

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-17-0272

Applicant: Metropolitan Water District, Attn: Alexander Marks

Agent: Dudek

Location: San Diego Creek Channel (Upper Newport Bay), City of Newport Beach, Orange County.

Project Description: Rehabilitation of a water distribution pipeline blow-off structure and internal piping and valves, and repair/improvement of the dirt access maintenance road leading to the structure. The project includes a Habitat Mitigation and Monitoring Plan (HMMP) to mitigate impacts to wetlands and sensitive habitat areas.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the coastal development permit, with conditions, for the rehabilitation of a water distribution pipeline blow-off structure and internal piping and valves, and repair of an existing unpaved access maintenance road leading to the structure. The major issues raised by the proposed development concern impacts to biological resources, water quality, hazards, visual resources, cultural resources, and public access. The project will maintain existing water service that is dependent on the continued operation of the OC Feeder, an approximately 41-mile long steel pipeline that distributes treated water from Metropolitan's F.E. Weymouth Water Treatment Plant located in the City of La Verne (Los Angeles County) to numerous communities in Los Angeles and Orange Counties.

Some components of the the proposed project will occur within a wetland resource located in the San Diego Creek Channel. The proposed project results in 0.16 acre of permanent impacts (fill) and 0.13 acre of temporary impacts to wetlands. This proposed fill (permanent impacts) is necessary to maintain existing water service that is dependent on the continued operation of the OC Feeder. Therefore, the fill is associated with an incidental public service and is therefore an allowable purpose under Coastal Act section 30233(a). Although the proposed fill is an allowable type of fill, the project can only be found consistent with the Coastal Act if it is the least environmentally damaging feasible alternative and feasible mitigation measures have been provided to minimize environmental effects. Other alternatives were evaluated; however, the proposed project was determined to be the least environmentally damaging alternative.

Additionally, the applicant has proposed mitigation measures to minimize environmental effects as a result of the permanent impacts (and also temporary) impacts to Coastal Sage Scrub, Mulefat, Mulefat Scrub, Disturbed Mulefat Scrub, Southern Willow Scrub, Tamarisk Scrub, Ruderal, and Southern Willow Scrub habitat. The proposed mitigation measures are set forth in the applicant's Habitat Mitigation and Monitoring Plan (HMMP): *Upper Newport Back Bay Blow-Off Structure Project – Habitat Mitigation and Monitoring Plan prepared for Metropolitan Water District of Southern California*, prepared by Dudek dated February 2018.

While the applicant has proposed mitigation for the permanent loss of wetlands via restoration/enhancement of areas to riparian vegetation totaling 0.72 acre, the proposed mitigation is insufficient. Restoration of an area to function as a wetland or to function more effectively as a wetland is not the same as creation of a wetland, which is how permanent impacts to wetlands are required by the Commission to be mitigated. In addition, a 3:1 mitigation ratio for permanent impacts to wetlands is not based on best available science. The Commission has determined in recent cases that a 4:1 mitigation ratio is the appropriate ratio for replacement of filled wetlands. Thus, in order to mitigate for the permanent loss of wetlands, the applicant is required to create wetlands at a ratio of 4:1 to the permanent impact. Therefore to ensure that mitigation for the permanent loss of wetlands is provided, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit a Revised HMMP that includes mitigation in the form of wetland creation for permanent wetland impacts at a ratio of 4:1.

To ensure that no additional degradation of wetland habitat or vegetation occur during construction, the Commission imposes **Special Condition No. 2**, which requires the applicant to provide an appropriately trained biologist that will monitor construction activity for disturbance to sensitive species or habitat area

Although section 30240(a) of the Coastal Act limits development in Environmentally Sensitive Habitat Areas (ESHA) to resource dependent uses, the Commission can permit necessary repairs to existing infrastructure in areas where ESHA is present, as is the case with this project. Habitat restoration and enhancement are resource dependent uses that are allowed within ESHA. However, new development, such as the two proposed project staging areas, cannot be permitted within ESHA. **Special Condition No. 3** requires the applicant to submit a Construction Staging Plan that avoids impacts to Coastal Sage Scrub, meaning that the two proposed staging areas must be relocated to another location where no ESHA would be disturbed. The habitat map for the project area shows a

large area south of the existing access road that is identified as ruderal. This ruderal area would be an appropriate area to locate the project staging area(s).

Any future changes to the proposed project, such as changes to the design of the blow-off structure or the access road repairs, may result in adverse impacts to habitat. Thus, the Commission imposes **Special Condition No. 4**, which informs the applicant that future development at the site requires an amendment or a new coastal development permit.

The project site is located in an area of state or federally listed rare, threatened, or endangered species; such as the Coastal California Gnatcatcher and Least Bell's Vireo and there is potential for the project to impact these special status bird species. Therefore, the Commission imposes **Special Condition No. 5**, which prohibits construction activity to take place during the bird nesting season (March 15 through September 1) and requires pre-construction surveys for nesting birds and avoidance of nesting sites during nesting.

The proposed project, because of its location adjacent to and within the San Diego Creek Channel and Upper Newport Bay, has potential for adverse impacts to water quality and biological resources during construction and post construction. Therefore, special conditions have been imposed in order to minimize any impacts to water quality and biological resources the proposed project may result in: **Special Condition No. 6** requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality during construction; and **Special Condition No. 7** requires the applicant submit a Storm Water Pollution Prevention Plan (SWPPP).

The proposed development is located in an area where coastal hazards exist which could adversely impact the development. Therefore, the Commission imposes **Special Condition No. 8**, which requires the applicant to assume the risk of development.

Although no cultural resources are known to exist on the site, the site is near areas where archaeological resources have been found. Therefore, the Commission imposes **Special Condition No. 9**, which requires the applicant to submit a Cultural Resource Treatment and Monitoring Plan.

The proposed project may result in temporary impacts to coastal public access. Therefore, **Special Condition No. 10** requires the applicant to submit a Traffic Control Plan.

The proposed project is located in the City of Newport Beach, which has a Local Coastal Program (LCP) that was certified by the Commission in January 2017. However, the project site is located in an area subject to the public trust, and within the Commission's original permit jurisdiction. Therefore, the Coastal Commission is the permit issuing authority for this project, and the standard of review is the Chapter 3 policies of the Coastal Act. The City of Newport Beach LCP can be used as guidance.

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APPENDICES

[Appendix A – Substantive File Documents](#)

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EXHIBITS

[Exhibit No. 1 – Location Map & Vicinity Map](#)

[Exhibit No. 2 – Site Plan](#)

[Exhibit No. 3 – Project Plans](#)

[Exhibit No. 4 – Impacts to Vegetation](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-17-0272 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 Coastal Development Permit Application No. 5-17-0272 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. 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

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 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

This permit is granted subject to the following special conditions:

1. **Revised Habitat Mitigation and Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of a Revised Habitat Mitigation and Monitoring Plan (HMMP). The HMMP shall be in substantial conformance with the *Upper Newport Back Bay Blow-Off Structure Project – Habitat Mitigation and Monitoring Plan prepared for Metropolitan Water District of Southern California*, prepared by Dudek (dated February 2018) and received in the Commission's office on February 28, 2018.

Any proposed changes to the approved HMMP 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.

