

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-17-0253

Applicant: California Department of Fish and Wildlife

Location: Ballona Wetlands Ecological Reserve, Area B, Playa Del Rey, Los Angeles County

Project Description: Cut drains (risers, approximately 48 inches in diameter) to grade, cap drain inlets and plug weep holes of drain lines in two existing unpermitted storm drains. Project area to be re-vegetated with native plant species consistent with surrounding habitat.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to cap two existing unpermitted storm drains that were installed in approximately 1996 within the Ballona Wetlands Ecological Reserve known as Area B, one north of Culver Boulevard, and one south of Culver Boulevard in Playa Del Rey. The proposed project raises issues regarding environmentally sensitive habitat area and wetland resources. Plugging the weep-holes that perforate the storm drain risers and capping the drains with a water-tight seal will help prevent water from entering the drains, thereby maintaining the hydrology of the surrounding natural habitat and wetland area.

Staff is recommending **APPROVAL** of a permit for the proposed development with special conditions regarding: 1) biological monitoring; 2) a final mitigation plan; 3) cultural resources; and 4) requiring the applicant to apply for a coastal development permit within 5 years of permit issuance to ensure the unpermitted drains and associated components and lateral pipes are removed or appropriately abandoned. As conditioned, the proposed development conforms with all applicable policies of the Coastal Act.

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EXHIBITS

- Exhibit 1 – Vicinity map and Project Location
- Exhibit 2 – Project Plans
- Exhibit 3 – As-Built Plans for Unpermitted Drains
- Exhibit 4 – Wetland Delineation Map
- Exhibit 5 – Enforcement Letters
- Exhibit 6 – Drain Photos
- Exhibit 7 – Applicant’s Alternatives Analysis
- Exhibit 8 – Letters of Concern

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-17-0253 pursuant to the staff recommendation.*

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:

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 will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of 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

This permit is granted subject to the following special conditions:

1. **Biological Monitor.** By acceptance of this permit, the applicant agrees that:
An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as dredging or construction that could result in disturbances to the Raptors or sensitive species in the area. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The applicant shall not undertake any activity that would disturb habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.
2. **Revegetation of Impacted Area.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final revised detailed revegetation plan to restore disturbed habitat to offset impacts associated with the project. Required revegetation shall be at a minimum ratio of 1:1 for the temporary impacts associated with the proposed work. The revised plan shall identify the final location and size of the proposed acreage/square foot revegetation area. A biologist qualified in the preparation of plans to restore vegetation consistent with the surrounding habitat shall design the revised landscaping/revegetation plan. The plan shall at a minimum include the following:
 - A. Revegetation plan including planting map, plant palette, source of plant material, and schedule of plant installation, watering, erosion control, soil fertilization and weed abatement;
 - B. Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of the dominant perennial species are similar to relatively undisturbed vegetation of the same type in nearby reference areas. Species composition shall be considered similar if all the dominant species and at least 80% of the non-dominant species at the reference site are present at the restored site.
 - C. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first.

The permittee shall monitor and remediate the restoration site in accordance with the approved mitigation and monitoring program, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved monitoring

program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Archaeological Resources

Prior to construction, the applicant shall retain the services of an independent qualified archaeologist and appropriate Native American consultant with appropriate qualifications acceptable to the Executive Director. The independent qualified archaeologist and appropriate Native American consultant shall be present on-site during all grading, excavation and site preparation that involve earth moving operations. The number of monitors shall be adequate to observe the earth moving activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological materials. In the event that any significant archaeological resources are discovered during operations, grading work in this area shall be halted and an appropriate data recovery strategy shall be developed, subject to review and approval of the Executive Director, by the applicant's archaeologist and the Native American consultant consistent with CEQA guidelines.

4. Application for Coastal Development Permit. Within five years of the date of issuance of Coastal Development Permit No. 5-17-0253, the applicant shall obtain a Coastal Development Permit to remove or appropriately abandon the remaining components of the unpermitted drains and associated lateral pipes if such components have not been removed or appropriately abandoned in association with the overall Ballona Wetlands Restoration Plan. The application for said Coastal Development Permit shall include a proposal to provide revegetation with appropriate native wetland species at a minimum ratio of 3:1 (revegetation area to area impacted by the drains) to address impacts associated with the initial installation of the unpermitted drains and associated pipes and temporal impacts to habitat resulting from the presence of the drains. If a coastal development permit has not been issued to remove or properly abandon the remaining components of the drains within 5 years from the date of Commission issuance of this permit, the Executive Director may grant for good cause additional time.

