

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2931

**ORDINANCE AMENDING ARTICLE 10 OF THE SAN
DIEGO UNIFIED PORT DISTRICT CODE,
STORMWATER MANAGEMENT AND DISCHARGE
CONTROL, TO MAKE EDITORIAL AND
CLARIFYING CHANGES IN CONFORMANCE WITH
SAN DIEGO REGIONAL WATER QUALITY
CONTROL BOARD ORDER NO. R9-2013-0001
(MUNICIPAL PERMIT)**

WHEREAS, the San Diego Unified Port District ("District") is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I ("Port Act"); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners ("BPC") to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, Article 10 of the San Diego Unified Port District Port Code ("District Code") establishes requirements, protocols, and procedures detailing how the tidelands resources may be used in compliance with state stormwater rules and regulations; and

WHEREAS, Article 10 of the District Code was originally established in June 2000 to comply with the Regional Board's San Diego County Municipal Stormwater Permit Order No. 2001-01, and was amended in 2007 to comply with a subsequent permit, Order No. R9-2007-0001, and again in 2015 to comply with the current Municipal Stormwater Permit, Order No. R9-2013-001 ("MS4 Permit"); and

WHEREAS, District staff has determined that certain editorial and clarifying revisions to Article 10 should be made to correct certain typographical errors and to clarify requirements relating to the existing stormwater program, in furtherance of the District's compliance with the MS4 Permit; and

WHEREAS, District staff anticipates commencing a more comprehensive effort to revise Article 10 later this year, in conjunction with anticipated amendments to the MS4 Permit in 2019; and

WHEREAS, anticipated updates to Article 10 will include public outreach and stakeholder engagement; and

WHEREAS, the District recommends that the BPC amend Article 10 by incorporating the proposed technical and clarifying revisions herein.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District do ordain as follows:

That Article 10 of the San Diego Unified Port District Port Code is hereby amended to read as follows:

ARTICLE 10

STORMWATER MANAGEMENT AND DISCHARGE CONTROL

SEC. 10.01 — TITLE, PURPOSE AND INTENT

(a) Title. This Article shall be known as “San Diego Unified Port District Stormwater Management and Discharge Control” and may be so cited.

(b) Purpose. The purpose of this Article is to establish a defined set of requirements, protocols and procedures by which the District and users of District tideland resources may operate in compliance with State stormwater regulations. Further, it is the intent of this Article to protect the health, safety and general welfare of the public, tenants, and visitors within District jurisdiction; to protect water resources and to improve water quality; to cause the use of management practices by the District and its tenants and/or subtenants, and users of District tidelands to reduce the adverse effects of polluted runoff discharges on waters of the State to ensure compliance with the Municipal Separate Storm Sewer System (MS4) Permit Order No. R9-2013-0001 (NPDES No. CAS0109266) including any amendments, and any applicable State and Federal law. This Article seeks to promote these goals by:

1. Effectively prohibiting non-stormwater discharges to the MS4;
2. Prohibiting and eliminating all illicit discharges and illicit connections to the MS4, and reducing pollutants in discharges into and from the MS4 to receiving waters, consistent with the prohibitions and limitations of the MS4 Permit;
3. Establishing minimum requirements for stormwater management, including source control requirements to prevent and reduce pollution;
4. Establishing site design requirements for development projects, to reduce stormwater pollution to the maximum extent practicable (MEP) and enhance existing water-dependent habitats;
5. Establishing standards for the use of off-site facilities and areas for stormwater management to supplement on-site practices at Priority Development Projects to meet post-construction BMP performance requirements;
6. Establishing notice procedures and standards for adjusting stormwater and non-stormwater management requirements where necessary;
7. Conforming with the Clean Water Act, the Porter-Cologne Water Quality Control Act, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board, the Water Quality Control Plan for the San Diego Basin adopted by the Regional Water Quality Control Board, and all other applicable State and Federal regulations; and

8. Establishing and identifying enforcement procedures.

(c) Intent. The San Diego Unified Port District intends that this Article shall be the primary enforcement document for the management and discharge control of stormwater and urban runoff within District jurisdiction.

SEC. 10.02 — DEFINITIONS

(a) For purposes of this Article:

Beneficial Uses: means the uses of water necessary for the survival or well-being of humans, plants, and wildlife. These uses of water serve to promote tangible and intangible economic, social, and environmental goals. "Beneficial Uses" of the waters of the State that may be protected include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. Existing beneficial uses are uses that were attained in the surface or ground water on or after November 28, 1975; and potential beneficial uses are uses that would probably develop in future years through the implementation of various control measures. "Beneficial Uses" are equivalent to "Designated Uses" under federal law.

Best Management Practices: means schedules of activities, pollution treatment practices or devices, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or the stormwater conveyance system. BMPs also include, but are not limited to, treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Plans that describe the BMPs to be implemented and other steps to be taken by a Person using property held in trust by the District, as required by the Executive Director to meet all applicable stormwater requirements, including, but not limited to, the prohibitions and limitations of the MS4 Permit, may also be considered a BMP. Such plans may include, but are not limited to, Stormwater Pollution Prevention Plans, Construction BMP Plans, BMP Plans and Rain Event Plans. BMPs may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this Article.

BMPs: means Best Management Practices.