The mitigation and monitoring program shall at a minimum include the following:

- A. Permanent impacts to wetlands will be mitigated by wetland creation at a ratio of 4:1;
- B. Plans for site preparation and preservation of native seed bank;
- C. Restoration plan including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;
- D. Description of the monitoring program (quantitative sampling methods such as quadrats, transects etc. and statistical analysis) that will be employed to determine the progress and ultimate success of the mitigation/restoration;
- E. Final Success Criteria. The restoration will be considered successful if the overall species composition and vegetative cover of the dominant species are similar (no more than 15% difference) to relatively undisturbed wetland habitat in a nearby reference area (s) or as defined in the literature. Species composition shall be considered similar if all the dominant species and at least 70% of the non-dominant species at the reference site (or as defined in the literature) are present at the restored site. If reference sites are used for determining success, they must be identified and sampled using the same monitoring methods employed for the restoration. The reference site (s) monitoring results must be included in the revised HMMP. If the literature is used for determining restoration success, the success criteria must be presented and the literature cited;
- F. Provisions assessing the initial biological and ecological status of the “as built” restoration site within 30 days of establishment of the restoration site in accordance with the approved restoration program;
- G. 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;
- H. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall be a cumulative report that summarizes all previous reports. Each report shall document the condition of the

restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards; and,

- I. Provisions for submission of a final monitoring report to the Executive Director at the end of the reporting period. The final report must be prepared in conjunction with a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report must address all of the monitoring data collected over the five-year period.

If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program that were necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.

The permittee shall monitor and remediate the wetland restoration site in accordance with the approved 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.

2. **Biological Monitor.** An appropriately trained biologist shall monitor construction activity 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 construction activities, which could significantly impact biological resources, such as construction within 100 feet of a wetland, and construction that could result in disturbances to Coastal Sage Scrub, Mulefat, Mulefat Scrub, Disturbed Mulefat Scrub, Southern Willow Scrub, Tamarisk Scrub, Ruderal, and Southern Willow Scrub or Least Bell's Vireo. 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, which would disturb sensitive species or 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.
3. **Construction Staging Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the permittee shall submit, for the review and approval of the Executive Director, two (2) full size sets of a Construction Staging Plan, which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts to sensitive habitat area, minimize public access impacts, and minimize water quality impacts to coastal waters.
 1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;

- (b) Construction equipment, materials, or activity shall not be placed within any Environmentally Sensitive Habitat Area (ESHA); and
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary.
- 2 The plan shall include, at a minimum, the following components:
- (a) A site plan that depicts:
 - (1) the limits of the staging area(s);
 - (2) the limits of all construction corridor(s);
 - (3) the limits of the construction site(s); and,
 - (4) the location of construction fencing and temporary job trailer(s); and
 - (b) A narrative that describes and explains the plan.

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

- 4. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-17-0272. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-17-0272. Accordingly, any future improvements to the access road or blow-off structure, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Coastal Development Permit No. 5-17-0272 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 5. Construction Timing/Avoidance of Sensitive Species.**
- A. To avoid adverse impacts on bird nesting season construction activity shall not occur between March 15 through September 1; and,
 - B. Prior to commencement of any construction activities, a qualified biologist shall conduct a breeding behavior and nesting survey for birds protected by the United States Fish and Wildlife Service, California Department of Fish and Wildlife, the Migratory Bird Treaty Act, and California species of special concern within 300 feet of the project site (500 feet for raptors and owls). If any occupied nests of any sensitive species are discovered, construction activities within 300-feet of the nest (500-feet for raptors and owls) shall be monitored to ensure that construction noise levels do not exceed 65 dB peak within 100 feet of the nest until the nest is vacated and juveniles have fledged and there is no longer evidence of a second attempt at nesting. The applicant shall implement a larger buffer if the biologist recommends a larger buffer from the nest area.
- 6. Construction Best Management Practices (BMPs).** The permittee shall comply with the following construction-related requirements:
- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;

- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone;
- F. If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity;
- G. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- H. Non buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- I. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- J. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- K. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- L. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- M. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- N. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- O. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- P. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- Q. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

R) During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any waterway, bay, street, alley or stormdrain, unless specifically authorized by the California Regional Water Quality Control Board.

- 7. Storm Water Pollution Prevention Plan (SWPPP).** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) size sets of a Storm Water Pollution Prevention Plan (SWPPP) prepared and signed by licensed engineer that, at a minimum, meets the following:

The storm water pollution prevention plans must show that permittee is properly prepared to apply site design, source control and treatment control BMP's, appropriate for the potential stormwater pollutants at this site, in order to protect coastal waters from polluted runoff generated by construction activities to the maximum extent practicable.

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

- 8. Assumption of Risk, Waiver of Liability and Indemnity Agreement Applicable to Applicant**

- A. By acceptance of this permit, the applicant, the Metropolitan Water District, acknowledges and agrees (i) that the site may be subject to hazards from wave and tidal action, flooding, erosion, sea level rise, geologic instability, or liquefaction; (ii) to assume the risks to the applicant, the Metropolitan Water District, 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.
- B. Prior to any conveyance of the property interest(s) that is/are the subject of this Coastal Development Permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject

property. This deed restriction shall not be removed or changed without a Commission amendment to this Coastal Development Permit.

- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Metropolitan Water District, 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.

9. Cultural Resource Treatment and Monitoring Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of a Cultural Resources Treatment and Monitoring Plan prepared by a qualified professional, which shall incorporate the following measures and procedures:
- i. The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end, the cultural resources monitoring plan shall require that archaeological and Native American monitors be present during all grading operations and subsurface construction activity that has the potential to impact cultural resources.
 - ii. There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological/cultural or paleontological resources.
 - iii. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.
 - iv. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and subsurface construction activities that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times.
 - v. If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.
- B. If the Executive Director determines that the discovery is significant, the permittee shall follow the procedures in Appendix B to determine if an amendment to this permit is required. If an amendment to this CDP is required, development within at least 50 feet of

the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

10. Traffic Control Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of a Traffic Control Plan that demonstrate the following:

- A. Every effort shall be made to minimize the duration of sidewalk, bike and road lane closures so that impacts upon public access are minimized;
- B. The sidewalk, bike and road lanes should be opened; and available for use to the maximum extent feasible during construction; and,
- C. A detour plan to re-route pedestrian and bicycle traffic shall be identified for those periods when the sidewalk and/or bicycle lane is closed for public safety purposes within the project area.

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

11. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the properties. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the properties now or in the future.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project includes: 1) the rehabilitation of an existing water distribution pipeline blow-off structure and internal piping and valves, originally constructed in the 1940s, situated along the OC Feeder pipeline adjacent to the San Diego Creek Channel in Upper Newport Bay; and 2) repair of an existing unpaved access maintenance road in order to allow vehicular access to the blow-off structure to facilitate routine maintenance and repairs ([Exhibit Nos. 2-3](#)).

The proposed project more specifically consists of the following:

Blow-off structure rehabilitation proposed includes:

- 1) Replacement of valves, replacement of corroded steel piping, and recoating of all exposed steel. Also, the blow-off discharge outlet would be modified to comply with current regulations to prevent potential cross contamination by providing an air gap to establish a vertical separation between the end of the blowoff discharge conduit and the fluctuating water level of the San Diego Creek Channel. The existing 9-foot high steel vent pipe extending above the structure will be removed and replaced with new discharge piping that will extend vertically up through the new vault lid and curve 180 degrees downward ("goose neck") over and into the existing energy dissipating structure extending approximately 1.5 feet above the proposed improved structure.
- 2) Encasement of the new piping by adding a reinforced concrete wall extension and roof, which will increase the height of the blow-off structure from approximately 5 feet above existing grade (12 feet above Mean Sea Level (MSL)) to approximately 10 feet above the existing grade (17 feet above MSL). The new height of the structure will be one foot above the 100-year flood plain elevation.