5. Assumption of Risk, Waiver of Liability, and Indemnity. By acceptance of this permit, the applicant, the California Department of Fish and Wildlife, acknowledges and agrees (i) that the site may be subject to hazards from accumulation of methane; (ii) to assume the risks to the applicant, the California Department of Fish and Wildlife, and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the California Department of Fish and Wildlife, as applicant, shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & LOCATION

The applicant is proposing to remove the above-grade portions of two unpermitted vertical storm drain risers (approximately 48 inches in diameter) that extend approximately 5 feet below grade and connect to two separate concrete inlets that are attached to approximately 100 foot long lateral connector drain lines, all of which are unpermitted. These lateral drain lines are connected to a permitted main drain line which outlets at Ballona Creek. The subject drains are located within the Ballona Wetlands Ecological Reserve, one located north of Culver Boulevard, and one south of Culver Boulevard in the Ballona Wetlands Ecological Reserve in Playa Del Rey ([Exhibit 1](#)). The surrounding area consists of both native and non-native vegetation. One of the vertical risers extends approximately 6 to 8 inches above grade, and the other is situated slightly below-grade. Both risers have multiple 3-inch weep-holes perforating the drain risers which drain water from the surrounding area during rain events. To plug these weep holes, the applicant proposes to weld small pieces of formed and fitted galvanized steel plates over all remaining weep-holes (approximately 3 inches in diameter) within the remaining portions of the risers, and weld one half-inch thick steel caps onto the remaining drain openings, creating a water-tight seal. Although the existing drains and lateral connecting pipes were installed in approximately 1996 without the benefit of a coastal development permit, the applicant is not seeking approval after-the-fact for the drains, and this permit would not authorize the retention of the drains or the associated lateral connector pipes. However, the applicant is seeking approval of the proposed work as a temporary remedial measure to stop the ongoing diversion of surface and below-surface water into the unpermitted drains, thereby preventing the draining of water from the wetland, which is detrimental to the surrounding natural habitat and wetland hydrology.

The project area is located in a portion of the Ballona wetlands known as Area B, which covers approximately 385 total acres and extends from Lincoln Boulevard west to developed properties along Vista del Mar, and north from the Westchester bluffs to the Ballona Creek Channel ([Exhibit 1](#)). Today, the Ballona Wetlands are remnants of a much larger wetland system that historically covered over 2,000 acres from Playa Del Rey to Venice. Although development within Area B (oil drilling, pipelines, road construction, dredged material disposal, and farming) left only portions of the area containing wetlands, all of the remaining wetland areas in this location are considered environmentally sensitive habitat areas and provide habitat for many species of marine fish, migratory shore birds, and endangered species, including the California least tern and Belding's savannah sparrow.

The subject drains and associated lateral connector drain lines in the Ballona Ecological Reserve are not authorized through any coastal development permit of which staff is aware. The Commission approved Coastal Development Permit No. 5-91-463, as amended, and the CDP was issued to the property owner, Playa Capital Company, for the construction of the Ballona Freshwater Marsh located immediately south of the intersection of Lincoln and Jefferson Boulevards and the main drain line, which runs from the Ballona Freshwater Marsh to the Ballona Channel, specifically identified in CDP No. 5-91-463. Commission staff has determined that the subject drains were not included as a part of those approved plans ([See Exhibit 4](#)). Beginning in 2013, Commission enforcement staff notified Playa Capital Company, LLC and the CDFW, which took ownership of

the Reserve in 2004, of the alleged violations, which are discussed in further detail below in Section B of this staff report. Pursuant to a settlement agreement (*Grassroots Coalition v. California Department Fish and Wildlife et. al. Los Angeles Superior Court Case No. BC619444*), the applicant (CDFW) submitted the subject CDP application to the South Coast Commission office on March 15, 2017, proposing to cap the drains and plug the weep-holes to stop the functionality of the drains to temporarily remediate their potentially harmful effects on the surrounding wetland habitat. Coastal Development Permit No. 5-17-0253 was filed as complete on July 30, 2017. The proposed capping of the drains and plugging of the weep holes are intended to address the immediate concerns regarding potential impacts to the surrounding habitat and wetland area. The proposed work is not considered a permanent solution.

