

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
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Date: November 29, 2012

Permit Application No.: **A-6-NOC-11-086****COASTAL DEVELOPMENT PERMIT**

On **November 15, 2012**, the California Coastal Commission granted to:

City of San Diego

this permit subject to the attached Standard and Special Conditions, for development consisting of

A 5 year master coastal development permit for clearing of sediment and vegetation and maintenance of storm water facilities to provide adequate flood control

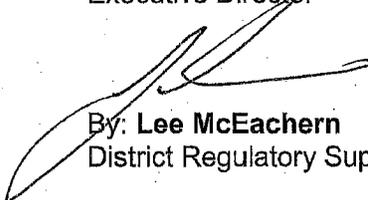
more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

Various drainages within Coastal Zone to include portions of Sorrento, Soledad and Los Penasquitos Creeks; Flinkote, Mission Bay High School and Pacific Beach Drive/Olney Street Channels; and, the Tijuana River, San Diego, San Diego County.

Issued on behalf of the California Coastal Commission by

CHARLES LESTER
Executive Director


By: **Lee McEachern**
District Regulatory Supervisor

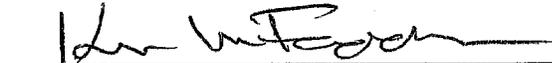
ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

12/20/12
Date


Signature of Permittee

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STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. **Duration of Master Permit.** The Master Permit is valid for a period of five years from the date of Commission action. Future channel maintenance beyond this date will require an amendment to this coastal development permit or a new coastal development permit. Any modification of the project within the five year period, including, but not limited to, changes in channel size or location, timing of work, or staging areas will require an amendment to this permit unless the Executive Director determines that no amendment is legally required.
2. **Substantial Conformance Review.** Channel maintenance activities will be determined by the City on an annual basis. Annual maintenance activities will be approved through the City's Substantial Conformance Review (SCR) process as detailed in the City's Master Storm Water System Maintenance Program dated October 2011 (**ref. Exhibit #4**), except as revised below:

Section 6.2 of the City's Substantial Conformance Review Process titled "State and Federal Agencies" shall be modified to include the following:

Concurrent with the City's SCR process and prior to commencement of work, the City shall submit an annual work plan and supporting documents for priority channels requiring maintenance activities for the upcoming year to the Executive Director of the Coastal Commission for review and written approval. The Executive Director shall review the submitted information to determine whether the proposed maintenance activities are consistent with the Master Maintenance Program and the specific terms of this permit. If any proposed activities are determined by the Executive Director to not be consistent with

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the Master Maintenance Program and terms of this permit, those specific activities shall not be permitted for that year unless reviewed and approved under a separate coastal development permit. The Executive Director shall notify the City of any proposed activities that do not comply with the terms of this permit within 60 days of submittal by the City of the annual work plan. No work may occur during the Executive Director's review period until the 60 day time period has passed.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised Substantial Conformance Review Program that incorporates the above revisions.

3. **Other Permits.** PRIOR TO THE COMMENCEMENT OF DREDGING, the applicant shall submit copies of all other required state or federal discretionary permits (i.e., U.S. Fish and Wildlife Service, Army Corps of Engineers, California Department of Fish and Game, Regional Water Quality Control Board, etc.) for the proposed project to the Executive Director within 30 days of approval of such permits. Any mitigation measures or other changes for the project required through said permits shall be reported to the Executive Director and shall become part of the project. No changes to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site(s) may be subject to hazards from flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

Prior to issuance of the Coastal Development Permit, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

5. **Timing of Construction.** To avoid potential impacts to coastal California gnatcatcher, least Bell's vireo, and other sensitive bird species, during their nesting season, maintenance activities within vegetated channels will not be permitted between the dates of February 15th and September 15th of any year; unless written permission from the California Department of Fish and Game and US Fish and Wildlife Service is provided to the Executive Director for review and written approval.
6. **Construction BMPs.** PRIOR TO THE COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, a Construction Runoff and Pollution Control Plan (CRPCP) shall be submitted to the Executive Director for review and written approval, to address the control of construction-phase erosion, sedimentation, and polluted runoff. The CRPCP shall demonstrate and comply with the following construction-related requirements:

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- a. Prior to the commencement of construction, the limits of the work areas and staging areas shall be delineated in cooperation with a qualified biologist, limiting the potential area affected by construction and ensuring that all agricultural lands, wetlands, and other environmentally sensitive habitats adjacent to construction areas are avoided during construction. All vehicles and equipment shall be restricted to these pre-established work areas and haul routes and to established or designated staging areas. Clearing and grading shall be limited to the minimal footprint necessary and for the shortest time necessary to avoid impacts to adjacent ESHA, riparian habitat and coastal waters;
- b. Best Management Practices (BMPs) shall be designed to control erosion from the disturbed area and prevent sediment and potential pollutants from entering coastal waters and/or native habitat plant communities during channel maintenance activities. The BMPs shall be implemented prior to or concurrent with construction and maintained throughout the project;
- c. In-stream erosion and turbidity control measures shall be implemented during channel dredging activities;
- d. Any newly exposed slopes shall be stabilized to minimize erosion and sediment from runoff waters during maintenance activities using mulch, contour grading and/or other established methods where feasible and appropriate;
- e. Temporary stockpiles of excavated sediment/vegetation should be protected with geofabric or other appropriate cover to prevent dispersal of the stockpile materials. Permanent stockpiling of excavated material on site shall not be allowed. Vegetation and sediment shall be removed from the site(s) on a regular basis during construction to prevent the accumulation of sediment and debris on the worksite. Excavated sediment and vegetation shall be stockpiled at designated temporary areas on the project site(s) and be removed to a permitted disposal site within three months, unless otherwise extended, in writing, by the Executive Director;
- f. During construction, all trash shall be properly contained in a receptacle with a cover over the top to prevent dispersal of trash, removed from the work site, and disposed of on a regular basis (at a minimum of once per week). Any debris discharged into coastal waters during implementation of the approved development shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit and other relevant state and/or federal regulatory controls;
- g. Equipment staging and materials stockpiling areas shall be limited to the locations and sizes specified in the approved final CRPCP. Construction vehicles shall be restricted to designated haul routes. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the final plans approved for the project;
- h. Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of coastal waters; and
- i. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered

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first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be immediately, upon discovery, contained and cleaned up consistent with relevant state and/or federal regulations.

7. **Water Quality Mitigation Measures.** The applicant shall comply with and implement the water quality improvement measures and timeframes identified in the report entitled "Supplemental Information –Water Quality, Appeal No. A-6-NOC-11-086, City of San Diego, Coastal Development Permit, Master Storm Water System Maintenance Program, dated October 2, 2012" (ref. Exhibit #5)
8. **Other Special Conditions from City of San Diego.** Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act. In addition, except as revised herein, the City shall comply with the requirements of the Final Recirculated Master Storm Water System Maintenance Program PEIR Mitigation Monitoring and Reporting Program for the project.
9. **Final Wetlands Mitigation Plan.** PRIOR TO THE COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, the applicant shall submit for the review and written approval of the Executive Director, a final mitigation plan, developed in consultation with Department of Fish and Game and the U.S. Fish and Wildlife Service and designed by a qualified wetland biologist. Said plan shall be in substantial conformance with the mitigation plan submitted with this application and shall be revised to include the following:
 - a. Preparation of a detailed site plan of the impact area(s), clearly delineating all areas and types of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included. The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards. Mitigation for impacts to wetlands shall result in a no-net-loss of function and values and be in-kind habitat to the fullest extent possible and at the appropriate ratios listed below in section d of this special condition. All wetland mitigation shall occur within nine months of impact and either be located on-site or within the same watershed, but in all cases mitigation must occur within the Coastal Zone. Mitigation shall not occur on sites subject to enforcement action where unpermitted development in wetlands has taken place as those sites are subject to restoration and not mitigation;
 - b. For those sites where impacts occur as a result of channel clearing, but mitigation has previously been provided, no additional mitigation is required, except in circumstances where the vegetation to be impacted is currently being utilized by sensitive bird and animal species and said species were not identified as using the areas when previously impacted and mitigation was completed. In such a circumstance, additional mitigation shall be required and shall be developed in consultation with the California Department of Fish and Game and/or U.S. Fish and Wildlife Service.
 - c. Preparation of a baseline ecological assessment of the impact area(s) and any proposed mitigation sites prior to initiation of any activities. Such assessment shall be completed by a qualified biologist and at a minimum shall include quantified estimates of the biological resources and habitat types at each site, description of the functions of these resources and habitats and the associated values. Results of the ecological assessment of the wetland impact area shall form the basis of the goals, objectives, and performance standards for the mitigation project;