Maintenance road and site access improvements proposed include:

- 1) Initially, a low-profile road (approximately 150 linear feet) will be installed where the access road intersects a topographic drainage feature directly west of the blow-off structure from approximately Station 8+00 to the end of the road at approximately Station 9+44. The road will be constructed of a cable concrete block revetment system underlain by a geotextile and crushed rock base surrounded by approximately 5 feet of grouted rip rap.
- 2) Extension of the pad around the blow-off structure to provide a turnaround area and vehicular access for on-going operations, repair, and maintenance activities at the end of the dirt road. The total proposed pad area for the blow-off structure will be approximately 45 feet long by 50 feet wide and constructed of a cable concrete block revetment system underlain by a geotextile crushed rock base surrounded by approximately 5 feet of grouted rip-rap.
- 3) The concrete block revetment system for the pad area and low-profile road will require placement of approximately 3,600 square feet of geotextile material and approximately 400 cubic yards of crushed aggregate base.
- 4) The concrete block revetment system for the pad area and low-profile road will also have grouted riprap (approximately 5 feet in height by 7.5 feet in width) on a majority of both sides of those project components, installed in a wedge-shape below the surface grade of the access road, whereby excavated soils will be backfilled to re-establish the existing grade.
- 5) The concrete revetment system is designed in a manner to allow passage of storm water runoff, and minor ephemeral drainage.

The concrete block revetment system for the 45-foot by 50-foot pad area and the low-profile road will result in disturbance of approximately 0.41 acre of area and will require removal/export of approximately 1,200 cubic yards of soil, which will be disposed of at an upland location offsite outside of the coastal zone. Two temporary construction staging areas are also proposed along the side of the access road.

Construction is estimated to take approximately 4 months (80 working days). In terms of sequencing, the proposed maintenance road and site access improvements, including the cable concrete block revetment system, will take place first followed by the blow-off structure repair in order to allow heavier equipment to safely travel to the blow-off structure for rehabilitation activities. The applicant has indicated that all construction activity will take place outside of bird nesting season, March 15 through September 1.

The proposed project results in 0.16 acre of permanent impacts to wetlands (fill) and 0.13 acre of temporary impacts (temporary disturbance) to wetlands. The applicant has proposed mitigation measures to minimize environmental effects as a result of the permanent impacts and also temporary impacts to Coastal Sage Scrub, Mulefat, Mulefat Scrub, Disturbed Mulefat Scrub, Southern Willow Scrub, Tamarisk Scrub, Ruderal, and Southern Willow Scrub habitat. The proposed mitigation measures are set forth in the applicant's Habitat Mitigation and Monitoring Plan (HMMP): *Upper Newport Back Bay Blow-Off Structure Project – Habitat Mitigation and Monitoring Plan* prepared for Metropolitan Water District of Southern California, prepared by Dudek dated February 2018.

The project site is located on the northern end of Upper Newport Bay on the northern bank of the San Diego Creek Channel at a low point along the Orange County (OC) Feeder adjacent to where the pipeline traverses beneath the San Diego Creek Channel within the City of Newport Beach (Orange County) ([Exhibit No. 1](#)). In this location, San Diego Creek Channel is tidally influenced and locally supports marsh and wetland habitats where not encroached upon by urban development. San Diego Creek Channel is the largest contributor of freshwater flow into Upper Newport Bay.

The project site, designated as Open Space in the City's certified LCP, is located South of Bayview Way; East of Jamboree Road; North of San Diego Creek Channel; and West of State Route (SR) 73. Direct access to the project site is provided via a one-lane unpaved dirt access maintenance road that intersects with Jamboree Road immediately north of the Jamboree Road Bridge over the San Diego Creek Channel.

The OC Feeder is an approximately 41-mile long steel pipeline that distributes treated water from Metropolitan's F.E. Weymouth Water Treatment Plant (Weymouth Plant) located in the City of La Verne (Los Angeles County) to numerous communities in Los Angeles and Orange Counties. In order to perform inspections, maintenance, and repair activities, the OC Feeder must be periodically shut down and dewatered. During such an event, water is discharged from the pipeline by gravity through a series of 15 blow-off structures spaced intermittently at low elevations along the 41-mile pipeline route. The subject blow-off structure is one of those 15 structures and is located at the lowest point in elevation along the entire OC Feeder alignment.

The applicant states that the proposed project is necessary because the blow-off structure has suffered serious corrosion as a result of more than five decades of operation in the saltwater

environment of the Upper Newport Bay and its valves have reached the end of their service life. Additionally, because the existing discharge outlet is frequently submerged in the brackish water of the San Diego Creek Channel, MWD is required to install new blow-off piping to comply with current Department of Public Health Cross Connection and Water Pollution Control Program regulations (17 CCR 64575 and 22 CCR 7583), which stipulate that water from the surrounding environment (both sea and rain water) must be prevented from infiltrating the potable water carried by the OC Feeder.

The rehabilitation of the existing access road that leads to the blow-off structure (an Orange County Flood Control District right-of-way) is necessary because the road has become impassable for maintenance vehicles. The applicant states that, as originally constructed, the access road was 12 feet wide and 840 feet long from Jamboree Road east to the blow-off structure. Stormwater runoff from development in the surrounding area has caused localized erosion at the blow-off structure, encouraged vegetation growth that impedes road access, eroded away approximately 250 linear feet of the road directly west of the blow-off structure, and caused road width reductions along a significant length of the road. As a result, maintenance vehicles can no longer access the blow-off structure. To currently access the blow-off structure, workers must leave their vehicles where the road becomes impassable to vehicles, and proceed on foot through dense vegetation and rough and uneven terrain. The removal of the vegetated overgrowth on the road constitutes a significant portion of the biological impacts of the proposed project, for which significant mitigation is proposed as part of the project (see HMMP).

The applicant has stated that the existing topography of the site would be generally maintained with only slight changes associated with re-establishment of the access road and installation of the concrete block revetment system. Both the access road and the grouted riprap protection will generally be at grade or very low profile. One of the problems the proposed project aims to correct is that storm water runoff north of the project site, as well as peak flows in San Diego Creek Channel, are causing substantial erosion and deterioration of the access route which makes the access road impassable for vehicles. The concrete block and cable system will establish a durable surface while avoiding a continuously connected impervious surface, which is often the cause of increased flow velocities and subsequent erosion. It will act as a semipervious surface, which, accompanied by the grouted riprap on either side, protects the road from scour and erosive flows. As designed, the proposed project is intended to minimize future storm water impacts at these locations.

B. STANDARD OF REVIEW

The proposed project is located in the City of Newport Beach, which has a Local Coastal Program (LCP) that was certified by the Commission in January 2017. However, the project site is located in an area subject to the public trust, and within the Commission's original permit jurisdiction. Therefore, the Coastal Commission is the permit issuing authority for this project, and the standard of review is the Chapter 3 policies of the Coastal Act. The City of Newport Beach LCP can be used as guidance.

In addition, this project constitutes a "treatment work" according to the definition set forth in the Federal Water Pollution Control Act, as referenced in section 30120 of the Coastal Act. The FWPCA defines treatment work as follows:

A) The term treatment work means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment. (B) In addition to the definition contained in subparagraph (A) of this paragraph, treatment works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems . . .

Section 30412(c) directs that any development constituting a treatment work providing service to any area within the coastal zone shall be reviewed by the Commission and any permit it issues shall be determinative only with respect to the following aspects of the development: 1) the siting and visual appearance of treatment works within the coastal zone; 2) the geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division; and 3) development projections which determine the sizing of treatment works for providing service within the coastal zone. The Commission is directed to make these determinations in accordance with Coastal Act policies. Moreover, section 30412(b) directs that the Commission shall not “modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.”

In addition, section 30254.5 of the Coastal Act specifically prohibits the Commission, notwithstanding any other provision of law, from imposing any term or condition on the development of any sewage treatment plant which is applicable to any future development that the Commission finds can be accommodated by that plant consistent with the Coastal Act.

