

CALIFORNIA COASTAL COMMISSION

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Commission Action:

TH 25d.

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-08-242

APPLICANT: County of Los Angeles Department of Public Works

PROJECT LOCATION: Oxford Basin Pump Station, Marina del Rey

PROJECT DESCRIPTION: Construct a low-flow diversion system to divert flows to the existing sanitary sewer line, including reconstructing concrete channel at the Oxford Basin outlet structure.

Lot Area	10.7 acres
Zoning:	Open Space

SUBSTANTIVE FILE DOCUMENTS: Marina Del Rey certified Local Coastal Plan, 1995

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission grant a permit for the proposed development with conditions regarding: 1) biological surveys and monitoring; 2) noise impacts; 3) erosion control and water quality measures; 4) monitoring of low flow facility; 5) wetland mitigation; 6) maintaining of public access during construction; and 7) Army Corps approval. As conditioned, the proposed development conforms with the marine resource protection and coastal access policies of the Coastal Act.

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-08-242 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 this permit is reported to the Commission. 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.

III. SPECIAL CONDITIONS

1. Biological Surveys and Monitoring

By acceptance of this Coastal Development Permit, the applicant agrees to retain the services of a qualified independent biologist or environmental resource specialist with appropriate avian survey and noise monitoring qualifications acceptable to the Executive Director. The qualified biologist or resource specialist will conduct surveys of trees on and adjacent to the project site (within 300 feet of any construction activities), just prior to any construction activities and once a week upon commencement of construction activities that include grading/dredging or use of other heavy equipment, and that will be carried out between **December 1st and September 30th**, inclusive. Such surveys shall identify the presence, nests, and eggs or young, of black-crowned night herons, snowy egrets, great egrets, great blue herons or other sensitive species in or near the project site. All surveys shall be submitted to the Executive Director of the Coastal Commission. In the event that the surveys identify any black-crowned night herons, snowy egrets, great egrets, great blue herons or other sensitive species exhibiting reproductive or nesting behavior on or adjacent to the project site (within 300 feet of any construction activities), the following measures shall be implemented:

- A qualified biologist shall be present at all weekly construction meetings and during all significant construction activities including pile driving, jack hammering (concrete demolition) or other hardscape demolition, to ensure that nesting birds are not disturbed by construction related noise. The qualified biologist shall be onsite monitoring birds and noise every day at the beginning of the project during the concentrated heavy equipment use. The qualified biologist shall review the 2006 guidance issued by the USFWS for estimating the effects of auditory and visual disturbance to northern spotted owls and marbled murrelets. The following list of variables, considered critical by the USFWS, shall be monitored by the qualified biologist assigned to this project: types of sound sources, distances from the sound sources to the birds, level of ambient noise in the environment, levels of anthropogenic (human-generated) noise, sound-modifying features of the environment, visual cues correlated with the noise, and behaviors associated with sound sources including startle movements, changes in foraging or reproductive rituals, interruption feeding young, nest abandonment, etc.

2. Heron and egret noise impact minimization

- Noise generated by construction (including but not limited to pile driving) shall not exceed ambient noise levels at the construction site and in **NO CASE** shall construction noise exceed **85 dB(A)** at any active nesting site. If construction noise exceeds 85 dB(A) sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of muffler, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not

reduce noise levels, construction within 300 feet of the nesting trees shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

- Construction staging areas or equipment shall not be located under any nesting trees and construction employees shall be prohibited from bringing pets (e.g., dogs and cats) to the construction site. Bright upward shining lights shall not be used during construction.

3. STOCKPILING, STAGING, AVOIDANCE OF SILTATION, AND EROSION CONTROL.

A. Applicant shall not allow discharge of silt or debris into coastal waters as a result of this project. Pursuant to this requirement, prior to issuance of a coastal development permit, the applicant shall agree in writing to require that the final plans shall minimize construction impacts of the project and that all contracts and other written materials shall include the requirements listed below. The applicant shall further agree that the final plans shall identify acceptable locations for stockpiling and staging of materials; plans for control of erosion, stockpiled earth from trenches, and cement; as well as plans for the disposal of construction materials. The plans shall contain the following:

1) A delineation of the areas to be disturbed by grading or construction activities including any temporary trenches, staging and stockpile areas.

2) The plan shall include source control Best Management Practices as part of a written plan designed to control dust, concrete, demolition pavement or pipe removed during construction, and/ or construction materials, and standards for interim control and for clean up. All sediment waste and debris should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill. Contractors and County Inspectors shall monitor and contain oil or fuel leaks from vehicles and equipment.

3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: filling or covering all holes in roadways such that traffic can continue to pass over disturbed areas, stabilization of all stockpiled fill, disturbed soils and trenches with shoring, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained at least on a weekly basis until grading or construction operations resume.

B. Prior to commencement of construction the applicant and its contractor(s) shall provide for the review and approval of the Executive Director final plans and plan notes that conform with the requirements of item A above. No work shall take place until the Executive Director approves the plans in writing.

C. Conformance with plans. All work shall take place consistent with the plans submitted in compliance with A above.

4. MONITORING AND MAINTENANCE

Prior to issuance of the permit the applicant shall prepare for the review and approval of the Executive Director, a program for annual or periodic inspection and appropriate monitoring and maintenance of the diversion device, the pumps and the trash separator. The plan shall establish the frequency that debris shall be removed from the trash separator, and shall identify the maintenance needs of the pump and other mechanical devices that the applicant proposes to employ. The applicant shall provide the reasoning, the monitoring and maintenance manuals, and the statistics upon which such a schedule is based. The applicant shall monitor and maintain the approved facility consistent with the approved plan.

5. SOFT BOTTOM HABITAT MITIGATION PLAN

With the acceptance of this permit the applicant agrees that prior to issuance of this permit, the applicant shall submit, for the review and approval of the Executive Director, written evidence of participation in a mitigation program designed in consultation with, and approved by, the National Marine Fisheries Service, California Department of Fish and Game, United States Department of Army Corps, and the Coastal Commission's Executive Director. The mitigation program shall be in an area ecologically connected with Marina del Rey to mitigate the loss of 36 square feet of soft bottom habitat associated with this project with the substantial restoration of open water soft bottom or other tidally influenced wetland habitat at a ratio of 3:1 [mitigation : impact].