As proposed, the project would require up to four construction workers to perform the proposed work. First, a small 0.5 -foot wide x 0.5-foot deep wedge of dirt (approximately one eighth of a cubic yard per riser) would be removed from around the perimeter of the risers utilizing a hand shovel so that the dirt does not fall into the inlet. The dirt will be temporarily placed on a 4-foot x 6-foot tarp next to the riser. The top of the corrugated metal riser pipes will be cut off at grade with a blow torch. A ladder will be lowered into the pipe to provide the construction workers necessary access to the portions of the riser below grade so that workers can weld small pieces of metal over each weep-hole within each riser to make it water tight to ensure water beneath the surface does not drain into the inlets. Finally, a flat metal plate is proposed to be welded to the top of the riser. The displaced soil being stored on the tarps would then be replaced around the cap. Existing vegetation surrounding the risers will not be impacted and will remain in place [\(Exhibit 3\)](#).

B. VIOLATION

Violations of the Coastal Act have occurred on the subject property including unpermitted installation of two drains, which are the subject of this application, and the concomitant effects of installation and functioning of the drains on wetland habitat. The two unpermitted drains at issue are located in the Ballona Ecological Reserve, roughly a tenth of a mile north of the Ballona Freshwater Marsh.

Documents submitted to the City of Los Angeles regarding construction of the Ballona Freshwater Marsh, which is a habitat mitigation and flood control component of the Playa Vista development, indicate that installation of the unpermitted drains was undertaken by the developer of Playa Vista, Playa Capital Company or its predecessor-in-interest, Maguire Thomas Partners, in approximately 1996. At the completion of installation, the subject property was owned by Playa Capital Company.

The unpermitted drains were not authorized by Coastal Development Permit No. 5-91-463, which authorized construction of the Ballona Freshwater Marsh. The unpermitted drains are not located within the Ballona Freshwater Marsh, but instead within natural saltmarsh and habitat areas separated from the Ballona Freshwater Marsh by Jefferson Boulevard. The unpermitted drains are not described in the application Coastal Development Permit No. 5-91-463, nor are the drains identified in the plans submitted with the application and presented to the Commission for approval. Thus, the unpermitted drains were not authorized through Coastal Development Permit No. 5-91-463.

Moreover, the unpermitted drains are antithetical with the habitat functions of the Ballona Freshwater Marsh. The unpermitted drains are located in the Ballona Ecological Reserve within

natural habitat and a wetland that rely on water to function. However, as a result of below-grade and at-grade inlets in the unpermitted drains, the drains remove water in the ground and on the surface at times water is present. This is detrimental to wetland hydrology and habitat that relies on water to function. One of the chief components of wetland habitat is wetland vegetation. Removal of wetland plant species, whether through removal or physical preclusion of growth through changes to hydrology, reduces the habitat value of a wetland. Degradation of wetland function through alteration of hydrology means that the same plants may not grow and habitat value and wildlife use of the wetland are reduced.

Commission staff initially became aware of the unpermitted drains in 2013 and noted the presence of the violations in a letter to Playa Capital Company dated June 12, 2013 letter. A subsequent letter in April 11, 2014 ([see Exhibit 5](#)) to Playa Capital Company explained in more detail why the drains constitute a violation of the Coastal Act, the effect of the drains on wetlands, and asked that Playa Capital Company agree to consent cease and desist and restoration orders that would provide for removal of the unpermitted drains and mitigation of the damages caused by installation and functioning of the unpermitted drains. Staff met on May 21, 2014 with representatives of Playa Capital Company and California Department of Fish and Wildlife to discuss potential options for resolution. As a permanent resolution of the violations had not been reached, on July 16, 2015, staff wrote to Playa Capital Company and California Department of Fish and Wildlife to suggest capping of the drains to limit any further impacts to the wetlands while a permanent resolution was worked out. On May 5, 2016, Grassroots Coalition initiated litigation with regard to the unpermitted drains, as described in more detail above. In its background to the complaint, Grassroots Coalition states that “As an interim measure, capping and plugging the drains should be completed before the next rainy season to prevent any further water from being drawn down the drains and further impacting the wetlands.” A settlement of the litigation precipitated submittal of this application before the Commission.