As such, the Commission is within its purview to evaluate the proposed project in terms of siting, design, and service area per Coastal Act section 30412. The Commission’s consideration of the development is undertaken pursuant solely to the authority duly granted to the Commission by the Coastal Act, is limited to ensuring the approved development’s conformance with the policies of the Coastal Act, and in no way represents actions which modify, supplant, condition, or otherwise conflict with a determination of either the state or any regional water quality control board in matters relating to water quality or the administration of water rights.

C. BIOLOGICAL RESOURCES/WATER QUALITY

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233 of the Coastal Act states (in relevant 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:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing 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 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.*
- (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.*

Section 30240 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

(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.

City of Newport Beach Certified Coastal Land Use Plan, Environmentally Sensitive Habitats, Policy 4.1.1-14, states:

Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Priority shall be given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

Coastal Land Use Plan, Environmentally Sensitive Habitats, Policy 4.1.1-15:

Apply the following mitigation ratios for allowable impacts to upland vegetation: 2:1 for coastal sage scrub; 3:1 for coastal sage scrub that is occupied by California gnatcatchers or significant populations of other rare species; 3:1 for rare community types such as southern maritime chaparral, maritime succulent scrub; native grassland and 1:1 for southern mixed chaparral. The ratios represent the acreage of the area to be restored/created to the acreage impacted.

Coastal Land Use Plan, Environmentally Sensitive Habitats, Policy 4.1.1-16:

For allowable impacts to ESHA and other sensitive resources, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period of not less than five years.

Coastal Land Use Plan, Environmental Study Areas, Policy 4.1.3-1:

Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:

C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.

D. Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat.

E. Limit encroachments into wetlands to development that is consistent with Section 30233 of the Coastal Act and Policy 4.2.3-1 of the Coastal Land Use Plan.

N. Prohibit invasive species and require removal in new development.

H. Participate in implementation of Total Maximum Daily Loads (TMDLs) – see Section 4.3 (Water Quality).

I. Participate in programs to control sedimentation into and within Upper Newport Bay.

Q. Continue to require Caulerpa protocol surveys as a condition of City approval for projects in Newport Bay and immediately notify the SCCAT when found.

Coastal Land Use Plan, Environmental Study Areas, Policy 4.1.3-2:

Prohibit the planting of invasive species in non-urbanized areas.

Coastal Land Use Plan, Environmental Study Areas, Policy 4.1.3-5:

Coordinate with the California Department of Fish and Game and the County of Orange in developing a management plan for the Upper Newport Bay Marine Park and the Upper Newport Bay Nature Preserve.

Coastal Land Use Plan, Environmental Study Areas, Policy 4.1.3-11:

Routine maintenance of drainage courses and facilities, sedimentation basins, trails, access roads, public infrastructure, and other related facilities may be allowed if carried out in accordance with the resource protection policies of the Coastal Land Use Plan.

Coastal Land Use Plan, Southern California Wetlands, Policy 4.2.1-1:

Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value.

Coastal Land Use Plan, Southern California Wetlands, Policy 4.2.1-2:

Protect, maintain and, where feasible, restore the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes.

Coastal Land Use Plan, Wetland Definition and Delineation, Policy 4.2.2-1:

Define wetlands as areas where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of hydrophytes. Such wetlands can include areas where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides.

Coastal Land Use Plan, Wetland Definition and Delineation, Policy 4.2.2-2:

Require a survey and analysis with the delineation of all wetland areas when the initial site survey indicates the presence or potential for wetland species or indicators. Wetland delineations will be conducted in accordance with the definitions of wetland boundaries contained in section 13577(b) of the California Code of Regulations.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-1 states:

Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

- A. *Construction or expansion of port/marine facilities.*
- B. *Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.*
- C. *In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- D. *Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
- E. *Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- F. *Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- G. *Restoration purposes.*
- H. *Nature study, aquaculture, or similar resource-dependent activities.*

- I. *In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-11 states:

Require the following minimum mitigation measures if a project involves diking or filling of a wetland:

A. If an appropriate mitigation site is available, the applicant shall submit a detailed plan which includes provisions for (1) acquiring title to the mitigation site; (2) “in-kind” wetland restoration or creation where possible; (3) where “out-of-kind” mitigation is necessary, restoration or creation of wetlands that are of equal or greater biological productivity to the wetland that was filled or dredged; and (4) dedication of the restored or created wetland and buffer to a public agency, or permanent restriction of their use to open space purposes.

Adverse impacts shall be mitigated at a ratio of 3:1 for impacts to seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for impacts to vernal pools and saltmarsh (the ratio representing the acreage of the area to be restored/created to the acreage of the area diked or filled), unless the applicant provides evidence establishing, and the approving authority finds, that restoration or creation of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event shall the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands. The mitigation shall occur on-site wherever possible. Where not possible, mitigation should occur in the same watershed. The mitigation site shall be purchased and legally restricted and/or dedicated before the dike or fill development may proceed.

B. The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water in place of creating or restoring wetlands pursuant to paragraph A. This method of mitigation would be appropriate if the applicant already owns, or can acquire, filled or diked areas which themselves are not environmentally sensitive habitat areas but which would become so if such areas were opened to tidal action or provided with other sources of surface water.

C. However, if no appropriate sites under options (A) and (B) are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.

This third option would be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The public agency may also face difficulties in acquiring appropriate sites even though it has the ability to condemn property. Thus, the in-lieu fee shall reflect the additional costs of acquisition, including litigation, as well as the cost of restoration. If the public agency’s restoration project is not already approved by the City, the public agency may need to be a co-applicant for a permit to provide adequate

assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to issuance of the permit. In addition, such restoration must occur in the same general region (e.g., within the same estuary) where the fill occurred.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-13 states:

Where impacts to wetlands are allowed, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period of not less than five years.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-14 states:

Require that any project that includes diking, filling or dredging of a wetland or estuary, as permitted pursuant to Policy 4.2.3-1, maintain the functional capacity of the wetland or estuary. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:

A. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance, and composition are essentially unchanged as a result of the project.

B. That the project does not harm or destroy a species or habitat that is rare or endangered.

C. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.

D. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and -consumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-16 states:

Design and site all structures permitted to encroach into open coastal waters, wetlands, and estuaries to harmonize with the natural appearance of the surrounding area.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-18 states:

Require restoration plans to be reviewed and approved by a qualified professional prior to accepting sites for mitigation.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-6 states:

Require grading/erosion control plans to include soil stabilization on graded or disturbed areas.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-7 states:

Require measures be taken during construction to limit land disturbance activities such as clearing and grading, limiting cut-and fill to reduce erosion and sediment loss, and avoiding steep slopes, unstable areas, and erosive soils. Require construction to minimize disturbance of natural vegetation, including significant trees, native vegetation, root structures, and other physical or biological features important for preventing erosion or sedimentation.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-8 states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Coastal Land Use Plan, NPDES, Policy 4.3.2-1 states:

Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.

Coastal Land Use Plan, NPDES, Policy 4.3.2-6 states:

Implement and improve upon best management practices (BMPs) for residences, businesses, new development and significant redevelopment, and City operations.

Coastal Land Use Plan, NPDES, Policy 4.3.2-7 states:

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

Treatment Control BMPs.

Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

Coastal Land Use Plan, NPDES, Policy 4.3.2-8 states:

To the maximum extent practicable, runoff should be retained on private property to prevent the transport of bacteria, pesticides, fertilizers, pet waste, oil, engine coolant, gasoline, hydrocarbons, brake dust, tire residue, and other pollutants into recreational waters.