6. PUBLIC ACCESS

The adjacent public bicycle path shall remain open to the public during the entire construction period and signs shall be posted to inform the public of the construction and the continued availability of the pathway.

7. U.S. ARMY CORPS OF ENGINEERS APPROVAL

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of the final permit issued by U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to install a low flow diversion system and leakage drain to the Oxford Pump Station. The Oxford Pump Station is located on the northeastern end of the Oxford basin, located south of the Oxford Avenue and Washington Boulevard intersection. The low-flow diversion system consists of modifications to the outlet structure (Project 3872), an 18" diversion line, pump well, valve vault, flow meter, sampling vault, telemetry system, and approximately 700 feet of 4-inch discharge line connected to the City of Los Angeles sanitary sewer. The diversion system is a water quality improvement for this storm drain line to comply with summer and winter dry weather Bacterial Total Maximum Daily Load requirements for Marina del Rey.

Modifications to the outlet structure consist of removing approximately 18 feet long by 14 feet wide reinforced concrete section of channel and construction of an approximately 22 feet long by 18 feet wide reinforced concrete channel with a headwall. Four 42-inch diameter Tideflex check valves will be installed in the headwall to pass storm flows into Oxford Basin and prevent salt water from Oxford Basin flowing back into the diversion system. The proposed project will require excavation of approximately 5 cubic yards of material, and approximately 20 cubic yards of backfill material, and require the temporary installation of a coffer dam in the channel and in front of the outlet to prevent water intrusion from the basin during construction.

The enlargement of the concrete channel will extend four feet into the existing soft bottom channel, impacting 36 square feet of wetlands. Approximately six *Myoporum* trees adjacent to the outlet will be removed or trimmed to install the equipment.

The Oxford flood control basin is comprised of approximately 11 acres. The bottom and sloping sides of the basin are mud lined, except for the two storm drain inlets and slide gate, which are cement lined. The storm water drainage basin is designed to collect storm water runoff from the surrounding areas, which then drains, via an approximately 400 foot long underground line, into the marina. The basin is surrounded by chain link fencing, and bordered by Washington Boulevard and residential development along Oxford Avenue to the north, Admiralty Way to the south, a public parking lot to the west, and Admiralty Park to the east.

The existing uses surrounding the site include residential and commercial development and open space. There are single-family residences located to the north across Washington Boulevard and along Oxford Avenue. Hotel development is located to the south and along the south side of Admiralty Way, and to the west. Admiralty Park, a linear passive park is located to the east along the north side of Admiralty Way. An approximately 10 foot wide bicycle path (South Bay Bike Trail) continues from Admiralty Park along the north side of the basin to Washington Boulevard.

B. Biological Resources

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges- and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states, in part:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
 - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

Section 30240 of the Coastal Acts states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which*

would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Sections 30230 and 30231 of the Coastal Act mandate that marine resources and coastal water quality shall be maintained and where feasible restored, protection shall be given to areas and species of special significance, and that uses of the marine environment shall be carried out in a manner that will sustain biological productivity of coastal waters.

Stormwater runoff (including storm sewer discharges) continues to be the largest source of pollution in Santa Monica Bay and across California.¹ It is a predominant cause of beach closures in each region of the state. It is the source of significant impact to the Marina as well. The County Periodic Review submittal of water quality testing results noted that the Marina is impacted spatially from pollutants from Oxford Retention Basin and Ballona Creek, both of which collect runoff from significant inland areas, from the open ocean as well as other temporal impacts. The proposed project is designed to divert year round low flows to the sanitary sewer system providing a decrease in ocean water pollution. The proposed project will comply with the summer and winter dry weather Bacterial Total Maximum Daily Load (TMDL) requirements for Marina del Rey.

1. Habitat

The marina provides habitat for numerous species of fish and waterfowl. Fish species include top smelt, northern anchovy, sea bass, and halibut. Birds include the State and Federally endangered California least tern (*Sterna antillarum brownii*), California brown pelican, Cormorant, Black-crowned Night Herons and Snowy Egrets.

The 10.7 acre Oxford Retention basin is located approximately 400 feet from the marina and is connected to the marina via an underground line that outlets in the northern portion of the marina. The basin itself contains brackish water, a mix of salt water from the basin's marina outlet and freshwater from the storm drains that outlet into the basin. Because the basin is a drainage impoundment, collecting runoff from drainage pipes that drain a highly urbanized area, the water quality is considered poor, and with the fluctuation in salinity, may not be suitable as fish habitat. Furthermore, the 400 foot long underground drain pipe is an impediment to fish recruitment into the basin. The County must also maintain basin water levels below sea level to ensure adequate capacity to contain runoff and allow drainage into the marina in order to prevent flooding of the surrounding neighborhoods during storm events. The need to maintain the flood control function of the basin may not allow for increased tidal flushing to potentially improve habitat values. The proposed low flow diversion is intended to improve the quality of the water that drains into the marina via the basin during low-flow events. In the future, the County can investigate and develop other methods to improve the water quality and enhancement of the habitat value of the basin. The public has raised concerns regarding the tide gate located at the western end of the basin and the County's previous improvements or replacement to the gate and the controlled tidal regime. The tide gate, although part of the Oxford Basin, is a separate issue. The proposed project is located on the far eastern side of the Basin and has no affect on the tidal regime, which is controlled by the tide gate. Staff is

¹ NRDC Testing the Waters 2004 pp CA-3.

currently investigating the County's improvement or replacement of the gate. However, the proposed project is not related to the tide gate and will not prejudice the County's ability for future water quality enhancement and habitat improvements within the basin.

