTATION & STORM WATER DEPARTMENT, Owner/Permittee, filed an application with the City of San Diego for an after-the-fact Coastal Development Permit and Substantial Conformance Review permit under the Master Storm Water System Maintenance Program (MSWSMP or MMP), Amended Site Development Permit (SDP) No. 2034245 and Program Environmental Impact Report (PEIR) 42891/SCH 2004101032 for past emergency channel maintenance conducted in 2010 and 2016, as well as proposed maintenance within a segment of Nestor Creek known as MMP Map 134. The project approvals would authorize and mitigate for past emergency maintenance activities (as referenced under PTS No. 292513 and PTS No. 481976) and future maintenance within the same project footprint. The emergency maintenance in 2010 included the removal of sediment, vegetation, trash and debris within the concrete (Approximately 565 linear feet) portion of MMP 134. The emergency maintenance in 2016 included the mechanized removal of sediment, vegetation, trash and debris within the earthen (65 linear feet) portion of the channel of MMP 134. The future maintenance includes the mechanized removal of sediment, vegetation, trash and debris within both the concrete (Approximately 565 linear feet) and earthen (65 linear feet) portions of the flood control channel of MMP 134 to reduce potential flooding and restore original conveyance capacity. A portion of the project site (MMP Map 134) is located within the Coastal Overlay Zone (appealable area) and is not included as a facility covered by the Coastal Commission's MMP Coastal Development Permit No. A-6-NOC-11-086.

WHEREAS, the project site is located behind 1788 Palm Avenue, west of Thermal Avenue and east of 18th Street between Saturn Boulevard and Cedar Street in the Coastal Overlay (Appealable)

Zone in the Otay-Nestor Community Plan. The project site is also referred to as Map 134 of the City's Master Storm Water System Maintenance Program. The channel is located within land zoned as RM-1-1 (residential-multiple unit) and CC-4-2 (commercial-community). The proposed loading and staging areas are designated as AR-1-2 (Agricultural-Residential), IL-3-1 (Industrial-Light);

WHEREAS, on September 7, 2010, the City of San Diego, as Lead Agency, through the Development Services Department, issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21 000 et seq.) under CEQA Guideline Section 15269(b)(c) as an Emergency Project; the Environmental Determination was filed with the San Diego County Recorder on September 9, 2010 and there was no appeal of the Environmental Determination; and

WHEREAS, the City approved an Emergency Coastal Development Permit (CDP) on September 15, 2010 (PTS 220166) to T&SWD. A subsequent CDP application was submitted to DSD August 16, 2012 (PTS 292513); and

WHEREAS, the City of San Diego T&SWD submitted a second Emergency Authorization to the DSD on January 1, 2016 (PTS 468373) for emergency maintenance to remove accumulated sediment, trash/debris, and vegetation within an approximately 65-foot earthen-lined portion of Map 134. A subsequent CDP application was submitted to DSD on April 5, 2016 (PTS 481976); and

WHEREAS, on January 22, 2016, the City of San Diego, as Lead Agency, through the DSD, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21 000 et seq.) under CEQA Guideline Sections 15269(b) and (c) as an Emergency Project; and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; and

WHEREAS, the second emergency maintenance in 2016 was necessary to restore storm water conveyance capacity to protect life and property from flooding and prevent the frequency of flooding to the surrounding residents, businesses and roadways prior to the upcoming rainy season (October 1st-April 30th); and

WHEREAS, the T&SWD is planning to conduct routine maintenance in the MMP Map 134 area for fiscal year 2019; and

WHEREAS, the City Transportation & Storm Water Depart filed an application on June 14, 2018 for an after-the-fact application for a CDP and Substantial Conformance Review under the MMP's amended Site Development Permit No. 2034245 for both the proposed maintenance and past emergency activities of 2010 and 2016; and

WHEREAS, the is activity described in both the past emergencies of 2010 and 2016, as well as future maintenance has been reviewed for consistency with the Program EIR prepared for the Master Storm Water System Maintenance Program (Project No. 42891/SCH No. 2004101032, October 4, 2011) certified and adopted by City Council Resolution No. R-307067 on October 24, 2011. This activity is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of California Environmental Quality Act (CEQA) review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section 21166 of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review for this action; and

WHEREAS, Development Services Department staff has reviewed for consistency to the MMP SDP No. 2034245 and PEIR Project No. 42891/SCH No. 2004101032, the individual technical assessments, maintenance plans, and studies for the Nestor Map 134 emergency channel maintenance and for the future maintenance in Fiscal Year 2019, including the Individual