BMP Design Manual for Permanent Site Design, Stormwater Treatment and Hydro modification Management (BMP Design Manual): means a programmatic level guidance document developed to eliminate, reduce, or mitigate the impacts of runoff from development projects, including Priority Development Projects. The BMP Design Manual provides procedures for planning, selecting, and designing permanent stormwater BMPs based on the performance standards presented in the MS4 Permit Order No. R9-2013-0001. The BMP Design Manual replaces the Standard Urban Stormwater Mitigation Plan which was developed pursuant to the 2008 Municipal Stormwater Permit for San Diego County.

Commercial Activity: means any public or private activity involved in the production, storage, transportation, (including transport of persons) distribution, exchange or sale of goods and/or commodities, or providing professional and/or non-professional services. These commercial activities do not include industrial activities, nor do they include any Federal, State, Municipal, or other government agency activities.

Construction Activity: means any activity involving the clearing, grading, and disturbances to the ground such as stockpiling, or excavation that result in land disturbance.

Construction BMP Plan: means a document which describes the BMPs to be implemented and other steps to be taken during the course of construction by the Discharger for projects that do not require coverage under the General Construction Stormwater Permit.

CWA: means the Federal Water Pollution Control Act, commonly known as the Clean Water Act.

Development Projects: means new development or redevelopment with land disturbing activities, structural development, including construction or installation of a building or structure, the creation of impervious surfaces, public agency projects.

Discharge: means any release, spill, leak, flow, escape, dumping, or disposal of any liquid, semi-solid or solid substance.

Discharger: means any person or entity engaged in activities or operations which have resulted or have the potential to result in a discharge to the MS4, or receiving waters; or any person or entity leasing or owning property on which such activities, operations or facilities are located.

Dry Season: means the time period from May 1 through September 30.

Environmentally Sensitive Areas: means areas that include, but are not limited to, all CWA 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance; water bodies designated with the RARE beneficial use by the State Water Resources Control Board; areas designated as preserves or their equivalent under the Multiple Species Conservation Program within the Cities and County of San Diego.

Erosion: means when land is diminished or worn away due to wind, water, or glacial ice. Often the eroded debris (silt or sediment) becomes a pollutant via stormwater runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, road building, and timber harvesting.

ESA: means Environmentally Sensitive Areas.

Facility: means a building, structure, installation or contiguous land, including, but not limited to, terminals or parts of terminals, from which or to which a discharge could occur.

General Construction Stormwater Permit: means NPDES Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities, and any modifications or amendments thereto, or as re-issued.

General Industrial Stormwater Permit: means NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water

Associated with Industrial Activities Excluding Construction Activities, and any modifications or amendments thereto, or as re-issued.

Grading: means the cutting and/or filling of the land surface to a desired slope or elevation.

Illicit Connection: Means any man-made conveyance or drainage system through which a non-storm water discharge to the MS4 occurs or may occur or any connection to the MS4 which has not been reviewed and authorized by the District that conveys an illicit discharge.

Illicit Discharge: means any discharge or release into stormwater, the MS4, receiving waters, or land that is not composed entirely of stormwater, except conditionally allowed discharges described in the MS4 Permit Order No. R9-2013-0001.

Impervious Surface: means any man-made, constructed or modified surface(s) that prevents or significantly reduces infiltration of water or precipitation into the underlying soil, resulting in runoff from the surface in greater volumes and/or at an increased rate, when compared to natural conditions prior to development. The term includes, but is not limited to, parking lots, driveways, streets, roadways, storage areas, rooftops, pavement, sidewalks, compacted gravel, compacted earth and oiled earth.

Industrial Activity: means any public or private activity which is associated with any of the eleven (11) categories of activities defined in 40 CFR 122.26(b)(14) and required to obtain an NPDES permit, or other activities required to obtain an NPDES permit or Waste Discharge Permit for stormwater runoff control, and any facility used for conducting industrial activities.

Industrial Discharger: means a Discharger who conducts any Industrial Activities.

Infiltration: means the process of percolating stormwater or non-stormwater into the subsoil.

Jurisdictional Runoff Management Plan: means a written description of the specific jurisdictional runoff management measures and programs that each Copermittee will implement to comply with MS4 Permit Order No. R9-2013-0001 and ensures that pollutant discharges in urban runoff are reduced to the MEP and do not cause or contribute to a violation of water quality objectives.

JRMP: means Jurisdictional Runoff Management Plan.

LID: means Low Impact Development.

Low Impact Development: means a storm management and land development strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect pre-development hydrologic functions.

Low Impact Development Best Management Practices (LID BMPs): include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States through stormwater management and land development strategies that emphasize conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect pre-development

hydrologic functions. LID BMPs include retention practices that do not allow runoff, such as infiltration, rain water harvesting and reuse, and evapotranspiration. LID BMPs also include flow-through practices such as bio filtration that may have some discharge of stormwater following pollutant reduction.

Maintenance of a BMP: means regularly scheduled activities taken to uphold the as-designed performance of a BMP, and includes, but is not limited to, repairing and cleaning of the BMP as necessary, and replacement of the BMP by an equally effective or more effective BMP at the end of its useful life.

Maximum Extent Practicable: means the technology-based standard established by Congress in CWA Section 402(p)(3)(B)(iii) that operators of MS4s must meet. MEP is further defined in Attachment C of the MS4 Permit Order No. R9-2013-0001.

MEP: means Maximum Extent Practicable.

MS4: means Municipal Separate Storm Sewer System.

Municipal Separate Storm Sewer System: means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural drainage features or channels, modified natural channels, man-made channels, or storm drains, by which urban runoff and stormwater may be conveyed to the receiving waters. The terms “MS4” and “Stormwater Conveyance System” may be used interchangeably.