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- d. The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project and include final design and construction methods that will be used to ensure the mitigation sites achieve the defined goals, objectives, and performance standards. Each performance standard shall state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Sustainability of the attributes should be a part of every performance standard. Success criteria shall require, and final performance monitoring shall ensure that the mitigation program provides, coverage commensurate with standards identified in the monitoring program (**see Special Condition #10**);
- e. All wetland impacts shall be mitigated at a ratio of 1:1 for temporary impacts, 2:1 for Natural flood channels, 3:1 for impacts to Riparian habitat, and 4:1 for impacts to Freshwater Marsh and Disturbed wetland (removal of giant reed (arundo) and other exotic, invasive and non-native vegetation is not considered an impact to wetlands requiring mitigation);
- f. A minimum 100 ft. buffer, developed in consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service, shall be provided from all newly created wetland/riparian habitat on the off-site mitigation site(s) unless 100 ft. is not available;

The permittee shall undertake mitigation in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. Final Monitoring Program. PRIOR TO THE COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, the applicant shall submit for review and written approval of the Executive Director, in consultation with the Department of Fish and Game, a final detailed monitoring program designed by a qualified wetland biologist/restoration specialist. Said monitoring program shall be in substantial conformance with the Conceptual Wetland Restoration Plan by Helix Environmental Planning, Inc., dated May 2011, and the approved Mitigation Plan required in Special Condition #9 above, but shall be revised to include the following:

- a. Submittal, upon completion of the mitigation site, of "as built" plans. Description of an as built assessment to be initiated within 60 days after completion of the mitigation project. This report shall describe the results of the as-built assessment including a description of how the as-built project differs, if at all, from the originally planned project.
- b. A description of all attributes of the mitigation habitat to be monitored along with the methods and frequency of monitoring. This description shall include a rationale for the types of data collected and how those data will be used. The description shall also clearly state how the monitoring data will contribute to the evaluation of project performance.
- c. A description of provisions for augmentation, maintenance, and remediation of the mitigation project to ensure each mitigation project attains its respective performance standards, throughout the monitoring period or in perpetuity as appropriate.
- d. Annual reports on the monitoring program shall be submitted to the Executive Director for approval for a period of no less than five years for freshwater and brackish water herbaceous communities and riparian scrub communities and 10 years (at a reduced

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intensity) for tree-based communities. Each report shall include copies of all previous reports as appendices. Each annual report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the mitigation project in relation to the performance standards described in Special Condition #9. In addition, biodiversity and cover requirements should be specific to the species and vegetation layers (e.g., in the herbaceous layer, there shall be at least "X" species of plants present from list A, each with no less than "Y"% cover).

- e. Inclusion of a protocol for creation of a comprehensive monitoring report prepared in conjunction with a qualified wetland biologist/restoration specialist at the end of the five or ten year period shall be submitted to the Executive Director for review and approval. This comprehensive report shall consider all of the monitoring data collected over the monitoring period in evaluating the mitigation project performance. Final monitoring for success shall take place no sooner than 3 years after the cessation of all remediation and maintenance activities (including irrigation) other than weeding and trash removal in order to provide evidence that the restoration is self-sufficient. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

The permittee shall undertake monitoring in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. **Mitigation for Upland Impacts.** PRIOR TO COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, the applicant shall submit to the Executive Director for review and written approval, a final detailed coastal sage scrub mitigation plan. Said plan shall be developed in consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game, and shall include, at a minimum, the following:
 - a. Preparation of a detailed site plan delineating all areas and types of impact to upland habitat species (both permanent and temporary) and the exact acreage of each impact;
 - b. All direct impacts to Coastal sage scrub habitat shall be mitigated at a ratio of not less than 1:1 for impacts located outside the City's Multiple Species Conservation Program Multi-Habitat Planning Area (MHPA) and 2:1 for impacts located inside the City's Multiple Species Conservation Program Multi-Habitat Planning Area (MHPA); and
 - c. Except as revised herein, mitigation for upland impacts shall be consistent with those identified in the Final Recirculated Master Storm Water System Maintenance Program PEIR Mitigation Monitoring and Reporting Program approved for the project and consist of either payment in the City's Habitat Acquisition Fund, acquisition and preservation, or purchase of mitigation credits. Mitigation for upland habitat impacts must occur within the Coastal Zone.

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The permittee shall undertake development in accordance with the approved mitigation plan. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.