With regards to avian habitat, the 1984 and 1995 certified LCP states that, due to pollutant levels resulting from its storm water collection function, the Oxford Basin does not provide suitable habitat, and because of the pollutant levels the sediments could be harmful to birds. However, in the 1995 certified LCP and in the Periodic Review, the Oxford Basin is considered an area for possible habitat restoration. In the recent periodic review, the Commission recommended the following:

60. Habitat enhancement and restoration of the Oxford basin should be identified as a goal in a future LCP amendment. Although the Oxford Basin is a flood control basin it has restoration potential as a transitional upland/wetland area for wading birds. To the extent feasible, the Oxford Basin area should be restored to provide habitat for wading birds and for passive public recreation while maintaining its function as a flood control facility. A restoration/enhancement plan should be prepared for the area and designed to improve the water quality of runoff entering the basin and should include specific measures to filter and infiltrate runoff. The plan should include an interpretive signage program and any public trails through the area should be sited and designed to minimize disturbance to nesting birds. Any dredging of the basin for routine maintenance or habitat enhancement purposes shall comply with the Water Quality Policies of the LCP, Regional Water Quality Control Board requirements, California Department of Fish and Game Regulations, and Army Corps and US Fish and Wildlife Regulations.

The land area within the basin, and surrounding the project's stormdrain outlet, is vegetated with non-native grasses and Myoporum, which is a non-native and invasive tree. Myoporum is not used for nesting for bird species, such as the heron or egret that are generally found nesting in eucalyptus, cypress, and palms located in other areas of the marina. Although herons and egrets are not found nesting in the basin, the trees (eucalyptus) located adjacent to and along the bicycle path to the north of the basin and project site, and to the east within Admiralty Park, have been known to contain heron nests. According to a report (*Marina Del Rey Heronry*, by Jeffrey B. Froke, Ph.D., May 2006), in 2004-2005, there were approximately 27 trees (eucalyptus) located along the north side of the bicycle path, between the basin and the residential development along Oxford Avenue, and Admiralty Park, that were used for nesting by Black-crowned Night Herons and Snowy Egrets. Approximately 24 of the trees are located within 300 feet of the project drain outlet and the proposed drain line that will extend from the outlet, along the bicycle path, to the Washington Street sewer line.

The applicant has stated that construction will need to be conducted during the non-rainy season to avoid problems with water runoff within the storm drain during construction. Construction is planned between March and June. The nesting season for the herons and egrets extends from approximately March through August, but can extend from December through September. Therefore, proposed construction will occur during the nesting season. The Initial Study recommends that pre-construction surveys be conducted during the breeding bird season (March 1- August 31) and prior to and during the anticipated 90 day construction period. However, this measure is to ensure construction activity does not directly impact any nests in the

event that any trees within the basin would need to be trimmed or removed. The Initial Study does not address impacts to surrounding nesting birds that could be disturbed due to loud construction noise or vibrations caused by pile driving, jack hammering, or trenching with heavy machinery.

Noise impacts on Birds

The effects of highway and construction noise upon birds are not well known, however, significant noise levels may impact birds in a number of ways. Continuous noise above the ambient environment or single or multiple loud impulse noise may produce changes in bird foraging and reproductive behavior; mask signals birds use to communicate; mask biological signals impairing detection of sounds of predators and/or prey; decrease hearing sensitivity temporarily or permanently; and/or increase stress and alter reproductive and other hormone levels.² Dooling and Popper prepared a review report in 2007 for Caltrans titled, "The Effects of Highway Noise on Birds".³ In this report they review the literature for studies that evaluate the impacts of traffic and construction noise on birds. They list three classes of potential effects of noise on birds: (1) physiological and behavioral effects; (2) damage to hearing from acoustic over-exposure; and (3) masking of important bioacoustic and communication signals all of which may also lead to dynamic behavioral and population effects.

Much of the information regarding impacts of noise on birds has been extrapolated from studies involving the influence of noise on humans and other mammals. A relatively small number of studies have focused directly on impacts of noise on birds and those studies have been performed on a limited number of bird species; to date no studies of noise impacts have been performed on wading bird species. Dooling and Popper (2007) state that, "Generally, humans have better auditory sensitivity (lower auditory thresholds) both in quiet and in noise than does the typical bird." Mammals in general have much greater auditory sensitivity than birds. Birds are more resistant to both temporary and permanent hearing loss or to hearing damage from acoustic overexposure than are humans and other mammals that have been tested.⁴

Sixty decibels (60 dB) is a widely used threshold for projects involving heavy equipment in areas supporting sensitive bird species. This threshold criterion is used by many agencies and consultants as the noise threshold, above which, birds may be adversely impacted. While this decibel range appears to be widely accepted and employed for projects involving potential noise impacts upon birds, its use is without well founded scientific

² Longcore, T. & C. Rich. 2001. A Review of the Ecological Effects of Road Reconfiguration and Expansion on Coastal Wetland Ecosystems. The Urban Wildlands Group

³ Dooling, R.J. & A.N. Popper. 2007. The Effects of Highway Noise on Birds. Prepared for: The California Department of Transportation, Division of Analysis. Prepared by: Environmental BioAcoustics LLC, Rockville, MD

⁴ Op. Cit. Dooling & Popper 2007

justification.⁵ Noise levels in quiet outdoor rural areas range from 40 to 45 dB(A)⁶ and from 50-55 dB(A) in quiet suburban areas.⁷ The 60 dB criterion stems from taking average ambient environment noise measurements and determining at what noise level, beyond that measured in the natural environment, would one expect to see adverse effects on avian vocal communication.⁸ And while this criterion is valuable as a starting point for it is conservative and protective, ambient environment noise levels must also be analyzed and figured into the decibel thresholds applied to projects on a case by case basis. Rural areas will have much lower exposure to significant ambient noise compared to urban areas. And while all projects have specific and unique circumstances, those with the potential to adversely impact sensitive bird species due to increased noise levels must minimize those noise impacts to the maximum extent possible.