2008 Municipal Stormwater Permit: means the San Diego County Municipal Storm Water Permit Order No. R9-2007-0001, Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority that was in effect from 2007 through 2013.

MS4 Permit: means Regional Municipal Stormwater Permit Order No. R9-2013-0001 Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region as modified, amended or re-issued.

Non-Stormwater: means all discharges to and from a MS4 or to the receiving water that do not originate from precipitation events (i.e., all discharges from a MS4 other than stormwater). Non-stormwater includes illicit discharges, non-prohibited discharges, and National Pollutant Discharge Elimination System permitted discharges.

National Pollutant Discharge Elimination System: means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the CWA.

NPDES: means National Pollutant Discharge Elimination System.

Person: means in this Article, an individual, association, partnership, corporation, Limited Liability Company, trustee, municipality, State or Federal agency, or any other legal entity, or agent or employee thereof.

Point Source: means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete

fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant: means any substance introduced to the MS4 that may cause or contribute to the degradation of water quality such that public health, the environment, or beneficial uses of receiving waters may be affected.

Pollution: means the alteration of the quality of the receiving water or MS4 by waste, to a degree that unreasonably affects either the waters for beneficial use or facilities that serve these beneficial uses.

Pollution Prevention BMP: means practices and processes that reduce or eliminate the generation of pollutants, in contrast to source control BMPs, treatment control BMPs, or disposal. Stormwater pollution prevention practices that are generally recognized in the applicable industry or business as being effective and economically sound.

Post-Construction BMPs: means a subset of BMPs including structural and non-structural controls which detail, retain, filter, or educate to prevent the release of pollutants to surface waters during the functional life of developments.

Priority Development Projects: means new development and redevelopment projects defined in Provision E.3.b of the MS4 Permit.

Receiving Waters: means Waters of the United States.

Redevelopment: means the creation, addition, and/or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, the addition to or replacement of a structure, and creation or addition of impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of the routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include trenching and resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways; new sidewalk construction, pedestrian ramps, or bike lanes on existing roads; and routine replacement of damaged pavement, such as pothole repair.

RWQCB: means the California Regional Water Quality Control Board for the San Diego Region.

Sediment: means soil, sand, and minerals washed from land into water from anthropogenic sources.

Source Control BMP: means land use or site planning practices, or structural or nonstructural measures that aim to prevent runoff pollution by reducing the potential for contamination at the source of pollution. Source control BMPs minimizes the contact between pollutants and runoff.

Standard Urban Stormwater Mitigation Plan: means a programmatic level guidance document developed to eliminate, reduce, or mitigate the impacts of runoff from development projects, including Priority Development Projects. The SUSMP was developed pursuant to the 2008 Municipal Stormwater Permit for San Diego County.

Stormwater: means stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Conveyance System: this term is used interchangeably with MS4.

Stormwater Pollution Prevention Plan: means a document which meets the requirements set out in the General Construction Stormwater Permit, General Industrial Stormwater Permit, MS4 Permit, JRMP, or this Article. A SWPPP describes the BMPs to be implemented and other steps to be taken by the Discharger to meet the applicable stormwater requirements for a construction site, Facility or for the use of property or resources held in trust by the District, as required by the Executive Director.

SUSMP: means Standard Urban Stormwater Mitigation Plan.

SWPPP: means Stormwater Pollution Prevention Plan.

Stormwater Quality Management Plan: means a plan developed to mitigate the impacts of urban runoff from Priority Development Projects that is in accordance with the MS4 Permit and District JRMP.

SWQMP: means Stormwater Quality Management Plan

Tenant: means any person who enters into a lease agreement or a use permit agreement (including Tideland Use and Occupancy Permits, rental agreements, easements, licenses, and other similar types of agreements) with the District directly or indirectly as a subtenant to the primary leaseholder.

Treatment Control BMP: means any engineered system including BMPs that rely on either a physical condition (other than an entirely natural and undisturbed condition) or a constructed or installed device designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

Urban Runoff: means all flows in a stormwater conveyance system and consists of the following components: stormwater (wet weather flows) and non-stormwater illicit discharge (dry weather flows).

Urban Stormwater Mitigation Plan (USMP): means a plan developed to mitigate the impacts of urban runoff from Priority Development Projects that is in accordance with the 2008 Municipal Stormwater Permit.

Waste: includes sewage and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within the containers of whatever nature prior to, and for purposes of, disposal.

Water Quality Control Plans: means a document adopted by the State Water Resources Control Board that sets forth water quality standards for surface water and groundwater, as well as actions to control nonpoint and point sources of pollution to achieve and maintain these standards.

Water Quality Objective: means numerical or narrative limits on constituents or characteristics of water to protect designated beneficial uses of the water. California's water quality objectives are established by the State and Regional Water Boards in the Water Quality Control Plans.

Water(s) of the State: means any water, surface or underground, including fresh and saline waters within the boundaries of the State (California Water Code Section 13050(e)). The definition of the waters of the State is broader than that for the Waters of the United States in that all water in the State is considered to be a water of the State regardless of circumstances or condition.

Water(s) of the United States: means water subject to the regulatory jurisdiction of the United States under the CWA and applicable case law.

Watershed: means that geographical area which drains to a specified point on a water course, usually a confluence of streams or rivers (also known as drainage area, catchment, or river basin).

Wet Season: means the time period from October 1 through April 30, also known as the rainy season.