Maintenance Plans, Individual Biological Assessments, Individual Historical Assessments, Individual Hydrologic and Hydraulic Assessments, Individual Water Quality Assessments, and Individual Noise Assessments;

WHEREAS, the following findings are intended to meet the requirements of §126.0708(a) and (b) of the Land Development Code (LDC); and

NOW THEREFORE, BE IT RESOLVED by the Hearing Officer of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit No. 2161345:

COASTAL DEVELOPMENT PERMIT – Section 126.0708

(a) Findings for all Coastal Development Permits:

- 1. 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.**

The project site is located within the Otay Mesa-Nestor Community Plan and Local Coastal Program (LCP) planning area. The project includes previous emergency maintenance and future maintenance planned for Fall 2018. The work includes maintenance of an existing storm drain channel (flood control facility) to remove accumulated sediment, vegetation, trash and debris to restore conveyance capacity within a concrete-lined and earthen facility. The maintenance activity does not interfere with public access to the coastal resources since there are no existing physical access ways or public views within or adjacent to the project site or vicinity as identified in the LCP. The closest view corridors identified in the LCP are along Saturn Blvd one block to the east, and Thermal Avenue, one block to the west, and which are not impacted by the project. A storm water conveyance facility is not intended to provide public access to coastal resources. Furthermore, this storm water facility is concrete lined and surrounded by development, and, thus, has no intrinsic scenic value. Maintenance is a short-term activity which does not affect long-term public views in the area.

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

The project footprints for 2010, 2016, and 2018 maintenance events cover a 535-linear foot concrete drainage and 65-linear foot earthen drainage channel. The storm

water facility contains areas of wetland vegetation which are considered sensitive biological resources, as defined in the City's Environmentally Sensitive Lands (ESL) Ordinance.

The project impacts on City wetlands associated with the 2010 emergency maintenance is 0.11 acre is composed of 0.03 acre of southern willow scrub (SWS, including disturbed), 0.02 acre of freshwater marsh (FWM), and 0.06 acre of disturbed wetland (DW) on the concrete channel. The impact associated with the 2016 emergency was comprised 0.02 acre of freshwater marsh within the earthen channel. The impacts associated with the proposed 2018 maintenance is composed of 0.03 acre of FWM (including disturbed) and 0.07 acre of DW and 0.01 of DW (arundo dominated) on concrete, and 0.01 acre of natural flood channel/streambed.

Pursuant to the City's Biology Guidelines, "Under the ESL, impacts to wetlands should be avoided. Unavoidable impacts should be minimized to the maximum extent practicable. Whether or not an impact is unavoidable will be determined on a case by case basis. Examples of unavoidable impacts include ... essential public facilities (essential roads, sewer, water lines, etc.) where no feasible alternative exists. Unavoidable impacts will need to be mitigated in accordance with Section III.B.1.a, of these guidelines." Nestor MMP Map 134 is an example of such an essential public facility, and because of the urban nature of surrounding development, no feasible alternative exists to channel maintenance.

T&SWD will provide compensatory mitigation for the loss of sensitive wetland vegetation within a mitigation site located near the Otay River at a ratio of 3:1, with a minimum 1:1 creation/restoration component so there is no-net loss of wetlands. The mitigation will be within the same watershed as where the impacts occur and occur on a parcel within the Otay Valley River Park (OVRP). Mitigation will be achieved through the creation (re-establishment) and restoration (rehabilitation) of aquatic resource habitat in place of disturbed land and large stands of giant reed (*Arundo donax*) at the project site. As consistent with the MMP's PEIR and MMRP, the riparian scrub proposed at the mitigation site will provide better quality habitat and be of greater value to wildlife than the impacted disturbed wetland, freshwater marsh, SWS, and natural flood channel. The project intersects the coastal zone and will protect coastal resources from the future spread of giant reed. Historic aerial images and USGS maps show that the proposed Hollister Quarry mitigation area has been a wetland in 1966, thus it is anticipated that native wetlands will successfully re-establish.

The mitigation program will include 1:1 creation and 2:1 enhancement for each of the impacted wetlands for a total of 0.12 acres and therefore would mitigate for impacts to environmentally sensitive lands in accordance with Section III.B.1.a. of the Biology Guidelines.