Dooling and Popper, in their 2007 report, present a table with guidelines for potential noise effects on birds at relative distances from the source based on a synthesis of the available literature. Hearing damage can potentially result from single impulses at or above 140 dB(A) or multiple impulses at or above 125 dB(A) when birds are close to the source. At greater distances from the noise source, where noise levels fall below 110 dB(A), birds may experience a temporary loss of hearing (known as a temporary threshold shift) from continuous noise above 93 dB(A). Masking may occur at decibels above and below 93 dB(A) depending on ambient noise levels. At even greater distances from the noise source, where the noise is still above ambient levels, masking may occur. Dooling and Popper suggest that noise levels below 50 to 60 dB(A) are unlikely to cause masking.

Oxford Basin Project

The Oxford Basin Project involves construction of a low-flow diversion system to divert flows to the existing sanitary sewer line, including reconstructing the concrete channel at the Oxford Basin outlet structure. The equipment list for the project includes an excavator, backhoe, concrete pump truck, front end loader, jackhammer, pickup truck, water pump, and a pile driver.

Los Angeles County Department of Public Works hired Chambers Group to perform a baseline breeding and nesting bird survey and noise assessment for the Oxford Basin Low Flow Diversion Project site.⁹ The purpose of the study was to identify the bird species likely to be impacted by the proposed project, determine ambient noise levels in the project

⁵ James, R.A. 2006. California innovation with highway noise and bird issues. In: Proceedings of the 2005 International Conference on Ecology and Transportation, Eds. Irwin CL, Garrett P, McDermott KP. Center for Transportation and the Environment, North Carolina State University, Raleigh, NC: p. 569.

⁶ dB(A) – a weighted decibel average

⁷ Ouis, D. 2001. Annoyance from road traffic noise: a review. *Journal of Environmental Psychology*. Vol. 21, pgs. 101-120.

⁸ Op. Cit. Dooling & Popper 2007

⁹ Chambers Group. July 2008. Results of the Baseline Breeding Bird Nesting Survey and Noise Assessment for the Los Angeles County Department of Public Works Oxford Basin Low Flow Diversion Project Site in the City of Marina del Rey, Los Angeles County, California.

area, examine noise levels associated with project components, and propose mitigation measures to reduce noise impacts. The study took place in June when numerous wading bird nests, both occupied and unoccupied were observed. Black crowned night herons, snowy egrets, and great egrets all nest in the Oxford Basin area. Black crowned night herons have been nesting in the area since 1995, snowy egrets have been observed nesting since 2005, and most recently several pairs of Great egrets have established nests in the area. All three species had active nests on June 3, 2008, when the noise study took place. At least 86 heron and egret nests were counted in seven distinct areas, in approximately 12 trees, on June 3, 2008.

Five noise stations were established to measure ambient noise – two under active nests and three at the concrete inlet/outlets where the project will occur. The noise assessment was conducted between 10:00AM and 3:00PM. Ambient peak noise levels during this five hour sampling periods exceeded 85 dB in all instances except at Station 3, which was situated near an existing low lying concrete inlet/outlet at the extreme east end of the Oxford Basin. The peak levels recorded at Station 3 did not exceed 60 dB. Noise levels at existing nesting locations within 300 feet of the project site ranged from 104 to 111 dB. The Chambers report states that, “The highest peak noise events were recorded from adjacent traffic noise, primarily by trucks, motorcycles, and other loud vehicles. In addition, peak traffic volume was not present during the sampling periods, so more frequent and steady exposure to high sound levels would be expected during times of higher traffic volume.”

At 50 feet from the operating equipment projected to be used for this project, the predicted unmitigated noise levels are: haul truck - 88 dB, jack hammer - 85 dB, air compressor - 86 dB, excavator - 85 dB, and pile driver - 95 dB. The noise levels then decrease with increasing distance between the source and the receptor. The loudest projected construction activities will involve the use of a jackhammer/backhoe combination for only one day, and a pile driver/air compressor combination on one separate day.

Although 60 dB is the noise threshold widely used for projects involving heavy equipment in areas supporting sensitive bird species, this criterion is not always warranted or attainable. Threshold noise values must be considered on a case by case basis. The setting of the proposed work is a highly urbanized area with a number of existing uses that have associated noise sources surrounding the project site including residential and commercial development, heavily used road infrastructure, and recreational park space. Single-family residences are located to the north across Washington Boulevard and along Oxford Avenue. High-rise condominium and hotel development is located to the south and along the south side of Admiralty Way, and to the west. Admiralty Park, a linear passive park, is located to the east along the north side of Admiralty Way. As stated above, Chambers measured ambient noise levels at the project site well beyond 60 dB. Their measurements ranged from 104 to 111 dB's at existing nesting sites. Chambers evaluated the noise data they collected and state that, “The data strongly suggests that the birds are able to breed quite successfully in situations where peak traffic noise far exceeds 85 dB.” Chambers proposes mitigation measures to keep peak noise levels below 85 dB. Given Dooling and Popper's 2007 review findings that, while masking may occur below 93 dB, it is noise above this level that presents real problems for birds. Given the fact that birds, like humans, are known to compensate in a number of behavioral and

physical ways to ambient noise [1]; Commission staff have determined that 85 db is an appropriate noise threshold to apply to this project given the high ambient noise levels at the project site. Therefore, 85 db is the noise criterion applied to the Oxford Basin Low Flow Diversion Project.

2. Water Quality and Construction Impacts

The proposed project involves construction in and adjacent to the water. Due to the proposed project's location in the water, the proposed work may have adverse impacts upon water quality and the marine environment.

The potential adverse impacts to water quality include accidental spills, disposing of debris in the water, and increase turbidity, which impact the marina waters. Resuspended sediments will have a potential to reduce water clarity and decrease ambient dissolved oxygen concentrations in the water column during construction if the sediments are anoxic. To minimize turbidity and allow access to the outlet, the applicant will use a coffer dam to remove water from the channel and outlet. The use of a coffer dam will reduce the potential for increased turbidity and debris from entering the marine environment during construction.