SEC. 10.03 — GENERAL PROVISIONS

(a) Construction and Application. This Article is not intended to interfere with, abrogate or annul any other Article, rule or regulation, statute, or other provision of law. The requirements of this Article should be considered minimum requirements, and where any provision of this Article imposes restrictions different from those imposed by any other Article, rule or regulation, statute or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

(b) Compliance Disclaimer. Full compliance by any person with the provisions of this Article shall not preclude the need to comply with other local, State or Federal statutory or regulatory requirements, which may be required for the control of the discharge of pollutants into stormwater and/or the protection of stormwater quality.

(c) Recycled Water. This Article is not intended to prohibit or prevent the use of recycled water provided such use complies with this Article.

(d) Executive Director Authority. The Executive Director is empowered to enforce the requirements of this Article, including, but not limited to, requiring Persons using property or resources held in trust by the District to prepare and implement BMPs to comply with this Article and to take other actions necessary to comply with this Article.

(e) District Permits and Approvals.

1. An application and approval is required for development projects, tenant improvements and construction activity on tidelands. Applications and permits are also required for special events and temporary commercial or industrial activities.

2. An application for any permits or approvals shall be accompanied by plans or documentation demonstrating how the applicable requirements of this Article will be met. No permit or approval shall be granted unless the decision maker determines that the application will comply with this Article.

3. An application for any special event permit or approval shall be accompanied by a deposit to cover any costs or expenses to abate an Illicit

Discharge or to repair any obstruction, damage or other impairment to the stormwater conveyance system.

(f) Procedures, Forms and Documents. The Executive Director may prepare, disseminate and maintain procedures, forms and other documents addressing the use of pollution prevention practices and BMPs and require their use for specific activities or Facilities. The District JRMP, BMP Design Manual, and templates, are available at the District and on the District's website, www.portofsandiego.org.

SEC. 10.04 — CONDITIONALLY ALLOWED NON-STORMWATER DISCHARGES

(a) Conditionally Allowed Non-stormwater Discharges. The following are conditionally allowed non-stormwater discharges as defined in the MS4 Permit.

1. Any discharge or connection to the MS4 regulated under an NPDES permit issued to a Discharger and administered by the State of California pursuant to Division 7 of the California Water Code is allowed, provided that the Discharger is in compliance with all requirements of the NPDES permit and other applicable laws and regulations.

2. Non-stormwater discharges to the MS4 from the following categories are allowed if the discharge has coverage under NPDES Permit No. CAG919001 (Order No. R9-2007-0034, or subsequent order) for discharges to San Diego Bay, or NPDES Permit No. CAG919002 (Order No. R9-2008-0002 or subsequent order) for discharges to surface waters other than San Diego Bay:

- a. Uncontaminated pumped ground water;
- b. Discharges from foundation drains;
- c. Water from crawl space pumps; and
- d. Water from footing drains. When the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year.

3. Non-storm water discharges to the MS4 from water line flushing And Water main breaks are allowed if the discharges have coverage under NPDES Permit No. CAG679001 (RWQCB Order No. R9-2010-0003 or subsequent order), and the Discharger is in compliance with all requirements of that NPDES permit and other applicable laws and regulations. This category includes water line flushing and water main break discharges from water purveyors issued a water supply permit by the California Department of Public Health or federal military installations.

4. Discharges from recycled or reclaimed water lines to the MS4 are conditionally allowed if the discharges have coverage under an NPDES permit, and the Discharger is in compliance with the applicable NPDES permit and other applicable laws and regulations. Otherwise, discharges from water lines are illicit discharges.

5. Non-storm water discharges to the MS4 from the following categories are conditionally allowed, unless the District or the RWQCB

identifies the discharge as a source of pollutants to receiving waters, in which case the discharge is considered an illicit discharge:

- a. discharges from diverted stream flows;
- b. discharges from rising groundwater;
- c. discharges from uncontaminated groundwater infiltration to the MS4;
- d. discharges from springs;
- e. discharges from riparian habitats and wetlands;
- f. discharges from potable water sources, except as set forth in Section 10.04(a) 3.
- g. discharges from foundation drains when the system is designed to be located above the groundwater table at all times of the year, and the system is only expected to produce non-storm water discharges under unusual circumstances; and
- h. discharges from footing drains when the system is designed to be located above the groundwater table at all times of the year, and the system is only expected to produce non-storm water discharges under unusual circumstances.

6. Non-storm water discharges from the following categories are conditionally allowed if they are addressed with BMPs. Otherwise, non-storm water discharges from the following categories are illicit discharges:

- a. Air conditioning condensation.
- b. Individual residential vehicle washing.
- c. Water from swimming pools.

7. Non-storm water discharges to the MS4 from firefighting activities are conditionally allowed if they are addressed as follows:

- a. Non-emergency firefighting discharges. Non-emergency firefighting discharges, including building fire suppression system maintenance discharges (e.g. sprinkler line flushing), controlled or practice blazes, training, and maintenance activities shall be addressed by BMPs to prevent the discharge of pollutants to the MS4.
- b. Emergency firefighting discharges. BMPs are encouraged to prevent pollutants from entering the MS4. During emergencies, priority of efforts should be directed toward life, property, and the environment (in descending order). BMPs shall not interfere with emergency response operations or impact public health and safety.

(b) Notwithstanding the categories of non-storm water discharges conditionally allowed in this section, if the RWQCB or the District determines that any of these categories of conditionally allowed non-storm water discharges are a source of pollutants to receiving waters, are a danger to public health or safety, or are causing a public nuisance, such discharges are prohibited from entering the MS4 and will be considered an illicit discharge.

SEC. 10.05 — PROHIBITIONS

(a) The following prohibitions apply to all persons and activities on land or waters within District jurisdiction.