The applicant is requesting authorization to cap the unpermitted drains as an interim measure to eliminate the functioning of the drains until such time as the drains are removed. The applicant is not proposing to include removal of the drains in this application and, thus, violations remain on the subject property. To address the persistence of the unpermitted drains, the applicant will be required by **Special Condition 4** to submit a CDP application to remove the drains within five years of the date of issuance of Coastal Development Permit No. 5-17-0253, the applicant shall submit a Coastal Development Permit application to remove or appropriately abandon the remaining components of the unpermitted drains and associated pipes if such components have not been removed or appropriately abandoned in association with the overall Ballona Wetlands Restoration Plan. If the restoration plan has not been approved by the Commission within five years, the applicant can request a time extension from the Executive Director for good cause.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

C. ENVIRONMENTALLY SENSITIVE 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 (a) of the Coastal Act states:

The diking, filling, or dredging of open 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:

- 1. New or expanded port, energy, and coastal-dependent industrial facilities, including commercial facilities.*
- 2. Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- 3. In open coastal water, 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.*
- 4. 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.*

5. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
6. *Restoration purposes.*
7. *Nature study, aquaculture, or similar resource dependent activities.*

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, ***preventing depletion of ground water supplies and substantial interference with surface water flows***, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams (emphasis added).

The Ballona wetlands area, including Area B, is owned by the Department of Fish and Wildlife. Presently the California Coastal Conservancy, the State Lands Commission and the Department of Fish and Game are developing a restoration plan to create a variety of native habitats in the Ballona Wetlands and associated upland areas, which includes about 600 acres owned by the State of California on both sides of Ballona Creek. Meetings with stakeholders, development of goals, and biological assessments began in the fall of 2005, and the site has been identified as a regional priority for restoration because of its potential as an outstanding habitat area. CDFW, as the lead agency under the California Environmental Quality Act, is coordinating the preparation of an Environmental Impact Report (EIR) for the proposed Ballona Wetlands Restoration Project. CDFW is currently soliciting comments on the Draft EIR.

Due to past development within Area B, including oil drilling, pipelines, road construction, and farming, only portions of the area contain wetlands (see [Exhibit 3](#) Map of wetland areas, based on the wetlands delineation conducted by Wetland Research Associates for the Coastal Conservancy in 2011). However, all wetland areas within the Ballona wetland area are considered environmentally sensitive habitat areas and provide habitat for many species of marine fish, migratory shore birds, and endangered species, including the California least tern and Belding's savannah sparrow. Because of the existence of the wetland and an environmentally sensitive habitat area, the development in Area B must be found consistent with Sections 30230 and 30231 of the Coastal Act. According to the above referenced wetland delineation, the subject drain north of Culver Boulevard is not specifically located within the delineated wetland, but is still hydrologically connected to the wetland, which is approximately 10 feet north of the wetland. The subject drain south of Culver is located in a delineated wetland ([See Exhibit 3](#)).

Commission staff met with opponents of the proposed project to discuss their concerns. Opponents contend that there is methane gas in the water flowing from the Fresh Water Marsh to the Ballona Creek which could potentially become trapped in the unpermitted lateral connector pipes if the drains are in fact sealed shut ([See Exhibit 8](#)). Commission staff requested that the applicant submit information regarding whether there is in fact methane in the water flowing through the subject pipes, and how trapped methane could potentially impact human health or the health of the surrounding habitat. As of the date of publication of this staff report, the CDFW has not submitted any information in response to staff's inquiries. However, this claim by the opponents of the project is unsubstantiated and speculative. There has been no submitted information that would indicate that there is methane gas in the water or pipes. Although the riser is proposed to be

capped, the existing main drain line, which this riser connects to via an approximately 100 foot long lateral, will continue to be opened at the inlet, at the freshwater marsh, and the outlet, at the Ballona Channel, allowing the passage of water and air as currently exists. In the event there are hazards associated with methane in the pipes, the Commission is imposing Special Condition 5.

Impacts to Wetlands

At staff's request, the applicant submitted a hydrology study to evaluate the hydrologic conditions surrounding the subject unpermitted drains, and to determine the impacts the drains have on the hydrology of the surrounding area (*Hydrologic Analysis for Freshwater Marsh Outlet Drain Risers*, prepared by PSOMAS for Playa Capital Company, LLC on September 27, 2017). The report found that the volume of water generated in these basin areas during the 2-year, 5-year, 20-year, 25-year, and 100-year storm events range from 6,900 to 33,000 cubic feet (cu-ft.) for the area north of Culver Boulevard, and between 25,600 and 122,600 cu-ft. south of Culver Boulevard. An additional 100-year storm event calculation for the larger of the two areas that are upstream of the debris risers was also analyzed for the approximately 400 square foot area on the south side of Culver Boulevard, which determined that a volume of 53 cu-ft. of runoff during a 100-year storm event could drain into the area immediately around the debris riser south of Culver Boulevard.