The improper storage of construction equipment and materials during construction can also contribute to adverse water quality impacts; therefore, the Commission finds it necessary to identify the following construction related restrictions: all construction materials and equipment shall be stored on impervious surfaces only; all construction materials or waste shall be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters; and that any and all construction equipment, materials and debris are removed from project site and discarded or stored in an appropriate manner at the conclusion of construction. The Commission finds it necessary to identify the permittee's responsibilities regarding construction and the utilization of best management practices and has conditioned the project accordingly. Thus, to assure that adverse impacts to water quality are minimized, the Commission imposes Special Condition No. 3 which requires the applicant to utilize best management practices including those described above. The special condition will help supplement the applicant's water quality program and ensure that the applicant's program is consistent with the Commission's water quality requirements for development in the water.

The proposed nuisance flow diversion project will prevent untreated storm water from entering the ocean during dry weather, thereby improving water quality. During construction, special precautions will be followed to ensure that materials are stored properly and debris is disposed of at an appropriate location. Once construction is complete, the County should maintain the nuisance flow diversion system to ensure its functionality. Only as conditioned for appropriate construction practices and proper maintenance does the Commission find that the proposed development is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

3. Fill of Coastal Waters and Wetlands

Section 30233 of the Coastal Act allows filling of coastal waters and wetlands only under very limited circumstances. Under this section, any approved filling of open coastal waters or wetlands must be for an allowable use, mitigation measures must be provided to minimize adverse environmental effects, and the project requiring the fill must be found to be the least environmentally damaging alternative. In this case, the proposed fill (cement side/retaining walls and cement apron) would result from the retrofitting of an existing storm drain outlet within a tidally influenced flood control basin. The amount of fill of the wetland area (mud lined banks and bottom) resulting from the extension of the concrete side walls and concrete apron would be 36 square feet. Section 30233(a)(5) of the Coastal Act allows fill for incidental public service purposes such as maintenance of existing intake and outfall lines. The proposed fill for the low flow diversion to an existing outfall is both incidental and for a public service purpose. However, allowable fill must be mitigated to minimize adverse environmental effects.

In past projects that included filling of coastal waters and impacts to wetlands, the Commission has consistently required mitigation. In other similar projects that required filling of wetlands within channels, the Commission has consistently required that impacts be mitigated with replacement or enhancement of similar habitat at a ratio of 3:1 (mitigation to impact). A higher mitigation ratio, such as 4:1, is not required for this project, due to the low habitat value of the impacted area.

The Commission has consistently required that mitigation sites be located in the same area, or area that is ecologically connected. The basin and channel are possible areas for mitigation where the County can regrade along the upland areas of the banks to widen the channel or basin whereby creating additional wetland area. However, because of the polluted nature of the basin, additional disturbance of the upland area within the basin could increase water quality concerns by resuspending toxic sediments that could enter into the marina waters. The County would need to do additional studies to determine the feasibility of creating additional wetlands within the basin and channel area. The County has indicated that they are currently investigating dredging the basin for improved flood control and it may be possible during dredging to expand the wetlands within the basin during the dredging activity to mitigate the loss of wetlands for the low flow diversion project during the dredging project.

Other possible mitigation sites include the nearby parcel 9U within Marina del Rey, and the Ballona Wetlands to the southeast of Marina del Rey. Parcel 9U is an undeveloped, approximately 3.5 acre parcel in the Marina that over the years, and due to depressions created by an old abandon construction site, has formed wetlands over a portion of the parcel. The County (Department of Beaches and Harbors) is investigating the future enhancement of wetlands on this parcel.

Ballona Wetlands property (consisting of 483 acres) was acquired by the State in December 2003 from Playa Vista Development Corporation. Additionally, an approximately 70-acre area, known commonly as "Area C", was transferred to the Department from the State Controllers Office in September 2004. The State Controller's Office was empowered under legislation (SB 666, Feb. 2003) to transfer the property it

originally received from the Howard Hughes Inheritance Tax Security Trust in 1984 to another State Agency. This transfer to the Department of Fish and Game (DFG) was approved by the Wildlife Conservation Board in 2003. The total acreage now owned in Fee Title by the Wildlife Conservation Board/DFG is 553 acres. It is proposed that the entire 553 acres be designated an Ecological Reserve. The primary management objective for this property is the preservation and enhancement of coastal salt marsh and freshwater marsh habitat and associated species. Other objectives include preservation and restoration of habitats supporting other species, protection of sensitive species, providing for appropriate public access and use, and assuring continued movement of wildlife between the state property and publicly owned lands in the vicinity of the wetlands. The property supports important species including the state listed endangered Belding's savannah sparrow. The impact site and the Ballona Wetlands' future restoration site are geographically close, share the same watershed, and are part of the same ecological system. Future restoration of the wetlands within the Ballona Wetlands area would increase the function and value of the habitat within the reserve.

The habitat to be impacted at the subject site consists of soft bottom and sides. No sensitive wildlife species are known to occur within this habitat area. Meanwhile, the wetland habitat restoration within the Ballona Wetlands area would occur in an area known to be high in plant and animal species diversity. Therefore, the restoration of habitat at Ballona Wetlands would be beneficial to a wide variety of wildlife. Any restored wetland habitat in the basin would not be expected to attract the diversity and abundance of wildlife that the off-site restoration would. A high probability of successful restoration would be expected at the Ballona Wetlands because the project would restore former and degraded wetland areas. Although the California Coastal Conservancy, who is involved in developing a restoration plan for Ballona Wetlands, has expressed interest in accepting in-lieu fees to assist in funding restoration, at this time such a program has not been established and a restoration plan has not been completed. The Department of Fish and Game and the California Coastal Conservancy are only in the preliminary planning stages for the restoration of the site. Therefore, it is premature to designate Ballona Wetlands as a mitigation site at this time, but may be a potential mitigation site in the future.