1. Illicit Discharges. Except as provided in Section 10.04, it is unlawful for any Person to discharge non-stormwater to the MS4. It is unlawful to cause or contribute to any illicit discharge directly or indirectly into the MS4, receiving waters, or land except as conditionally allowed in this Article. It is unlawful for any Person to cause, either individually or jointly, any discharge into or from the MS4 that results in or contributes to a violation of the MS4 Permit.

2. Illicit Connection. It is unlawful to establish, use or maintain an illicit connection to the stormwater conveyance system. This prohibition applies retroactively to connections made in the past, even if the connection was established pursuant to a valid permit and was legal at the time of the connection.

3. Waste and Pollutants Disposed on Land and in Water. It is unlawful to release, discharge, place or deposit any substances, pollutants, or waste, on land or in the MS4 or elsewhere in the receiving waters except in such receptacles as may be provided by the District. It is unlawful to dispose of, or attempt to dispose of, waste by burying it in or under the earth or water.

4. Flammable Materials. It is unlawful to throw, deposit, leave, abandon, pump, or discharge oil, spirits, or any flammable liquid or material on District lands, in the MS4, or in receiving waters.

5. Discharge of Excreta and Sewage. It is unlawful to discharge, or cause or permit the discharge of excreta or sewage, except in designated pump-out stations or restroom facilities. It is unlawful to fail to properly connect any inhabited improvements to a sewage disposal system or sanitary sewer or to permit sewage seepage.

6. Washing of Impervious Surfaces. It is unlawful to discharge, cause or permit the discharge of untreated wash water from the washing of impervious surfaces.

7. Wash Waters. It is unlawful to discharge, cause or permit the discharge of untreated wash water or the washing of any floor coverings such as grates, mats or rugs from any commercial or industrial sites or activities, including but not limited to, restaurants, commercial fishing landings, gas stations, auto repair garages, or from other types of automotive or repair facilities, into the stormwater conveyance system or receiving waters.

8. Irrigation Water Runoff. It is unlawful to discharge, or cause or permit the discharge of irrigation water, including recycled water used for irrigation, landscape irrigation, and lawn watering to the MS4 or receiving waters.

9. Repair, Construction and Demolition Debris. It is unlawful to deposit or abandon waste or building material of any description that has been generated during the repair, construction, or demolition of any structure or vessel. Upon the completion of any repair, construction or demolition, all

Dischargers shall gather up and haul away all waste of every nature, and return the land to a condition equal to or better than its original condition, at their sole cost and expense.

SEC. 10.06 — BEST MANAGEMENT PRACTICE REQUIREMENTS

(a) Applicability. Every Person undertaking any activity or use of a premise or Facility which may cause or contribute to stormwater pollution, illicit discharges, or non-stormwater discharges, shall comply with the BMP guidelines or pollution control requirements as established by this Article and the JRMP.

1. Minimum BMPs for All Persons. All Persons must install, implement and maintain the following minimum BMPs:

a. Pollution Prevention BMPs. Stormwater pollution prevention practices that are generally recognized in the applicable industry or business as being effective and economically sound or as described in the JRMP must be implemented.

b. Proper Use of Materials. All materials with the potential to pollute urban runoff (including but not limited to cleaning and maintenance products used outdoors, fertilizers, pesticides and herbicides) shall be used in accordance with label directions or material safety data sheets.

c. Storage of Materials and Waste. All materials and wastes with the potential to discharge to the MS4 or receiving waters shall be stored in a manner that either prevents contact with stormwater or contains contaminated runoff for treatment and disposal.

2. Minimum BMPs for All Facilities and Activities. All Facilities and/or activities identified in this Subsection must implement and maintain the BMPs applicable to that Facility or activity as identified in the JRMP, as required by the Executive Director, as required by applicable NPDES Permits, as required by other state or federal law or, for Priority Development Projects, as required by the BMP Design Manual:

a. Commercial Facilities and Activities. Commercial facilities and activities must meet the applicable requirements of this Article and the JRMP. This includes, but is not limited to, compliance with all prohibition requirements and minimum BMPs specified in the JRMP for commercial activities.

b. Industrial Facilities and Activities. Facilities and activities subject to the General Industrial Stormwater Permit must install, implement and maintain any additional BMPs required by that Permit in addition to the BMPs required in the JRMP.

c. Construction Activities. Construction activities must meet the applicable requirements of this Article and the JRMP. This includes, but is not limited to, compliance with all prohibition

requirements and minimum BMPs specified in the JRMP for construction activities. Those facilities and activities also subject to the General Construction Stormwater Permit must install, implement and maintain any additional BMPs required by that permit and meet documentation, permit registration and permit close-out requirements of that permit.

(b) Maintenance of BMPs. Every Person undertaking any municipal, construction, commercial or industrial activity, development, or any activity or use of a Facility shall maintain the BMPs necessary to achieve and maintain compliance with this Article. The tenant(s) and operators of lands on which treatment control BMPs, including but not limited to temporary and post-construction BMPs, have been installed to meet the requirements of this Article or the JRMP shall ensure the maintenance of those BMPs at all times. Maintenance of a BMP may be transferred with the following conditions:

1. The District or another public entity may accept responsibility for maintenance of any BMP, under such conditions as the District or other public entity determines are appropriate. Where a maintenance obligation is proposed by a public entity other than the District, the District shall be involved in the negotiations with that agency, and in negotiations with the other agencies responsible for issuing permits for the construction and/or maintenance of the BMP. In these instances, the District must be identified as a third party beneficiary empowered to enforce any such maintenance agreement.

