

**CALIFORNIA COASTAL COMMISSION**

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# W16C

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## STAFF REPORT: REGULAR CALENDAR

**CDP Application No.:** 5-18-0554

**Applicant:** California Department of Fish and Wildlife

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

**Project Description:** Removal of unpermitted drain risers and associated lateral pipes and structures, either 1) immediately upon approval of the permit, or 2) within five years of Commission action on the permit. Off-site restoration of 0.6 acre of willow habitat.

**Staff Recommendation:** Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to remove unpermitted drain risers and associated lateral pipes and structures that were installed in approximately 1996 within the Ballona Wetlands Ecological Reserve (BWER) in Playa del Rey, City of Los Angeles. The drains were installed in an area of the BWER known as Area B. One of the drains is north of Culver Boulevard, and the other drain is south of Culver Boulevard.

In December of 2017, the Commission approved Coastal Development Permit 5-17-0253 and required the drains to be sealed within 30 days of Commission action to stop the drains from removing water from the wetlands. The Commission also required CDFW to apply for a separate permit to remove the unpermitted drains and associated

pipes within 180 days of Commission action and for the unpermitted drains and associated development be removed within one year of Commission action on the new application. This application (CDP application 5-18-0554) is the application submitted by CDFW to remove the drains as required by 5-17-0253. The standard of review for the proposed project is Chapter 3 of the Coastal Act.

Although the unpermitted drains were sealed and rendered inert in January 2018, Special Condition 4 of Coastal Development Permit 5-17-0253 required that the follow-up permit application include a plan to remove the unpermitted drains and a proposal to provide habitat restoration with appropriate native wetland species at a minimum ratio of 4:1 (revegetation area to area impacted by the drains). The habitat restoration is required to address direct impacts associated with their initial unpermitted drain installation, and the temporal impacts of dewatering the surrounding habitat areas that has occurred because of the presence of the drains in this location since approximately 1996.

The installation of the drains and pipelines directly impacted approximately 21,780 square feet of habitat, including 18,780 square feet of annual grassland/non-native monoculture, which requires a mitigation ratio of 0.5:1 (revegetation area to area impacted by the drains). The drains also impacted 3,000 square feet of wetland vegetation, and 400 square feet of wetlands did not regularly form as a result of draining the area, which must be mitigated at a ratio of 4:1 (revegetation area to area impacted by the drains). Therefore, the total mitigation required for the total impacts associated with the unpermitted development is 22,990 square feet. CDFW is proposing approximately 26,136 square feet of willow habitat restoration in Southeast Area B alongside the freshwater marsh. The restoration is greater than the amount the Commission has required in past actions, and accounts for the loss of grassland and wetland habitat caused by the presence of the drains for the last 24 years.

Although the Commission, through its action on Permit No. 5-17-0253, required the unpermitted drains and associated pipes to be removed within one year of Commission action on the new application (which is the subject application), the biological impacts and potential impacts to cultural resources related to full removal were not fully analyzed in the staff report for the previous permit, and CDFW maintains that immediate excavation of the area, which is located within the footprint of the larger restoration effort proposed to be undertaken within the next five years, would unnecessarily inflict additional adverse impacts to the reserve. Thus, CDFW requested that two options be analyzed as co-equal project descriptions to remove the unpermitted drains and associated pipes; either 1) immediately upon approval of the permit, or 2) within five years of Commission action on the permit to allow for the excavation and removal of the pipes to occur concurrently with the BWER Restoration Project. In addition, CDFW requested an amendment to Permit No. 5-17-0253 to allow the unpermitted drains and pipes to be removed within 5 years of Commission action on this permit, which will be heard concurrently with the hearing on this application (5-18-0554).

The drains were sealed in January 2018, rendering them non-functional and inert, and no significant impacts to habitat are expected in the next one to five years due to the

presence of the buried drains and risers. However, undertaking excavation efforts in this sensitive location twice, both for immediate removal of the drains and pipes and then disrupting the habitat again for the larger planned BWER restoration project, may negatively impact habitat and cultural resources. In addition, the larger restoration project will be designed to improve the wetland habitat immediately following removal of the drains and will maintain the habitat over time. The alternative approach, involving immediate removal of the unpermitted drains, will mean the habitat will be disrupted again when the BWER occurs, possibly just as the habitat is beginning to re-establish. In order to minimize impacts to wetland habitat, Commission staff recommends approval of the removal of the unpermitted drains to occur within five years, so that removal may occur in conjunction with the BWER Restoration.

Pursuant to Special Condition 4 of Coastal Development Permit 5-17-0253, the applicants are proposing an offsite mitigation plan that includes 0.6 acre of habitat enhancement and restoration by removing pampas grass and any other invasive non-native species and planting native arroyo willow, mule fat (*Baccharis salicifolia*), and California blackberry (*Rubus ursinus*). The long-term goal of the mitigation is to sustain native vegetation and provide suitable habitat for native wildlife including the least Bell's vireo.