Therefore, as a condition (Special Condition No. 5) of this permit, the applicant, prior to issuance of the permit shall submit, for the review and approval of the Executive Director, written evidence of participation in a mitigation program designed in consultation with, and approved by, the National Marine Fisheries Service, California Department of Fish and Game, United States Department of Army Corps, and the Coastal Commission's Executive Director. The mitigation program shall be in an area ecologically connected with Marina del Rey to mitigate the loss of soft bottom habitat with the substantial restoration of open water soft bottom or other tidally influenced wetland habitat at a ratio of 3:1 (mitigation: impact). Only as conditioned to provide mitigation to offset the loss of soft bottom habitat can the proposed project be found consistent with Section 30235 of the Coastal Act regarding fill of coastal waters.

The Commission finds that the fill necessary to undertake the proposed retrofit to the storm drain outlet is allowable fill that can be permitted if there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to

minimize adverse environmental effects. An alternative to the project is to construct the low flow diversion further up on the storm drain line. However, due to the area being below sea level, the construction area would need to be de-watered and catch basins between the diversion and the Oxford basin would need to be fitted with filters in order to achieve the same level of water quality improvements and comply with summer and winter dry weather Bacterial Total Maximum Daily Load requirements for Marina del Rey. This alternative would be economically infeasible and would not be less environmentally damaging.

Because the proposed fill is minor and necessary for the proposed public service (water quality improvements), which will comply with summer and winter dry weather Bacterial Total Maximum Daily Load requirements for Marina del Rey, there is no feasible less environmentally damaging alternative. The recommended special conditions of approval, including the timing condition to protect nesting birds, monitoring for continued maintenance, and wetland mitigation, will mitigate the potential adverse environmental effects of the proposed project. Evidence of final or conditional approval from the U.S. Army Corps of Engineers will pinpoint for the Commission whether such approvals have any effect upon this coastal development permit approval. Therefore, the Commission imposes a special condition (Special Condition No. 7) which requires that the applicant submit evidence of approval from the U.S. Army Corps of Engineers prior to commencement of construction. As conditioned above, the Commission finds that the proposed project is consistent with the marine resource and water quality policies of the Coastal Act.

C. Public Access

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast.

The project site is located adjacent to a paved public bicycle path (South Bay Bike Trail) and Admiralty Park. The approximately 10 foot wide paved pathway does not provide access to the beach, however, the pathway is a segment of the coastal bicycle access route and provides bicycle and pedestrian access from the Marina area to Washington Boulevard and the Venice area of the City of Los Angeles to the north.

Construction access will be provided through the existing access/maintenance gate immediately to the east of the project site's storm drain outlet. Construction activity at the outlet will not interfere with public access along the bicycle pathway or Admiralty Park. However, the project includes trenching and laying 4-inch line within the southern edge of the pathway to connect the low-flow diversion to the existing sewer line located at Washington Boulevard. During construction for the 4-inch line, the pathway will be temporarily reduced from two lanes to one lane, but will continue to remain open to the public. The County will require signs to be posted to inform the public of the construction and the continued availability of the pathway. The Commission finds that the project will not significantly impact public coastal access or recreational opportunities, and therefore the project is consistent with Sections 30210, 30211, and 30251 of the Coastal Act.

D. Local Coastal Program

In 1984, the Commission certified the County's Land Use Plan portion of the Marina del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of undeveloped land, which was a portion of the County's LCP area located south of Ballona Creek and east of Lincoln Boulevard (known as Area B and C). Subsequent to the City's annexation, the City submitted the identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original County LCP area. The Commission certified the Land Use Plan Amendment for the annexed area with suggested modifications on December 9, 1986. The County also resubmitted those portions of their previously certified LUP that applied to areas still under County jurisdiction, including the area known as Area "A", and the existing Marina. The Commission certified the County of Los Angeles' revised Marina del Rey land Use Plan on December 9, 1986. On September 12, 1990, the Commission certified an Implementation Program pertaining to the existing marina, with suggested modifications. The undeveloped area in the County, Playa Vista Area "A" was segmented from the marina and no ordinances were certified for the area. After accepting the suggested modifications, the Commission effectively certified the Marina del Rey LCP and the County assumed permit issuing authority.

In 1995, the County submitted an amendment to the LCP. In May 1995, the Commission certified the LCPA with suggested modifications. The County accepted the modifications and the LCP was effectively certified. The revised 1995 LCP represented a major change in the county's approach to Marina del Rey development. Abandoning the bowl concept, which limited height on moles and next to the water, the County presented the Commission with a redevelopment plan that allowed greatly increased heights if and when developers provided view corridors over no less than 20% of the parcel. Increased height would be contingent on the provision of increased views. Secondly, the County agreed that at the time of renegotiations of the leases, the lessees would be required to reserve a 18 foot wide promenade /fire road along the water that would be open to the public.

The certified LCP designates the proposed site as Open Space and is a permitted use. However, the proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is the chapter three policies of the Coastal Act. The

County's certified LCP is advisory in nature and may provide guidance for development. As stated in the preceding sections, as conditioned, the project will not adversely impact coastal and marine resources or coastal access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

Potential impacts are to marine resources, water quality, and boater and pedestrian access. As conditioned, all potential adverse impacts have been adequately mitigated. As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