2. Any Discharger who transfers ownership of a BMP or responsibility for the maintenance of a BMP to another Discharger shall provide written notice of the maintenance obligations associated with that BMP to the District and any new or additional responsible party prior to that transfer. No transfer of ownership of a BMP or transfer of maintenance responsibilities to a new responsible party may occur without District approval and signed acknowledgements from all parties involved with the transaction.

3. Inspection, Repair and Upgrading of Treatment Control BMPs. The Discharger must regularly inspect any treatment control BMPs at manned and unmanned facilities to verify that they are functioning as designed. Inspections must be performed at least once a year. The Discharger must repair any treatment control BMPs that fail as soon as it is safe to do so. If the failure of such a BMP indicates that the BMPs in use are inappropriate or inadequate to the circumstances, the Discharger must modify or upgrade the BMPs to prevent any further failure in the same or similar circumstances.

4. Documentation of BMP Maintenance and Inspection of Treatment Control BMPs. The Discharger must maintain inspection records and documentation of routine maintenance and repair of the treatment control BMPs at their facility. Inspection records and documentation of maintenance must be made available to the District upon request.

(c) Stormwater Plan Compliance. Whenever a SWPPP, Construction BMP Plan, or other plan is required, the Executive Director may require consideration of

District documents when determining which BMPs to include in the proposed plan(s) to prevent or reduce pollution. Any Person required to prepare a SWPPP or Construction BMP Plan or other plan shall install, implement and maintain the BMPs identified in the plan for the life of the project or the duration of the pollutant generating activities. Such plans may be required for:

1. NPDES Permits. Any Discharger that owns or operates industrial facilities or activities subject to the General Industrial Stormwater Permit shall prepare and maintain on site an up-to-date SWPPP as required by the applicable NPDES Permit. Any Discharger that owns or operates construction activities subject to the General Construction Stormwater Permit shall prepare and maintain on site an up-to-date SWPPP as required by the applicable NPDES Permit.

2. District Requirements. In addition to any other authority provided in this Article 10, the Executive Director may require any Person to prepare, submit and implement a SWPPP, Construction BMP Plan, or other plan if:

- a. A Person proposes to undertake any construction activities, whether or not such activity is subject to the General Construction Stormwater Permit;
- b. A Person does not come into compliance with this Article after one or more warnings or other enforcement actions in response to inadequate implementation or maintenance of BMPs;
- c. The Facility or activity at issue is a source of pollutants to receiving waters despite compliance with this Article; or
- d. To ensure compliance with the MS4 Permit.

SEC. 10.07 — INSPECTION AND MAINTENANCE OF STORMWATER CONVEYANCE LATERALS, SEWER LATERALS AND ON-SITE WASTE WATER SYSTEMS

(a) Inspection and Maintenance of Stormwater Conveyance Laterals, Sewer Laterals and On-site Wastewater Systems. Stormwater conveyance laterals shall be cleaned, maintained and replaced when necessary to prevent seepage and spills. Sewer laterals shall be cleaned, maintained and replaced when necessary to prevent seepage and spills. On-site wastewater systems shall be pumped, maintained, and modified or replaced when necessary to prevent spills.

1. Spills. Any spill or release from the failure of a stormwater conveyance lateral, sewer lateral or on-site wastewater system shall be contained and cleaned-up in a manner that minimizes any release of pollutants.

2. Damaged or Failed Systems. Damaged or failed stormwater conveyance laterals, sewer laterals or on-site wastewater systems shall be repaired or replaced, after obtaining all required permits and approvals.

SEC. 10.08 — MONITORING AND REPORTING REQUIREMENTS

(a) Applicability. All Dischargers shall comply with this Section.

(b) Reporting of Spills, Releases and Illicit Discharges. The Discharger shall report spills, releases, and illicit discharges to the stormwater conveyance system or to receiving waters to the District upon discovery and as otherwise required by applicable State and Federal laws, rules or regulations. The Discharger shall provide copies to the District of any and all communications between the Discharger and any other government agency upon request. If safe to do so, the Discharger shall take immediate action to contain and minimize the spill, release or illicit discharge.

(c) Monitoring. Any Discharger required to sample, test, monitor, and report shall make the results of such activities available to the District upon request at the Discharger's sole expense. Sampling, testing, monitoring, and reporting may be required for:

1. NPDES Permits. Discharges subject to the General Industrial Stormwater Permit and the General Construction Stormwater Permit shall perform the sampling, testing, monitoring and reporting required by the applicable NPDES Permit.

2. District Requirements. Whenever a SWPPP, Construction BMP or other plan is required, the Executive Director may require the Discharger to perform sampling, testing, monitoring and reporting.

3. District Orders. The Executive Director may order a Discharger to conduct testing or monitoring and to report the results to the District at the Discharger's sole expense if:

- a. The Executive Director determines that testing or monitoring is needed to determine whether BMPs are effectively preventing or reducing pollution in stormwater as required by this Article, or to determine whether the facility is a significant source of pollutants to receiving waters;
- b. The Executive Director determines that testing or monitoring is needed to assess the impacts of a spill or illicit discharge;
- c. A spill or illicit discharge has not been eliminated after written notice by the Executive Director;
- d. Repeated violations have been documented by written notices from the Executive Director; or
- e. The RWQCB requires the District to provide any information related to the Discharger's activities.