Coastal Land Use Plan, NPDES, Policy 4.3.2-13 states:

Site development on the most suitable portion of the site and design to ensure the protection and preservation of natural and sensitive site resources by providing for the following:

A. Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss;

B. Analyzing the natural resources and hazardous constraints of planning areas and individual development sites to determine locations most suitable for development;

C. Preserving and protecting riparian corridors, wetlands, and buffer zones;

D. Minimizing disturbance of natural areas, including vegetation, significant trees, native vegetation, and root structures;

E. Ensuring adequate setbacks from creeks, wetlands, and other environmentally sensitive habitat areas;

F. Promoting clustering of development on the most suitable portions of a site by taking into account geologic constraints, sensitive resources, and natural drainage features

G. Utilizing design features that meet water quality goals established in site design policies.

Coastal Land Use Plan, NPDES, Policy 4.3.2-19 states:

Require parking lots and vehicle traffic areas to incorporate BMPs designed to prevent or minimize runoff of oils and grease, car battery acid, coolant, gasoline, sediments, trash, and other pollutants to receiving waters.

Coastal Land Use Plan, NPDES, Policy 4.3.2-22 states:

Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. Section 30232 of the Coastal Act requires protection against the spillage of crude oil, gas, petroleum products, or hazardous materials in relation to any development. Section 30233 of the Coastal Act limits the fill of open coastal waters

to certain allowable purposes and also requires that any project which results in fill of open coastal waters provide adequate mitigation. One purpose for which fill is allowed is incidental public service purposes. Section 30240 of the Coastal Act protects environmentally sensitive habitat area (ESHA) and requires that development adjacent to sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade those areas.

1. Environmental Sensitive Habitat Area (ESHA)

Section 30240 of the Coastal Act requires that environmentally sensitive habitat area (ESHA) be protected. Under Section 30107.5 of the Coastal Act, there are three important elements of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals, or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The proposed development, including the access road repair, temporary staging areas, and restoration will directly and indirectly affect some sensitive habitat areas that are designated and protected as ESHA under Section 30240 of the Coastal Act.¹ The designated ESHA primarily consists of Coastal Sage Scrub that exists along both sides of the access road, which is potential habitat for the *California gnatcatcher*. Dr. Jonna Engel, Coastal Commission Ecologist, has concluded that CSS is easily disturbed and degraded by human activities such as the introduction of non-native and ornamental and invasive species, and clearing for trails and other types of development. Also, the certified City of Newport Beach LCP identifies Coastal Sage Scrub (CSS) as ESHA.

The LCP states the following regarding CSS under the ESHA section (4.1.1 Environmentally Sensitive Habitats):

Several of the natural communities that occur in Newport Beach are designated rare by the CDFG and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of ESHA under the Coastal Act. These include southern dune scrub, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, southern willow scrub, southern cottonwood willow riparian forest, southern arroyo willow forest, southern black willow forest, southern sycamore alder riparian woodland, and southern coastal purple needlegrass grassland.

Although not all riparian habitat types are rare throughout the state, in southern California over 90% of the original riparian habitats had been lost to development by 1989. All remaining native riparian habitats in southern California, including southern coast live oak riparian forest, meet the definition of ESHA both because of their rarity and because of their important roles in the ecosystem. For example, many species of birds nest and roost in riparian habitat but forage in adjacent coastal sage scrub and chaparral.

Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there

¹ According to the applicant, the project will result in unavoidable permanent impacts to 0.04 acre disturbed Coastal Sage Scrub due to re-grading and repair of the access road, as well as short-term temporary construction impacts to a total of 0.19 acre of Coastal Sage Scrub and Disturbed Coastal Sage Scrub due to the temporary project staging areas.

are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or “edge” habitat adjacent to saltmarsh, providing important functions such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated threatened under the Federal Endangered Species Act.

While Section 30240(a) limits development in ESHA to resource dependent uses, the Commission can permit necessary repairs to existing infrastructure in areas where ESHA is present. Habitat restoration and enhancement are resource dependent uses that are allowed within ESHA. However, new development, such as the proposed project staging areas, cannot be permitted within ESHA.

Special Condition No. 3 requires the applicant to submit a Construction Staging Plan that avoids impacts to Coastal Sage Scrub, meaning that the two proposed staging areas must be relocated. The habitat map for the project area shows a large area south of the access road that is identified as ruderal. This ruderal area would be an appropriate area to locate the project staging area(s).

The road repair work is necessary repair and maintenance of an existing structure that, although not previously permitted, existed prior to adoption of the Coastal Act. Section 30610(d) of the Coastal Act specifies that repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repairs does not require a coastal development permit, except for “extraordinary methods of repair and maintenance” determined by regulation to involve a risk of substantial adverse environmental impact. Section 13252(a)(3) of the Commission’s regulations identifies any method of repair or maintenance work located in ESHA, and that involves either the placement of solid materials or the presence of mechanized equipment or construction materials in ESHA, as development that requires a coastal development permit.

The proposed road repair work satisfies the requirements of section 13252(a)(3). Therefore, under section 30610(d) and section 13252 of the Commission’s regulations, the Commission may authorize and condition the *method* of repair or maintenance to ensure compliance with Chapter 3 of the Coastal Act, whereas the underlying development to be repaired, in this case, the existing pre-Coastal road, is not the primary subject of the permit. Thus, although the road repair work is non-resource dependent development in ESHA, the Commission may only regulate the method by which that repair work is undertaken.

In this case, there is development proposed in ESHA and adjacent to ESHA. The development proposed in ESHA is allowable because it is repair and maintenance of an existing authorized structure. The development in ESHA has been conditioned to minimize impacts to the ESHA and to not significantly disrupt habitat values. Similarly, the development outside of ESHA has been conditioned to ensure that it is sited and designed to prevent impacts that would significantly degrade the ESHA. Thus, as conditioned, and given that the proposed project consists of repair and maintenance of existing development, the proposed development, as conditioned is consistent with section 30240 of the Coastal Act.

2. Fill of Wetlands

In order to assess the biological resources impacted by the proposed, project reports were conducted, including CEQA documentation, for the project site. Vegetation communities found within the project site include Coastal Sage Scrub, Disturbed Coastal Sage Scrub, Freshwater Marsh, Mulefat Scrub, Salt Marsh, and Southern Willow Scrub. Special-status plant species observed during focused plant surveys included two occurrences of Southwestern Spiny Rush located over 75 feet from the project footprint. Additionally, numerous special-status wildlife species known to occur or that have a moderate potential to occur in the project area included; but are not limited to, Coastal California Gnatcatcher, Least Bell's Vireo, Coyote, and Western Red Bat.

While the proposed project has been designed to avoid biological impacts to the maximum extent feasible, according to the applicant, the proposed project would result in the following wetland impacts ([Exhibit No. 4](#)):

- 1) Unavoidable permanent impacts (fill) to a total of 0.16 acre of wetlands (Mulefat, Mulefat Scrub, Southern Willow Scrub, Tamarisk Scrub, Ruderal, and Southern Willow Scrub) associated with improvements to the blow-off structure pad/access turn around area and re-grading and repair of the existing access road.
- 2) Additionally, the project would result in temporary construction impacts to a total of 0.13 acre of wetlands (Disturbed Mulefat Scrub, Mulefat Scrub, Southern Willow Scrub, Tamarisk Scrub, Ruderal and Southern Willow Scrub) associated with temporary construction grading limits and storage areas.

Thus, the proposed project will result in fill within areas of the San Diego Creek Channel defined as wetland resources pursuant to section 30121 of the Coastal Act. The fill is necessary to maintain existing water service that is dependent on the continued operation of the OC Feeder, which is an incidental public service.