EXHIBIT NO. 1

Application Number

5-08-242

Vicinity Map

California Coastal Commission

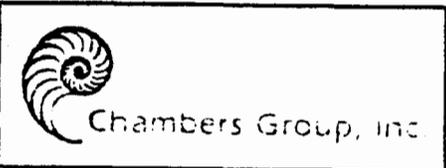
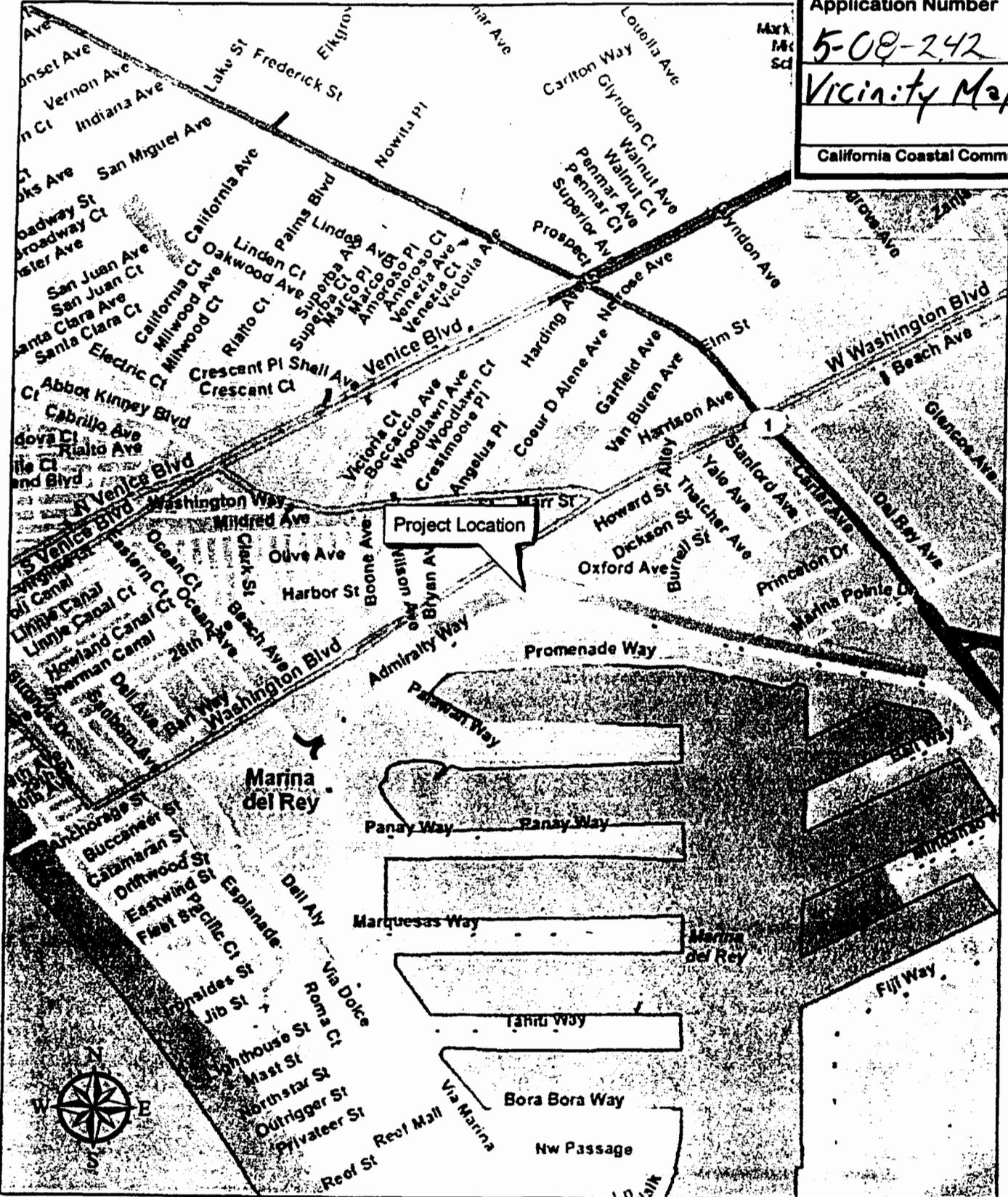


Figure 2 - Project Location Map
Marina Del Rey Low-Flow Diversion Project
County of Los Angeles Public Works Department

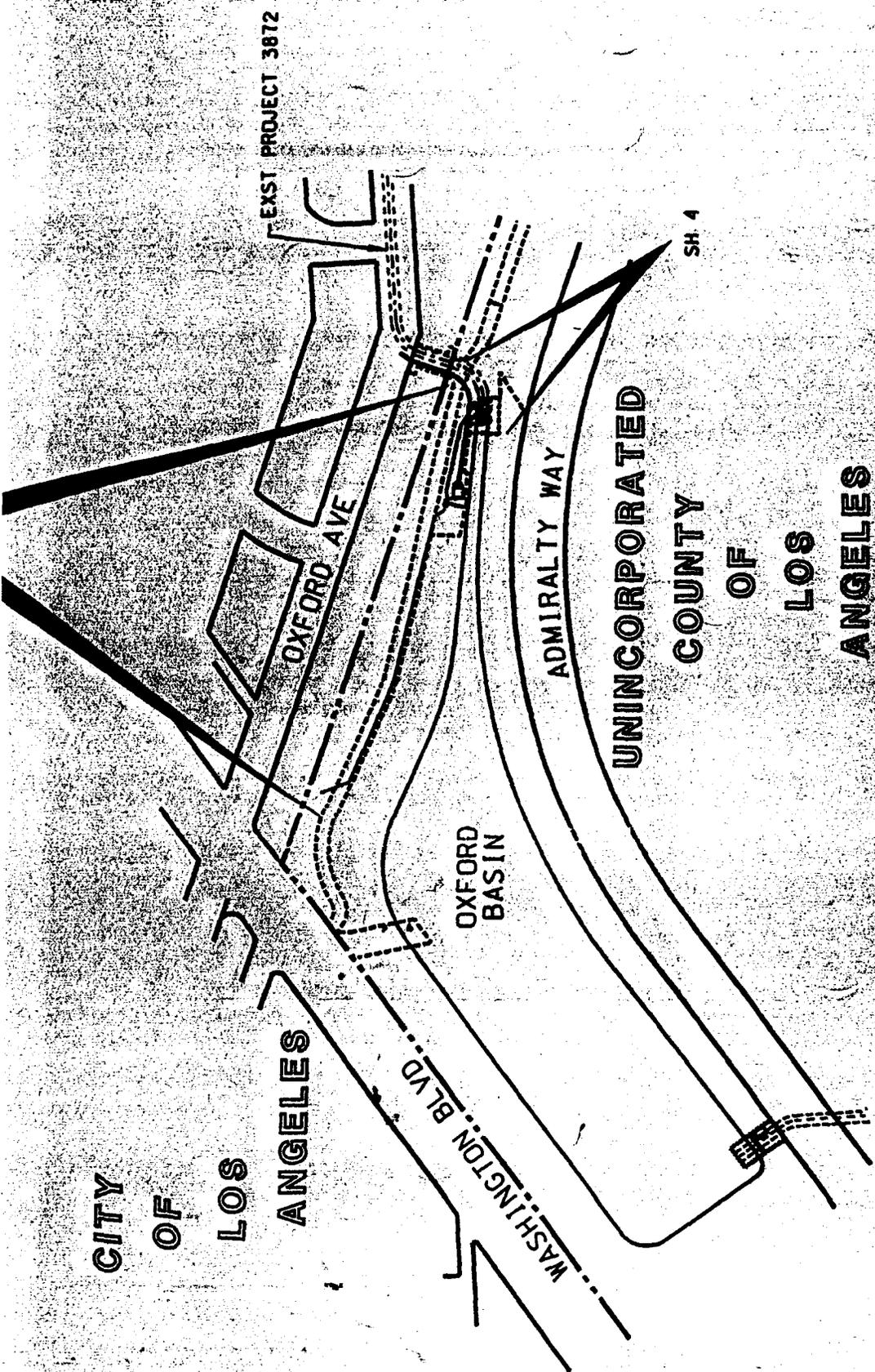
SH. NO. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