(d) Testing. The Executive Director may determine the manner in which any testing and monitoring must occur, and may determine when required sampling, testing or monitoring may be discontinued. Testing and monitoring ordered may include the following:

1. Visual monitoring of dry weather flows, wet weather erosion, and/or BMPs;
2. Visual monitoring of premises for spills or discharges;

3. Laboratory analyses performed by a California State Certified Laboratory of stormwater or non-stormwater discharges for pollutants;
4. Background or baseline monitoring or analysis; and
5. Monitoring of receiving waters or sediments that may be affected by pollutant discharges by the Discharger (or by a group of Dischargers including the Discharger).

(e) Reporting of Testing Results. The Executive Director may determine the manner in which the results of any testing and monitoring are reported.

SEC. 10.09 — DEVELOPMENT AND REDEVELOPMENT PROJECTS

(a) Applicability. The following requirements are applicable to all development and redevelopment activities.

(b) Post-Construction BMP Requirements for all development projects. Development and redevelopment projects as defined in the BMP Design Manual shall be designed to include and shall implement post-construction BMPs consistent with the BMP Design Manual. Post-construction BMPs must ensure that pollutants and runoff from the development will be reduced to the MEP, will not significantly degrade receiving water quality, and will not cause or contribute to an exceedance of receiving water quality objectives.

(c) BMP Operation and Maintenance Verification. Annual written verification of effective operation and maintenance of each approved treatment control BMP by the Discharger is required to be submitted to the District at the Discharger's sole expense prior to each wet season.

(d) Any proposed alteration or construction activity to a development project where post-construction BMPs had been previously installed must evaluate whether the proposed alteration or construction activity will impact the original design, intent, or pollutant removal effectiveness of the post-construction BMP at the site. Any proposed impacts to post-construction BMPs must be addressed either by replacement or upgrade as required to meet the conditions of the development project approval, the JRMP, or this Article.

(e) Priority Development Projects. Priority Development Projects are subject to structural BMP requirements as defined in the BMP Design Manual. All Priority Development Projects (including ministerial projects) shall be designed using the methods described in the BMP Design Manual and shall include all applicable studies and reviews required by the BMP Design Manual.

1. Priority Development Project BMP Requirements. All priority development projects shall implement the post-construction BMPs unless they have provided a written determination, to the satisfaction of the District that said BMPs are not applicable or feasible.

2. Stormwater Quality Management Plan. All Priority Development Projects shall develop a SWQMP and submit the plan for the District's review and approval. The SWQMP must reflect the actual constructed condition of the Priority Development Project.

3. Priority Development Project BMP Requirements. All Priority Development Projects shall implement post-construction BMPs consistent with the BMP Design Manual unless they have provided a written determination, to the satisfaction of the District that said BMPs are not applicable or feasible.

(f) Post-Construction BMP Operations and Management Plan. All applications for a permit or approval associated with a development or redevelopment project subject to structural treatment control must be accompanied by a post-construction operations and management plan specified by the District. The plan shall specify the manner in which the applicant will implement the post-construction BMPs required by this Article.

(g) Stormwater Management Plan Review Deposit. The District may require a monetary deposit to pay the estimated reasonable costs for the review of any development or redevelopment project proposal for compliance with this Section. Such a monetary deposit must be approved by the Board of Port Commissioners prior to implementation.

(h) Alternative Compliance for Priority Development Projects. Pursuant to Provision E.3.c.(3) of the MS4 Permit, the District may authorize the use of off-site facilities and areas for stormwater management to supplement on-site BMPs at Priority Development Projects as an alternative compliance measure to meet post-construction BMP performance requirements. The applicant must meet all the terms and conditions of the District alternative compliance approval within the required timeframe.

(i) Waivers. Principal permits or approvals sought for a project otherwise subject to this Section may be waived if the Executive Director determines that compliance would be infeasible.

SEC. 10.10 — OTHER ACTS AND OMISSIONS THAT ARE VIOLATIONS

The following acts and omissions are violations of this Article:

(a) Causing, Permitting, Aiding or Abetting Non-Compliance. It is unlawful to cause, permit, aid or abet non-compliance with any part of this Article.

(b) False Statements, Misrepresentation and Concealment. It is unlawful to make any false statement or misrepresentation to the District or its agents concerning compliance with this Article. False statements or misrepresentations may include, but are not limited to, any misrepresentation in a voluntary disclosure, any submission of a report that omits required material facts without disclosing such omission, and any withholding of information required to be submitted by or pursuant to this Article. It is unlawful to conceal a violation of this Article.

(c) Failure to Promptly Correct Non-Compliance. Violations of this Article must be corrected as soon as practical or within the time period specified by the Executive Director. Each day or part thereof that action necessary to correct a violation is not initiated and diligently pursued is a separate violation.

(d) Continued Non-Compliance. A separate violation may be considered to have taken place for each day non-compliance with this Article exists.

(e) Permits, Approvals and SWPPPs. It is unlawful to fail to conform with an applicable SWPPP, Construction BMP Plan, or another plan required pursuant to this Article or fail to comply with urban runoff-related provisions in any other District permit or approval.

SEC. 10.11 — INSPECTIONS

(a) Authority to Inspect. The Executive Director is authorized to inspect activities and facilities, whether or not occupied, at reasonable times, in a reasonable manner, and with reasonable notice to carry out the purposes of this Article or any applicable statute, rule, code or regulation enforceable by the District.

(b) Scope of Inspections. Inspections may include any and all actions necessary to determine compliance with this Article. Inspections may include, but may not be limited to sampling, taking measurements, metering, and placing devices necessary to sample, monitor, meter, record, visually inspect and review records. When samples are collected, the owner or operator may request and receive split samples. Records, reports, analyses, or other information required under this Article may be inspected and copied, and photographs taken to document a condition and/or a violation of this Article.