The rehabilitation of the blow-off structure and the access road will result in 0.16 acre of permanent wetland impacts (fill). Construction grading and the proposed construction staging areas will result in 0.13 acre of temporary wetland impacts. Therefore, these activities are considered fill of wetland resources. This fill is necessary to rehabilitate an existing blow-off structure and access to it in order to ensure operation of the water distribution pipeline that provides an important public service. While the access road is being widened in areas to 12 feet in width, it is only being widening to the original 12-foot width (when it was constructed). Thus, no expansion of road capacity is created by the project. Therefore, the fill is associated with an incidental public service.

Although the proposed fill is an allowable type of fill under section 30233(a), the project can only be found consistent with the Coastal Act if it is the least environmentally damaging feasible alternative and feasible mitigation measures have been provided to minimize environmental effects. The applicant considered the following alternatives in determining the least environmentally damaging alternative: 1) relocation of the blow-off structure to the north of the existing structure; 2) relocation of the blow-off structure to the south side of San Diego Creek Channel (opposite side of the creek); 3) construction and maintenance access via San Diego Creek Channel; and 4) reduced pad area adjacent to the blow-off structure.

The applicant stated that Alternative No. 1 was not chosen for several reasons. Moving the blow-off structure further north would not be situated at the lowest hydraulic point of elevation along the OC feeder alignment and if dewatering were to occur, additional pumping would be required instead of having the benefit of gravity flow and would result in energy consumption and associated air emissions. In addition if relocated north, the existing facility would need to be decommissioned and a new access road and blow-off structure would need to be constructed. Relocating the structure would result in permanent and temporary biological impacts due to construction of a new access road and blow-off structure. Alternative No. 2 also shared the same issues as Alternative No. 1, but also had additional issues. The southern location would require a new engineered foundation to support it and may have public access and visual resource impacts. For these reasons, the applicant did not choose these two alternatives.

Alternative No. 3 would involve use of a barge along San Diego Creek Channel to deliver equipment, materials, and construction personnel to the site of the blow-off structure. However, this alternative would require a landing structure and would likely require dredging of the creek to allow access for the barge. The applicant states that this would result in impacts to open water habitat and would likely impact an equal amount of Mulefat Scrub and/or Southern Willow Scrub vegetation relative to the proposed project. In addition, this alternative would not meet the objective of reestablishing safe, reliable, and immediate access along the existing access road to the blow-off structure for repair and maintenance or in the event of an emergency. Therefore, this alternative was not chosen.

Alternative No. 4 consisted of a reduced pad footprint adjacent to the blow-off structure. However, the applicant states that a reduced pad size would not provide the necessary turnaround area for construction and maintenance equipment to access the site. Currently, workers access the site by foot since the access road becomes impassable at a certain point. The applicant further states that the blow-off structure needs to be accessed in order to provide necessary improvements to prevent cross-connection in compliance with current department of Public Health Cross Connection and Water Pollution Control Program regulations (17 CCR 6475 and 22 CCR 7583), to ensure the reliability of water deliveries, to provide the capability to fully dewater the pipeline in a timely and efficient manner, and to ensure safe, reliable, and immediate access to the blow-off structure for repair and maintenance or in the event of an emergency. Therefore, the proposed pad size is necessary and alternative smaller pad footprint would not be feasible.

While the Commission agrees that the proposed project is the least environmentally damaging feasible alternative, feasible mitigation measures to minimize environmental effects are still necessary. As stated previously, the proposed project results in 0.16 acre of permanent impacts and 0.13 acre of temporary impacts to wetlands.

To mitigate for the permanent fill of 0.16 acre of wetlands, the applicant is proposing to mitigate at a minimum 3:1 replacement-to-impact ratio with the restoration of 0.24 acre of Mulefat and Southern Willow Scrub habitat, and with 0.37 acre of non-native invasive species removal. The proposed 0.24 acre of restoration of Southern Willow Scrub/Mulefat will occur at the Newport Valley site, which consists of 25 acres of City of Newport Beach-owned property. The 0.37 acre of non-native invasive species removal will take place within the Upper Newport Bay Ecological Reserve. The California Coastal Commission's Community Based Restoration and Education Program has already

started conducting wetland and riparian restoration at this site through the removal of non-native species and the replanting of native willow and mulefat species. The mitigation site is designated in the Newport Beach General Plan and Local Coastal Plan as an Environmental Study Area and is a California Coastal Commission designated Environmentally Sensitive Habitat Area (ESHA). The property where mitigation is proposed will be conserved and managed in perpetuity by California Department of Fish and Wildlife (CDFW) and the City of Newport Beach. The 0.24 acre of willow/mulefat restoration funded by Metropolitan would be subject to a project-specific Habitat Mitigation and Monitoring Plan (HMMP): *Upper Newport Back Bay Blow-Off Structure Project – Habitat Mitigation and Monitoring Plan prepared for Metropolitan Water District of Southern California*, prepared by *Dudek* dated February 2018; and monitored for a period of five years to ensure success. In addition, the HMMP states that a biological consultant will be present to monitor mitigation work.

To mitigate for temporary fill of 0.13 acre of wetlands, the applicant is proposing a 2:1 replacement-to- impact ratio with onsite reseeding with a local native grass mix or Mulefat and Southern Willow cuttings/seedings, the onsite removal of non-native invasive plants species for 1 year following seeding implementation, and with 0.13 acre of off-site non-native invasive species removal within the Upper Newport Bay Ecological Reserve. This is also covered under the applicant’s proposed HMMP.

The applicant is also proposing restoration of an additional 0.48 acre of Southern Willow Scrub/Mulefat conducted at the Newport Valley Mitigation Site, as required by the United States Fish and Wildlife Service (USFWS) to offset impacts to occupied Least Bell's Vireo habitat located in the permanent and temporary impact areas. These activities are also covered the applicant’s proposed HMMP.

The CDFW, United States Department of Fish and Wildlife (USFWS), and RWQCB staff have reviewed and approved the HMMP.

While the applicant has proposed restoration of areas to riparian vegetation in total of 0.72 acre ($0.24 + 0.48 = 0.72$) to mitigate for the permanent loss of wetlands, mitigation for permanent wetland impacts require the creation of a wetland at a ratio of 4:1. Restoration of an area to function as a wetland or to function more effectively as a wetland is not the same as creation of a wetland. Although the Newport Beach LCP requires a mitigation ratio of 3:1 for permanent loss of wetlands (cite), in the experience of Commission staff, this ratio has not been adequate to off-set the permanent loss of wetlands, due in part to the difficulty of attaining a successful mitigation program for permanent impacts to wetlands. Best available science has shown that adherence to a mitigation ratio of 4:1 is more appropriate mitigation for permanent wetlands loss. Thus, because the standard of review here is Chapter 3 of the Coastal Act, and the LCP is used as guidance only, the Commission finds that in order to comply with section 30233 mitigation requirements for fill of wetlands, the applicant must create wetlands at a ratio of 4:1 to off-set the permanent impacts to wetlands resulting from the proposed project. Therefore to ensure that mitigation for the permanent loss of wetlands is provided, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit a Revised HMMP that includes mitigation for permanent wetland impacts at a ratio of 4:1. In addition, in order to minimize potential impacts during construction, the Commission imposes **Special Condition No. 2**, which requires that an appropriately trained biologist shall

monitor construction activity and to implement methods to avoid disturbance to sensitive species or habitat area.

There is significant potential for adverse impacts to habitat as a result of any future changes to the proposed project, such as a change to the access road width or blow-off structure height. Thus, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 4**, which is a future improvements special condition.

In conclusion, the Commission finds that the proposed project involves wetland fill that is allowable as an incidental public service purpose, that the proposed fill is the least environmentally damaging feasible alternative, and that, as conditioned to revise the HMMP, adequate mitigation measures have been provided to minimize adverse environmental effects. Therefore, the proposed project, as conditioned, can be found consistent with Section 30233 of the Coastal Act.