The proposed development has been conditioned to assure the project is consistent with the resource protection policies of the Coastal Act. Due to updates and revisions to the project plans during the application process, staff recommends the Commission impose **Special Condition 1**, which requires the submittal of final plans incorporating all changes, and **Special Condition 2** requires submittal of a final habitat restoration and monitoring plan. To ensure the unpermitted development will be removed within five years if not sooner with the Ballona Wetland Ecological Reserve Restoration Project, **Special Condition 3** requires the development to be removed. **Special Condition 4** is imposed to ensure preservation of cultural resources, **Special Condition 5** requires appropriate best management practices be implemented during construction to protect adjacent marine resources, and **Special Condition 6** is imposed to ensure the applicant assumes the risks of the development.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-18-0554, as conditioned. The motion is on page 5.

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## **EXHIBITS**

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Exhibit 3 – Drains and Pipes Removal Plans

5-18-0554 (California Department of Fish and Wildlife)

Exhibit 4 – Wetland Delineation Map

Exhibit 5 --Site Plan with Construction Work Limits

Exhibit 6 – CCC Notice of Violation dated April 11, 2014

Exhibit 7— *Habitat Impacts Related to Ballona Wetlands Ecological Reserve, Playa Del Rey, CA*, prepared by Dr. Jonna Engel, CCC Senior Ecologist, July 22, 2020

Exhibit 8 – Location of Offsite Mitigation

Exhibit 9 -- Letters of Concern

Exhibit 10 – CDFW Memo Regarding South Drain Leakage, dated July 17, 2020

## **I. MOTION AND RESOLUTION**

### **Motion:**

I move that the Commission approve Coastal Development Permit 5-18-0554 pursuant to the staff recommendation.

### **Staff Recommendation of Approval:**

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

### **Resolution to Approve the Permit:**

The Commission hereby approves the Coastal Development Permit for the proposed project 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

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 applicant 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 five years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit two full sized (3 ft. x 2 ft.) sets of revised final plans with graphic scale to the Executive Director for review and written approval. The final plans shall be in substantial conformance with the project plans submitted to the Coastal Commission's South Coast District Office on October 11, 2019 but shall be modified to achieve compliance with Commission action on this permit, which includes a plan to address the existing hole(s) in the south drain in addition to any breaks in the sealant that may occur in the future.

The permittee shall undertake development in accordance with the approved final plans. 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.

2. **Final Habitat Restoration and Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a final habitat restoration and monitoring plan in substantial conformance with the submitted *Ballona Wetlands Ecological Reserve Willow Restoration Plan*, California Department of Fish and Wildlife,

received July 7, 2020. The revised restoration and monitoring plan shall at a minimum include the following:

- A. Revegetation plan including planting map, plant palette, source of plant material, and schedule of plant installation, watering, erosion control, soil fertilization and weed abatement;
- B. Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of the dominant perennial species are similar to relatively undisturbed vegetation of the same type in nearby reference areas. Species composition shall be considered similar if all the dominant species and at least 80% of the non-dominant species at the reference site are present at the restored site.
- C. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first.
- D. Specific details regarding the type of herbicide proposed, including the Environmental Protection Agency (EPA) Registration Number, how it will be applied, and methods of use
- E. If the unpermitted drains and associated pipes are removed independently of a larger restoration project which would be subject to a separate coastal development permit, revegetation of the impacted area is required at a minimum ratio of 1:1, and shall be carried out onsite to revegetate the area impacted by temporary dredging associated with removal.

The permittee shall monitor and remediate the restoration site in accordance with the approved mitigation and monitoring program, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 3. Removal of Unpermitted Development.** Within five years of the date of approval of Coastal Development Permit No. 5-18-0554, the applicant shall perform the approved work to remove the subject unpermitted drains and associated unpermitted development. Removal of the remaining unpermitted drains and associated unpermitted development may be a component of the larger planned restoration project. If all of the remaining components of the drains have not been removed within five years from the date of Commission action on Coastal Development Permit No. 5-18-0554, but the permittee presents evidence to the Commission Executive Director prior to expiration of the five year period that the planned BWER restoration is near completion or is imminent (if work has not yet

commenced), the Executive Director may grant for good cause additional time to complete the approved work.

**4. Cultural Resource Treatment and Monitoring Plan.** By acceptance of this permit the applicant agrees to comply with the following:

A. Incorporate the following into the archeological monitoring plan:

(i) Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of 1 Native American monitor from each tribal entity 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, excavation work, site preparation or landscaping activities associated with the approved development. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archaeological monitoring or research plans, past archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;

(ii) The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;

(iii) The Native American Monitor(s) shall be required until native soils have been reached.