SEC. 10.12 — ENFORCEMENT

Violations of this Article may be deemed a threat to public health, safety and welfare, and the environment and are identified as public nuisances. The Executive Director may enforce this Article and abate public nuisances in his or her discretion as follows:

(a) Administrative Authorities. Written and/or verbal orders may be issued to stop any action in violation of this Article or any applicable statute, rule, code or regulation enforceable by the District, including but not limited to the elimination of illicit discharges or the removal of illicit connections

1. Administrative Citation. An Administrative Citation may be issued and civil penalties may be imposed pursuant to Section 0.11 (i). Administrative citations may be issued to discipline a Discharger for violations of this article, to require abatement, corrective, remedial, and/ or mitigation activities, including but not limited to any of those listed in Section 10.06 or any applicable statute, rule, code or regulation enforceable by the District. All required actions must be performed within a reasonable period of time as determined by the Executive Director. An Administrative Citation may also be issued to abate any public nuisance created by or resulting from a violation of this Article, including summary abatement. All costs to detect and abate any such public nuisance shall be borne by the violator and/ or the tenant of the premises on which the public nuisance exists. .

2. Stop Work Orders. Whenever any work is being done contrary to the provisions of this Article, or any applicable statute, rule, code or regulation enforceable by the District, the Executive Director may order the work stopped by notice in writing, served on any person performing the work or causing such work to be done, and any such person shall immediately stop

such work until authorized by the Executive Director to proceed. Any challenge to the abatement costs or the necessity of manner of abatement shall be resolved through the hearing procedures in Section 0.11(i).

3. Summary Abatement. If the Executive Director determines that a public nuisance exists and immediate action is necessary to preserve or protect the public health or safety, the District may summarily abate the nuisance by any reasonable means without notice or hearing. Any challenge to the abatement costs or the necessity or manner of abatement shall be resolved through the hearing procedures in Section 0.11(i).

4. Permit Suspension and Revocation. Violations of this Article or any applicable statute, rule, code or regulation enforceable by the District may be grounds for suspension, revocation or modification of any permit, license or approval. Suspensions and revocations shall occur in accordance with the hearing procedures in Section 0.11(i).

(b) Judicial Authorities.

1. Injunctive or Declaratory Relief. Any violation of this Article or any applicable statute, rule, code or regulation enforceable by the District may be enforced by a judicial action for injunctive or declaratory relief.

2. Civil Penalties and Remedies. The District may file actions in Superior Court to enforce this Article or any applicable statute, rule, code or regulation enforceable by the District, seeking civil penalties and/or other remedies as provided in this Section and in Section 10.12. There is no requirement that administrative enforcement authorities be used before such actions are filed.

3. Criminal Arrest. The assistance of a peace officer may be enlisted to arrest violators as provided in California Penal Code, Ordinances 5, 5c, 5d of Title 3, Part 2 (or as amended) and/or a citation and notice to appear as prescribed in Ordinance 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as amended) may be issued. There is no requirement that administrative enforcement authorities be used before such actions are filed. The immunities prescribed in Section 836.5 of the Penal Code are applicable to the Executive Director and his or her designees acting in the course and scope of their employment pursuant to this Article.

(c) Administrative Penalties. Administrative penalties may be imposed pursuant to District Code Section 0.11(i). Any later-enacted administrative penalty provision in the District Code shall also be applicable to this Article, unless otherwise provided therein.

(d) Criminal Penalties. Criminal penalties may be imposed pursuant to District Code Section 0.11.

1. Misdemeanor. Non-compliance with any part of this Article constitutes a misdemeanor and may be enforced and punished as prescribed in Section 0.11 and any other applicable statute, rule or regulation.

2. Infraction. The Executive Director may charge any violation of this Article as an infraction at his or her discretion. Infractions may be abated as a nuisance or enforced and punished as prescribed in Section 0.11 and any other applicable statute, rule or regulation.

(e) Civil Penalties. The following may be awarded without monetary limitation in any civil action, except where a maximum monetary amount is specified:

1. Injunctive relief;
2. Costs to investigate, inspect, monitor, survey or litigate;
3. Costs to, place or remove soils or erosion control materials, to correct any violation, and to repair environmental damage or to end any other adverse effects of a violation;
4. Compensatory damages for losses to the District or any other plaintiff caused by violations; and/or restitution to third parties for losses caused by violations;
5. Civil penalties in accordance with District Code Section 0.11(i); and
6. Attorney fees and court costs as permitted by law.

(f) Cost Recovery. The Executive Director may impose a monetary penalty without limitation to recover the costs, including staff time and materials, to investigate or monitor any violation of this Article.

(g) Attorney Fees. In any action, administrative proceeding or special proceeding to enforce this Article and abate a nuisance, the prevailing party may recover attorney fees if, at the initiation of the action or proceeding, the District elects to seek recovery of its own attorneys' fees. In no event shall the award of attorney fees to the prevailing party exceed the amount of reasonable attorney fees incurred by the District in the action or proceeding.

(h) Penalties and Remedies Not Exclusive. Penalties and remedies under this Article may be cumulative and in addition to other administrative, civil, or criminal remedies.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By:  Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of October 2018, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Malcolm, Moore


ABSENT: None.

ABSTAIN: None.



Rafael Castellanos, Chairman
Board of Port Commissioners

ATTEST:



Donna Morales
District Clerk

(Seal)