The report concludes that the storm drain risers have no appreciable effect on the surrounding hydrology because the tops of the risers are set at a higher elevation (approximately one foot above the small roadway drainage swale located along the northern edge of Culver Boulevard, and one at approximately the existing level ground elevation south of Culver Boulevard) than the surrounding low-lying areas where ponding occurs, and the drainage swales effectively transport excess surface water from the area before it reaches the risers. Regarding the weep holes, the study concludes that because they are "not open to the free flow of water except at the very top of each riser" and are "below the ground surface and not accessible to any runoff flows", that they do not drain a significant amount of water.

However, Commission staff observed the drain risers and the location of the weep holes in the risers during a site visit in October of 2016, and noted several of the weep holes were at grade and slightly higher than grade level ([See Exhibit 6](#)). Staff has also observed how the weep holes actually function during a rain event, which is documented on video submitted by a member of the public. The video demonstrates that the relatively large weep holes located at grade and slightly higher than grade level do in fact drain water that would otherwise be retained in the wetland during a rain event, which is in fact detrimental to the surrounding wetland habitat. Thus, since the applicant is proposing to plug the weep holes, and the proposed project stops the diversion of surface waters into the drains, which keeps the water in the wetland. The Commission finds that the proposed project will serve as a temporary means of restoring and enhancing degraded wetland habitat in the Ballona Wetlands until a full restoration plan is approved, or the applicant applies for a subsequent coastal development permit application within five years as required by **Special Condition 4**.

The Draft EIR/EIS for the Ballona Wetlands Ecological Reserve Restoration Project is currently in the public comment phase, and proposes to remove or properly abandon the unpermitted drains and associated lateral pipes as part of two of the project alternatives to restore the wetlands. In the event that the Ballona Wetlands Ecological Reserve Restoration Project does not in fact address the unpermitted drains, Commission staff is imposing **Special Condition 4**, which requires CDFW to apply for a coastal development permit in 5 years to remove or properly abandon the unpermitted drains and associated lateral pipes, which shall include a proposal to provide revegetation with

appropriate native wetland species at a minimum ratio of 3:1 (revegetation area to area impacted by the drains) to address impacts associated with the initial installation of the unpermitted drains and associated pipes and temporal impacts to habitat resulting from the presence of the drains. If a coastal development permit has not been issued to remove or properly abandon the remaining components of the drains within 5 years from the date of Commission issuance of this permit, the Executive Director may grant for good cause additional time. As conditioned, the project will not have an adverse impact on the wetlands, and is consistent with Section 30230, 30231 and 30240 of the Coastal Act.

Fill of Wetland

The drain located south of Culver Boulevard is located within a delineated wetland. The digging of a half-foot deep trench around the drain to allow the proposed work to occur qualifies as temporary dredging of a wetland. Pursuant to Section 30233, dredging of wetlands must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

1. Allowable Use

Section 30233 of the Coastal Act limits development within wetlands, such as at the subject site, to seven specific uses. One of the uses under Section 30233 for which development within wetlands is allowed, is restoration. The proposed project will result in stopping the functionality of the unpermitted drains, which stops potentially negative impacts currently caused by the drains, thereby restoring the wetland hydrology of the wetland. Thus, the proposed project is an allowable use.

2. Project Alternatives

The applicant studied five alternative methods to alter or remove the drains to prevent water from entering the drains ([See Exhibit 7](#)). Alternatives the applicant proposed include: 1) plugging the weep holes and welding caps to the risers without removing the risers; 2) removing the tops of the risers approximately one foot below the surrounding grade; 3) installing concrete or wood plugs into the pipes; 4) removing the risers and concrete bases; and 5) removing the risers, concrete bases, and associated lateral pipes. The first alternative offers the least ground disturbance, but still leaves the visual obstruction of the risers. The last four alternatives require far more ground disturbance and heavy mechanized equipment which would be disruptive to potential cultural resources that may be located at varying depths of the soil surrounding the unpermitted drains and associated pipes, and harmful to the surrounding habitat. The proposed alternative is therefore the environmentally preferable alternative.

3. Mitigation

The amount of soil to be dredged around the risers is a small 0.5 -foot wide by 0.5-foot deep wedge of dirt, which is approximately one eighth of a cubic yard per riser. To address the temporary impacts associated with the dredging activities associated with the proposed work, the Commission is imposing 1:1 revegetation (restoration to area temporarily impacted), which is addressed by

Special Condition 2. Therefore, Commission staff finds the proposed development as conditioned is consistent with the requirements of Section 30233.