- 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 project is located within the Coastal (appealable area) of the Coastal Overlay Zone. Channel maintenance does not involve any activities that conflict with the certified Otay Mesa-Nestor Community Plan and Local Coastal Program (LCP) and Implementation Program. The channel is located within the "Open Space" land use designation and the Residential and Commercial zoning designations. One of the strategies identified in the Local Coastal Plan to address drainage and flood control is to work cooperatively with community residents to obtain historical knowledge of the flooding characteristics in their community, and the City has received multiple notifications from the community requesting maintenance within this channel. Channel maintenance is incidental to the existing flood control system. The flood control system provides a public service in that it protects the general public as well as public and private property from flooding. Thus, the development is both incidental and serves a public service purpose. Thus, as an incidental public service use, the project constitutes an allowable use under the City's LCP. Therefore, the development is consistent with the City's LCP with regard to uses allowed within wetlands.

The concrete- and earthen-lined drainage channel at Palm Avenue and Thermal Avenue/18th Street, identified as Map 134, is located within the Coastal Overlay Zone (Appealable Area); the Otay Mesa-Nestor (OMN) community planning area and the Local Coastal Program (LCP) planning area. The OMN LCP policies include provisions to protect public access to the Bay; park and recreation areas; recreation and visitor serving facilities and services; heritage resources; environmentally sensitive habitat areas; visual resources; affordable housing; impacts from residential development, and public works.

The proposed maintenance activities would occur within an as-built, concrete- and earthen-lined drainage channel that is secured by a chain-linked fence. The trapezoidal channel is adjacent to residential and commercial development on both sides, and empties into the Port of San Diego property known as the Salt Ponds. Removal of sediment, trash/debris, and vegetation within the facility will improve storm water conveyance capacity and would not alter or impact existing public access to the bay or Salt Ponds; park, recreational or visiting serving area; the Western Salt Company building (heritage resource); the build-out of residential development; and existing public views or physical access (visual resources) as identified by the community plan and LCP. The project is solely the maintenance of an existing public facility which does not include new development beyond its existing as-built condition. Therefore, it would not conflict with the goals of the LCP to preserve and restore the natural resources and habitat within the lower San Diego Bay because new development or land uses that are inconsistent or incompatible are not proposed.

The LCP also includes a provision to retain and restore the mobile home parks north of Palm Avenue to provide affordable housing in the community. The storm water facility to be maintained is adjacent to these mobile home parks. Risk management claims and testimony from residents within the mobile home park have documented

previous flooding and damages of private property during periods of heavy precipitation. Sediment, trash/debris, and vegetation that has grown and accumulated throughout the years, primarily because the channel has not been properly maintained or cleaned, has impeded and contributes to the lack of adequate conveyance capacity of storm water run-off during storm events. Maintenance would therefore reduce the frequency of flooding at the mobile home park by restoring the conveyance capacity within this portion of Nestor Creek. The project is consistent with the provisions of the certified Local Coastal Program. A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them impacts sensitive biological resources. Therefore, with the exception of the deviation from section 143.0141(b)(5) the project is consistent with all provisions of the certified Local Coastal Program.

- 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.**

Consistent with section 30210 of the Coastal Act, the City shall provide for maximum access, which shall be conspicuously posted, and recreational opportunities consistent with public safety needs. The site does not contain a physical public access way and is not within a shoreline public recreation area. The project does not propose to encroach into any public access way as development will be in-channel maintenance with a designated staging area. As the maintenance does occur between the nearest public road and the sea, this finding does not apply to the maintenance project. No recreational uses are within the channel maintenance area. Nestor Creek has been subject to trash dumping, and per post-maintenance protocols of the MMP, City crews will routinely inspect channels for two years and treat invasive weeds and remove trash from maintenance and access areas.

(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 project would include maintenance of an existing storm drain channel (flood control facility) to remove accumulated sediment, vegetation, trash and debris to restore conveyance capacity within a concrete-lined and earthen facility. This segment of Nestor Creek is within a drainage easement which was channelized when the adjacent properties and roadways were developed. This drainage facility is also

considered a wetland as defined by the City's Biological Resources Guidelines because wetland hydrology is present and past human activities have occurred to remove the historic vegetation.

Section 143.0130(d) of the San Diego Municipal Code states that uses permitted in wetlands include incidental public service projects, where it has been demonstrated that there is no feasible less environmentally damaging alternative, and where mitigation measures have been provided to minimize adverse environmental effects, which this project currently meets.

However, maintenance would occur within a drainage easement and is located within a wetland and wetland buffer, which is not an allowed use, and each of the allowable uses listed in section 143.0130(e) such as, public access paths, fences, restoration and enhancement activities and other improvements necessary to protect wetlands would not provide an economically viable use of the channel. T&SWD would be denied the single economically viable use of the storm water facility if the facility could not be regularly maintained. The lack of maintenance would in effect increase flood risks to the surrounding properties and areas, potentially increasing the City's liability and risk management claims from the loss of life and property.