3. Avian Species

The project site is located in an area of state or federally listed rare, threatened, or endangered species. Focused surveys for special status bird species were conducted in 2005, 2007, 2012 and 2013. Coastal California Gnatcatcher and Least Bell's Vireo were observed during these surveys. There is potential for the project to impact special status bird species. The applicant has indicated that work will take place outside of the bird nesting season, March 15 through September 1. However to ensure that no construction activity takes place during the bird nesting season (March 15 through September 1), the Commission imposes **Special Condition No. 5**, which prohibits construction activity to take place during the bird nesting season (March 15 through September 1) and requires pre-construction surveys for nesting birds and avoidance of nesting sites during nesting.

4. Construction Impacts to Water Quality

Construction will occur directly over and in coastal waters. As such, there is a possibility that construction phase activities could result in adverse water quality impacts. In addition, there is a possibility that improper staging and storage of equipment could have impacts on both water quality and nearby wetland habitat. Wetlands and other sensitive habitat are located within the footprint of the project and in the project vicinity.

Potential construction phase impacts include improper storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or in a manner which allows such materials to be discharged into the San Diego Creek Channel and coastal waters via rain or urban runoff. These actions would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column.

The applicant is proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as: Temporary erosion control and temporary sediment controls to be used during construction, such as temporary soil

stabilization and silt fencing where necessary; waste management and materials pollution controls during construction; and weekly inspections of installed BMPs.

In order to assure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, the Commission imposes **Special Condition No. 6**, which requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality.

Besides adhering to the construction Best Management Practices (BMPs) as required by **Special Condition No. 6** above, a Storm Water Pollution Prevention Plan (SWPPP) should also be prepared for the proposed project that would specifically deal with water quality on site during construction. Therefore, it is necessary to impose **Special Condition No. 7**, which requires the applicant to submit a Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the Executive Director.

The project will consist of two temporary construction staging areas. These locations were chosen based upon their proximity to the blow-off structure and their previously disturbed/developed condition. However, the proposed staging areas are located in ESHA and must be relocated to ensure consistency with Coastal Act section 30240(a), as required by **Special Condition 3**. In order to ensure that water quality is not impacted by these construction staging areas, once properly located to avoid ESHA, the Commission imposes **Special Condition No. 6** and **Special Condition No. 7** which require the applicant to implement construction Best Management Practices (BMPs) and to submit a SWPPP to protect water quality during construction.

The applicant has indicated that groundwater may be encountered during the installation of the grouted riprap, the crushed rock road base, and the concrete. In addition, a small volume of water may need to be pumped out during the rehabilitation work on the blow-off valve. Thus, dewatering may be necessary for the proposed project. The applicant has stated that if necessary, they will obtain approval for dewatering from the Regional Water Quality Control Board (RWQCB). In order to ensure that dewatering approval is obtained if necessary, the Commission imposes **Special Condition No. 6**, which requires the applicant to obtain dewatering approval if it is needed for the proposed project.

5. Post-Construction Impacts to Water Quality

There is potential that the proposed development will result in urban runoff entering the storm water system. Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, pesticides and fertilizers are often contained within urban runoff entering the storm water system. In this case, the site drains a relatively small project area consisting of a blow-off valve pad and an access road (approximately 0.8 acre).

A larger concern for water quality impacts occurs during the project construction. Elevation differences between existing and proposed topography are no more than approximately two feet. Because the changes in topography are minor and localized, and because the design of the project has considered existing on-site drainage patterns, the proposed project is not likely to substantially alter drainage patterns and thus would not substantially change the likelihood of flooding, erosion, or siltation on or off site. In addition, the low-profile road will be constructed of a cable concrete block revetment system underlain by a geotextile and crushed rock base. This will establish a durable

surface while avoiding a continuously connected impervious surface, which is often the cause of increased flow velocities and subsequent erosion post project. Therefore, post construction water quality has been addressed and will not result in additional water quality impacts.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232 and 30233 of the Coastal Act and with the marine resources and water quality policies of the City's certified LCP, as discussed above.

D. HAZARDS

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawall/bulkheads, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act provides in part:

New Development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazards...

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8 1-2 states:

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Coastal Land Use Plan, Hazards and Protective devices, Policy 2.8 1-4 states:

Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-5 states:

Permit revetments, breakwaters, groins, harbor channels, seawall/bulkheads, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-6 states:

Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-9 states:

Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-10 states:

Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).

Section 30235 provides that revetments that alter natural shoreline processes shall be permitted to protect existing structures in danger of erosion, when designed to eliminate or mitigate adverse impacts on shoreline sand supply.

The proposed project involves installation of a concrete block revetment system to protect the pad area and road consisting of the placement of approximately 3,600 square feet of geotextile material and approximately 400 cubic yards of crushed aggregate base. In order to protect the low-profile road from undermining caused by stormwater related erosion and to protect the pad against tidal action and stormwater runoff, grouted riprap will be installed on a majority of both sides of those project components adjacent to the San Diego Creek Channel. They will be installed in a wedge-shape below the surface grade of the access road, whereby excavated soils would be backfilled to re-establish the existing grade. The proposed protection is the minimum size necessary to protect the pad and road, and has been placed as far landward as possible. Without protection, the road and the pad would be subject to erosion and tidal action and stormwater runoff, and the stability of those components would be threatened. In this case, these components, as well the entirety of the proposed project is necessary to maintain existing water service that is dependent on the continued operation of the OC Feeder. Thus, the proposed protection is permitted under section 30235 of the Coastal Act because it is necessary to protect an existing structure in danger of erosion, is the minimum size necessary to protect the structures, and is not expected to adversely impact shoreline sand supply.

In addition, under section 30253, the proposed project must minimize risks to life and property in areas of high flood hazard areas. Here, the existing blow-off structure is within the 100-year flood plain, and the existing access road and proposed block revetment system is within or partially within the floodplain. The Federal Emergency Management Agency (FEMA) 100-year flood elevation in San Diego Creek at the proposed project site is approximately 16 feet above Mean Sea Level (MSL). This flood elevation puts the top of the blow-off structure below the 100-year floodplain by approximately 3.2 feet. The proposed project would raise the height of the blow-off structure by

approximately 9 feet sufficiently to prevent it from being submerged by a 100-year flood and reduce the vulnerability of the blow-off structure to a 100-year flood. Further, in order to evaluate the project based on Commission's Sea Level Rise Policy (Adopted August 2015), the applicant submitted the following document analyzing the hazards associated with the site: *Flood Analysis for the Upper Newport Backbay Blow-Off Structure*, prepared by Psomas, dated February 21, 2017. The analysis concluded that no additional structural protection other than currently proposed is needed at this time based on modeling and consideration of the CCC's 2015 guidance document.

The proposed project will continue to be subject to tidal action from the San Diego Creek Channel and development at such a location is inherently risky because of flood risk. Therefore, the Commission imposes **Special Condition No. 8**, requiring the applicant to assume the risks of the development. As conditioned, the applicant is notified that the project is being built in an area that is potentially subject to wave and tidal action, flooding, erosion, sea level rise, geologic instability, or liquefaction that can damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development and is required to indemnify the Commission in the event of a lawsuit against it.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with Sections 30235 and 30253 of the Coastal Act and the hazard policies of the City's certified LCP, as discussed above.

E. VISUAL RESOURCES

Section 30251 states in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-1 states:

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Section 30251 of the Coastal requires the protection of scenic views, and where feasible, restoration of visual qualities in visually degraded areas.