Section 30240(a) of the Coastal Act 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.

Environmentally Sensitive Habitat Areas (ESHA) are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. As stated above, all wetland areas within the Ballona wetland area are considered environmentally sensitive habitat areas and provide habitat for many species of marine fish, migratory shore birds, and endangered species, including the California least tern and Belding's savannah sparrow. The proposed project qualifies as a resource-dependent restoration project and will temporarily stop the draining of water from the surrounding habitat and wetland areas, which will prevent significant disruption of habitat values by preventing ongoing wetland destruction by preventing water from entering the drains, thereby maintaining the hydrology of the surrounding saltmarsh habitat area. Furthermore, the minor dredging that is proposed to take place around the risers in order to perform the proposed work is relatively minor and will not disturb any existing vegetation surrounding the drains. Thus, as conditioned, the proposed project is also consistent with Section 30240 of the Coastal Act.

E. CULTURAL AND ARCHAEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The applicant submitted a confidential map indicating all known archaeological sites within a half-mile radius of the project sites based upon the *Phase I Cultural Resources Reconnaissance Survey for the Ballona Wetlands Ecological Reserve Restoration Project*, prepared by Bonterra Psomas in May, 2015. Although there are known archaeological or paleontological resources within a half-mile radius of the proposed work, none are located within 100 feet of the project site. Furthermore, such minor dredging (approximately 0.5 foot wide by 0.5 foot deep trench) proposed in association with the capping of the unpermitted drains is not likely to impact cultural resources. However, the Commission is imposing **Special Condition 3**, which requires the applicant to have an archaeological monitor present during any ground disturbing activities to inspect the materials. **Special Condition 3** requires both Professional Archeologists and Native American monitors be present during soil disturbance. Cultural history can aid in cultural resource location and identification on a project site and can assist in the preliminary resource investigations prior to site preparation. At a minimum, Native American groups should be notified of impending development

through the CEQA process, but in order to maximize protection of archeological and cultural resources, these groups should be invited to participate in preliminary investigations and project review and/or design. Additionally, reports and results of investigations should be shared with these groups for feedback, commentary, and peer-review. As conditioned for a monitoring plan and protection of the archeological resources, the project is consistent with Section 30244 of the Coastal Act.

F. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states that:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

In November 1986, the Commission certified, with suggested modifications, the land use plan portion of the Playa Vista segment of the City of Los Angeles' Local Coastal Program after the City annexed the area. The proposed project is located within the City of Los Angeles' planning area of Playa Vista. While there is a certified land use plan for the area, the City of Los Angeles does not have a certified Local Coastal Program for the Playa Vista area. The City of Los Angeles submitted its Local Coastal Program in March 1981. The Commission denied the submitted LCP on December 18, 1981. The City has not submitted a revised LCP.

The Ballona wetlands area, including Area B, has been acquired by the Department of Fish and Wildlife. Presently the California Coastal Conservancy, the State Lands Commission and the Department of Fish and Game are developing a restoration plan to create a variety of native habitats on the Ballona wetlands and associated upland areas, including the project site. This larger restoration project area includes about 600 acres owned by the state of California on both sides of Ballona Creek. Meetings with stakeholders, development of goals, and biological assessments began in the fall of 2005. CDFW, as the lead agency under the California Environmental Quality Act, is coordinating the preparation of an Environmental Impact Report (EIR) for the proposed Ballona Wetlands Restoration Project, and is currently soliciting comments on the Draft EIR. The proposed project does not change any land use or any planning decision regarding the restoration of the marsh. The project as proposed and conditioned will not have any impacts on the marsh and is consistent with the habitat policies of the Coastal Act. The Commission, therefore, finds that the proposed project is consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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. CDFW has declared the proposed work to be Exempt from CEQA according to Section 15303, New Construction or Conversion of Small Structures.

The Commission's findings regarding Coastal Act consistency are incorporated here by reference. As conditioned and as explained in the findings, the proposed development will not have any significant adverse effect on the environment. Feasible mitigation measures are incorporated into the project and the project is the environmentally preferable alternative.

Appendix A - Substantive File Documents

- Certified Playa Vista Land Use Plan, City of Los Angeles, 1986.
- Coastal Development Permit Application No. 5-17-0253
- *Hydrologic Analysis for Freshwater Marsh Outlet Drain Risers*, prepared by PSOMAS for Playa Capital Company, LLC on September 27, 2017