A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them impacts sensitive biological resources.

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

As stated above, incidental public service projects are an allowable use under SDMC section 143.0130(d), however, the maintenance activities are not an allowed use in the wetland buffer area pursuant to SDMC section 143.0130(e). In addition, per SDMC section 143.0141(b)(5), impacts to wetlands, shall be avoided, and encroachment into the 100-foot wetland buffer is not allowed without approval of a deviation. Per the City's Biology Guidelines, "Under the ESL, impacts to wetlands should be avoided. Unavoidable impacts should be minimized to the maximum extent practicable. Whether or not an impact is unavoidable will be determined on a case by case basis. Examples of unavoidable impacts include ... essential public facilities (essential roads, sewer, water lines, etc.) where no feasible alternative exists. Unavoidable impacts will need to be mitigated in accordance with Section III.B.1.a of these guidelines." Nestor MMP Map 134 is an essential public facility, and because of the urban nature of surrounding development, no feasible alternative exists to channel maintenance.

As this facility requires routine maintenance to convey storm water effectively, strict compliance with section 143.0141(b)(5), would deny T&SWD the only economically viable use of the storm water facility. Maintenance crews need to enter into the

wetland buffer area for cleaning and maintenance in order to carry out the incidental public service project in the wetland area permitted by section 143.0130(d).

Since the City has made the investment of constructing storm water facilities, strict application of ESL would preclude maintenance and would therefore, interfere with the City's reasonable investment-back expectations, as well as protecting life and property from flooding. T&SWD has paid tax-payer's dollars in claims against the City by residents and business owners for the loss of property and damage caused by flooding. This has been correlated to lack of frequent maintenance activities (dredging and excavation) for affected channels, whose conveyance capacities are diminished by the accumulated sediment, trash, and vegetation within the channel.

A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them impacts sensitive biological resources.

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

The channel is located within land zoned as RM-1-1 (Residential-multiple unit) and CC-4-2 (Commercial-community). Zone RM-1-1 permits lower density multiple dwelling units, and Zone CC-4-2 permits development with high intensity, strip commercial characteristics and permits a maximum density of one dwelling unit for each 1,500 square feet of lot area. Flood control facilities are allowed within both designations.

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 storm water facilities maintained by T&SWD are designed to convey storm water flows in order to protect life and property. Council Policy 800-04 states, "Adequate drainage facilities are required to remove storm water runoff in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life...It is the basic responsibility of any owner or holder of land to accept and provide a suitable conveyance and outlet for the natural upstream flow of storm water runoff passing through or originating from such land...The City will generally accept responsibility for maintenance of public drainage facilities which are designed and constructed to City standards and located within a public street or drainage easement dedicated to the City."

These drainage facilities also convey urban runoff from development, protect water quality, and support natural resources. These existing storm water facilities were included in T&SWD's Master Storm Water System Maintenance Program since these channels would reasonably need maintenance for the life of the project. There was no enlargement of these facilities.

During past emergency maintenance, vegetation removal was limited to the minimum necessary to protect life and property. The long-term performance and economic viability of these storm water facilities is dependent upon ongoing and proper routine maintenance.

A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them impacts sensitive biological resources.

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.

No expansion or modifications to the storm water facilities beyond their original configuration were or will be made. With respect to impacts to biologically sensitive lands, there are a series of maintenance protocols incorporated into the program specifically designed to minimize the impacts to these storm water facilities as well as adjacent to maintenance activities. A series of water quality protocols are included to ensure that areas downstream of maintenance activities do not experience increased sedimentation or diminished water quality. Biology protocols require that sensitive biological areas adjacent to maintenance areas be protected during maintenance. IHHAs identify the minimum amount of environmentally sensitive vegetation which must be removed to increase the capacity of storm water facilities to convey storm water. All applicable protocols and MMRP requirements have been implemented in both the past emergencies of 2010 and 2016, as well as the planned maintenance.

A deviation from section 143.0141(b)(5) related to the requirement for a 100-foot wetland buffer in the coastal zone is appropriate because maintenance crews need to enter into the wetland buffer area for cleaning and maintenance in order to carry out the incidental public service project in the wetland area permitted by section 143.0130(d).