TITLE
GENERAL PLAN
FLOOD CONTROL
LAND ACQUISITION
RIGHT OF WAY
REVISIONS
MAY 1962

SURVEY.....

STORM DRAIN
SEWER.....
WATER.....
GAS.....
POWER.....

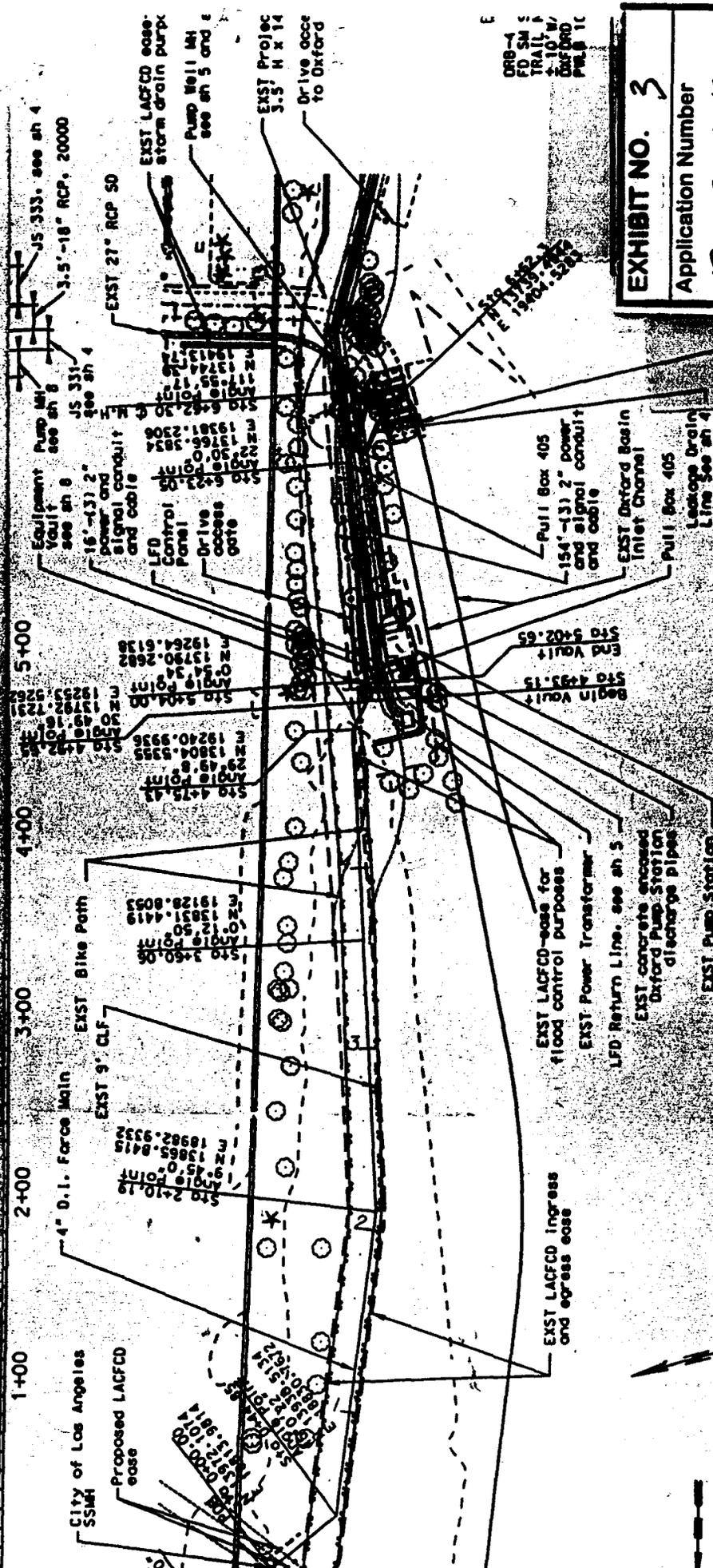
CITY OF LOS ANGELES



GENERAL PLAN
NOT TO SCALE

Los Angeles County
Department of Public Works
The Information Shows Herein is
PRELIMINARY
Unofficial and Subject to Change

EXHIBIT NO. 2
Application Number 5-08-242
Location Map
California Coastal Commission



DRB-1
FD SM
TRAIL
2-10-74
OXFORD
PLAN 11

EXHIBIT NO. 3
Application Number <i>5-08-242</i>
<i>Site Plan</i>
California Coastal Commission

PLAN
SCALE = 40'

Remove existing outlet
construct LFD Structure, see sheet 11