The proposed project is located adjacent to the San Diego Creek Channel directly in between Jamboree Road to the west and State Route (SR) 73 to the east, major arterial roadways. Bayview Way and an adjacent automotive dealership are located just to the north of the project site ([Exhibit No. 1](#)). Although the project site is located adjacent to the San Diego Creek Channel, which contains riparian vegetation and in which water flows year round, the site is not in a highly scenic area because of the bridges, highways and surrounding urban development. The site is visible from San Diego Creek Channel trail located on the south side of the creek.

The existing blow-off structure includes an above ground concrete vault that is approximately 6 feet wide and 6 feet long, and stands approximately 5 feet above the existing grade (12 feet above MSL) with an approximately 9-foot high steel vent pipe extending above the structure for a maximum height of 14 feet. The existing blow off vault has an attached 6.25 foot by 3.5 foot and concrete energy dissipating structure that is also 5 feet in height and serves to reduce the velocity of water released from the OC Feeder before the water enters a 21-inch diameter concrete outlet that discharges into the San Diego Creek channel.

The project includes adding approximately 5 feet to the height of the concrete blow-off structure to encase new piping by adding a reinforced concrete wall extension and roof, which will increase the height of the of the blow-off structure from approximately 5 feet above existing grade (12 feet above MSL) to approximately 10 feet above the existing grade (17 feet above MSL). The existing 9-foot high steel vent pipe extending above the structure will be removed and replaced with new discharge pipe that will extend approximately 1.5 feet above the proposed improved structure for a total post project height of 11.5 feet. Thus, the total height of the development will be reduced from the existing 14 foot height to an 11.5 foot height, but the overall bulk of the blow-off structure will slightly increase. The project also includes the clearing of vegetation and construction activity that could be viewed from off-site locations. However, a majority of the existing vegetation will remain intact and these short-term visual impacts would be minor. Since public views of the site are limited and impacts to any potential views of the site are minimal and or temporary, the project does not result in any significant adverse impacts to visual resources.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act and with the visual resource policies of the City's certified LCP, as discussed above.

F. CULTURAL RESOURCES

Section 30244 states in relevant part:

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

Coastal Land Use Plan, Paleontological and Archaeological Resources, Policy 4.5.1-1 states:

Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources. If avoidance of the resource is not feasible, require an in situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development.

Coastal Land Use Plan, Paleontological and Archaeological Resources, Policy 4.5.1-2 states:

Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources, require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archaeological resources. If resources are determined to be significant, require submittal of

a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.

Section 30244 of the Coastal Act states that development that would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

A Final Environmental Impact Report dated May 2015 stated that a cultural resource records search and pedestrian survey was conducted by the City, as well as, an updated records search and Native American consultation process undertaken for the proposed project. These investigations concluded that no archaeological resources were identified on the proposed project site. However, they did identify three archaeological sites and one isolate within the vicinity of the project site. In addition to the previous searches, a paleontological record search was conducted at the Natural History Museum of Los Angeles County, Vertebrate Paleontology Section, as part of the Final Environmental Impact Report. While a records search did not identify any vertebrate fossil localities within the proposed project site, there are fossil localities within the proposed project vicinity. To ensure that any prehistoric, archaeological or paleontological cultural resources that may be present on the site and could be impacted by the proposed development receive proper protections, preferably avoidance, the Commission imposes **Special Condition No. 9**, which requires the applicant to submit a Cultural Resource Treatment and Monitoring Plan. The plan shall include provisions for both Professional Archeologists and Native American monitors to be present during soil disturbance.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with Section 30244 of the Coastal Act and with the cultural resources policies of the City's certified LCP, as discussed above.

G. PUBLIC ACCESS

Section 30210 of the Coastal Act 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.

Section 30211 of the Coastal Act 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.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:[...]

(2) adequate access exists nearby, ...

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-1 states:

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Section 30210 of the Coastal Act states that 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. Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30212 of the Coastal Act states that public access shall be provided in new development from the nearest public roadway to the shoreline and along the coast except where adequate access exists nearby.

Within the immediate vicinity, there are several trails including the paved San Diego Creek Channel trail along the south side of the creek across from the project site and dirt trails along its northern bank, west of Jamboree Road, that provide hiking, bike, and equestrian access to the Upper Newport Bay Nature Preserve ([Exhibit No. 1](#)). However, there are no formalized trails located on the project site. The proposed project will not adversely impact the public's ability to access these trails. Therefore, public access in the surrounding area will continue to be provided post project.

The access road, where work is proposed as part of the project, intersects with Jamboree Road, which provides access to trails and public amenities in the area; and during construction, access to Jamboree Road may be impacted. In order to remedy this impact, the applicant has stated that a traffic control plan will be implemented that will detour pedestrians to the west side of Jamboree Road onto the Bayview Trail between University Drive and Bayview Way and prohibit pedestrians from using the sidewalk on the east side of Jamboree Road adjacent to the construction zone for safety purposes. While the applicant has provided a narrative of the plan, no such formalized plan has been submitted. Thus, the Commission finds that it is necessary to impose **Special Condition No. 10**, which requires the applicant to submit a Traffic Control Plan.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211 and 30212 of the Coastal Act and with the public access policies of the City's certified LCP, as discussed above.

H. LOCAL COASTAL PROGRAM (LCP)

The proposed project is located in the City of Newport Beach, which has a Local Coastal Program (LCP) that was certified by the Commission in January 2017. However, since the proposed project is located within the Commission's permit jurisdiction, the standard of review is the Chapter 3 policies of the Coastal Act and the City's LCP is used only as guidance. The proposed development is consistent with the biological resources, water quality, hazards, visual resources, cultural resources and public access policies of the City's certified LCP and does not conflict with any provision of the certified LCP.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, 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. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach Harbor is the lead agency and the Commission is a responsible agency for purposes of CEQA. An Environmental Impact Report was completed for the project: *Orange County Feeder Blow-Off Structure Rehabilitation Project* Final Environmental Impact Report (State Clearinghouse No. 2013051022), dated May 2015. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the biological resources, water quality, hazards, visual resources, cultural resources, and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: Substantive File Documents

Orange County Feeder Blow-Off Structure Rehabilitation Project Final Environmental Impact Report (State Clearinghouse No. 2013051022) dated May 2015; Letter from Metropolitan Water District to Commission staff dated March 20, 2018; *Results of August 2016 Updated Biological Resource Survey Orange County Feeder Blow-off Structure Rehabilitation Project* prepared by Dudek dated January 23, 2017; *Flood Analysis for the Upper Newport Backbay Blow-Off Structure* prepared by Psomas dated February 21, 2017; Letter from Commission staff to Metropolitan Water District dated April 21, 2017; Letter from Metropolitan Water District to Commission staff dated September 5, 2017; United States Fish and Wildlife Service (USFWS) Notice of Federal Cooperative Agreement Award F16AC00770; City of Newport Beach Planning Department CEQA Notice of Exemption for the Newport Valley Restoration Project dated August 1, 2014; Letter from Commission staff to Metropolitan Water District dated October 6, 2017; Letter from Metropolitan Water District to Commission staff dated February 22, 2018; *Upper Newport Back Bay Blow-Off Structure Project – Habitat Mitigation and Monitoring Plan* prepared for Metropolitan Water District of Southern California prepared by Dudek dated February 2018; California Department of Fish and Wildlife (CDFW) 1602 Streambed Alteration Agreement Notification No. 1600-2017-0080-R5.

**APPENDIX B:
Cultural Resources Significance Testing Plan Procedures**

A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
3. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the deposits are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archeological Plan for the review and approval of the Executive Director. The Supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid

impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archeologists convened in accordance with current professional practice. Representatives of Native American groups with documented ancestral ties to the area shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.