The project is consistent with the provisions of the certified Local Coastal Program. A deviation to the 100-foot buffer around all wetlands and to sensitive biological resources is requested because storm water facilities by their very nature and function are located within wetlands and the removal of vegetation to clean them impacts sensitive biological resources. Therefore, with the exception of the deviation from section SDMC 143.0141(b)(5) the project is consistent with all provisions of the certified Local Coastal Program.

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

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the HEARING OFFICER is hereby GRANTED by the HEARING OFFICER to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. CDP 2161345 and SCR 2161346, a copy of which is attached hereto and made a part hereof.

BE IT FURTHER RESOLVED, that the facility known as Nestor MMP Map 134 facility is included in the MMP and SDP No. 2034245, the emergency maintenance is in substantial conformance with the MMP, SDP No. 2034245, and the PEIR, and that SUBSTANTIAL CONFORMANCE REVIEW NO. 2161346 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee.

Helene Deisher
Development Project Manager
Development Services

Adopted on: September 19, 2018

IO#: 21003732 (FUND 100000)

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

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 21003732 (FUND 100000)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COASTAL DEVELOPMENT PERMIT NO. 2161345
NESTOR MAP 134 CDP AND SCR - PROJECT NO. 610537 [MMRP]
Hearing Officer

This Coastal Development Permit No. 2161345 is granted by the Hearing Officer of the City of San Diego to CITY OF SAN DIEGO TRANSPORTATION & STORM WATER DEPARTMENT, Owner/Permittee pursuant to San Diego Municipal Code [SDMC] section 126.0708 and Site Development Permit No. 2034245, which amended and superseded Site Development Permit No. 1134892 for the Master Storm Water System Maintenance Program [MSWMP or MMP]. The project site is located behind 1788 Palm Avenue, west of Thermal Avenue and east of 18th Street between Saturn Boulevard and Cedar Street in the Otay-Nestor Community Plan area. The project site is also referred to as Map 134 of the City's Master Storm Water System Maintenance Program (MMP). The channel is located in an area of land zoned as RM-1-1 (residential-multiple unit) and CC-4-2 (commercial-community). The proposed loading and staging areas are designated as AR-1-2 (Agricultural-Residential), and IL-3-1 (Industrial-Light), and located within the Coastal Overlay Zone (Appealable Area).

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for past emergency channel maintenance conducted in 2010 and 2016, as well as proposed maintenance within a segment of Nestor Creek known as MMP Map 134. The project approvals would authorize and mitigate for past emergency maintenance activities (as referenced under PTS No. 292513 and PTS No. 481976) and future maintenance within the same project footprint. The emergency maintenance in 2010 included the removal of sediment, vegetation, trash and debris within the concrete (Approximately 565 linear feet) portion of MMP 134. The emergency maintenance in 2016 included the mechanized removal of sediment, vegetation, trash and debris within the earthen (65 linear feet) portion of the channel of MMP 134. The future maintenance includes the mechanized removal of sediment, vegetation, trash and debris within both the concrete (Approximately 565 linear feet) and earthen (65 linear feet) portions of the flood control channel of MMP 134 to reduce potential flooding and restore original conveyance, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 19, 2018, on file in the Development Services Department.

The project shall include:

- a. Past emergency channel maintenance conducted in 2010 and 2016 as described. The Project would authorize and mitigate for past emergency maintenance activities (as referenced under PTS No. 292513 and PTS No. 481976); and

- b. Future maintenance (FY 2019 Season) within the same project footprint. The maintenance includes the mechanized removal of sediment, vegetation, trash and debris within a concrete (565 linear feet) and earthen (65 linear feet) flood control channel to reduce potential flooding and restore original conveyance capacity), as well as proposed maintenance within a segment of Nestor Creek known as MMP Map 134.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by October 3, 2021.
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. 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:

9. 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.

10. The mitigation measures specified in the MMRP and outlined in PROGRAM ENVIRONMENTAL IMPACT REPORT, NO. 42891/SCH No. 2004101032, October 4, 2011, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

11. The Owner/Permittee shall comply with the MMRP as specified in PROGRAM ENVIRONMENTAL IMPACT REPORT, NO. 42891/SCH No. 2004101032, October 4, 2011 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: **Biological Resources, Historical Resources, Land Use (MHPA), and Water Quality.**

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 Hearing Officer of the City of San Diego on September 19, 2018 and Resolution No. XXX.

ATTACHMENT 5

COASTAL DEVELOPMENT PERMIT NO. 2161345
September 19, 2018

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Helene Deisher
Development Project Manager

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

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

City of San Diego
Transportation & Storm Water Department
Owner/Permittee

By _____
NAME: Roger Wammack
TITLE: Assistant Deputy Director

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