B. If an area of tribal cultural deposits is discovered during the course of the project:

(i) All construction and subsurface activities that have the potential to uncover or otherwise disturb tribal cultural deposits in the area of the discovery shall cease within 50 feet of the deposit immediately;

(ii) The permittee shall report all discovered resources as soon as possible, by phone for by email to the Executive Director;

(iii) The professional archeological monitor onsite must contact all affected groups of the Native American Tribe that are not present for onsite monitoring and notify them of the discovery in order to determine the results of (iv) and (v) below;

(iv) Significance testing may be carried out only if acceptable to the affected Native American Tribe, in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B) and in consultation with the Tribe. The Executive Director shall, in writing, determine the adequacy of the Significance Testing Plan and if it can be implemented without further Commission

action, provide written authorization to proceed. The Significance Testing Plan results, if applicable, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination. If the Executive Director determines that the discovery is significant, development shall not recommence and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan consistent with Appendix B.

(v) The treatment method or mitigation measure for the discovery shall be prepared in consultation with the Native American monitor(s), and the MLD when State Law mandates the identification of a MLD. The permittee shall inform the Executive Director of the treatment method in writing. In-situ preservation is the preferred treatment and can be achieved through such methods such as, but not limited to, project redesign, capping, and deeding the cultural resource areas in open space. The range of treatment and mitigation measures considered shall not be constrained by the approved development plan.

C. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. 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.

**5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittees 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) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

(f) The permittees shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.

(g) 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.

(h) 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.

(i) 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.

(j) The discharge of any hazardous materials into any receiving waters shall be prohibited.

(k) 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.

(l) 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.

(m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

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

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Location and Description**

#### **Location and Site History**

The applicant is proposing to remove two unpermitted drain lines and associated structures that connect to the permitted main drain line which outlets at Ballona Creek. The subject drains are located within the Ballona Wetlands Ecological Reserve, one located north of Culver Boulevard, and one south of Culver Boulevard in the Ballona Wetlands Ecological Reserve (BWER) in Playa Del Rey ([Exhibit 2](#)). The surrounding area consists of both native and non-native vegetation.

The subject drains and associated lateral connector drain lines in the BWER are not authorized through any coastal development permit of which the applicant or any outside party has provided evidence of or of which Commission staff is aware. The Commission approved Coastal Development Permit No. 5-91-463, as amended, and the CDP was issued to the property owner, Playa Capital Company, for the construction of the Ballona Freshwater Marsh located immediately south of the intersection of Lincoln and Jefferson Boulevards and the main drain line, which runs from the Ballona Freshwater Marsh to the Ballona Channel, specifically identified in CDP No. 5-91-463. The subject drains were not included as a part of those approved plans. Beginning in 2013, Commission enforcement staff notified Playa Capital Company, LLC and the CDFW, which took ownership of the Reserve in 2004, of the alleged violations, which are discussed in further detail below in Section D of this staff report ([Exhibit 6](#)). Pursuant to a settlement agreement (*Grassroots Coalition v. California Department Fish and Wildlife et. al. Los Angeles Superior Court Case No. BC619444*), the applicant (CDFW) submitted an application for Coastal Development Permit No. 5-17-0253 on March 15, 2017 requesting authorization to cap the unpermitted drains as an interim measure to prevent the drains from functioning until the drains themselves could be removed during the BWER Restoration project, which was in the initial planning stages at that time.

Following a public hearing in December of 2017, the Commission required the drains to be sealed within thirty days of Commission action on Coastal Development Permit 5-17-0253, and required CDFW to apply for a permit to remove the unpermitted drains and associated pipes within one year of Commission action on the new application (Coastal Development Permit 5-18-0554). In January of 2018, CDFW sealed the drains by inserting a metal sleeve into the interior of both risers to cover all of the weep holes, sealed the weep holes and drain lids with marine-grade structural epoxy adhesive (suitable for potable water contact), and bolted down the lids with L-brackets to ensure the lids could not be removed. Although Coastal Development Permit 5-17-0253

approved welding small pieces of formed and fitted galvanized steel plates over all weep-holes and welding one-half-inch thick steel caps on the drains, the Executive Director approved the sealant as a sufficient alternative in lieu of welding, due to fire hazard concerns associated with dry vegetation surrounding the drains at that time. In March and April of 2020, air bubbles were observed emanating from the south riser by an interested party and acknowledged by CDFW in July of 2020, which according to members of the public were methane being “outgassed” of the south drain ([Exhibits 9 and 10](#)). The Department estimates that the air being released is not methane, but is rather air from the tide gate emanating from a small leak in the seal in the south drain which does not drain significant amounts of water during rain events, but the Department has indicated that it will patch the seal if authorized and required by the Commission through this permit action.

Pursuant to Special Condition 4 of Coastal Development Permit No. 5-17-0253, CDFW applied for a coastal development permit in June 2018 with two options to remove the drains, which proposed to: 1) “appropriately abandon the drains” by filling the vertical risers with concrete until such time as the drains could be removed with the larger BWER Restoration Project, or 2) leave the sealed drains in place until they were proposed to be removed during the larger BWER Restoration Project.

During the March 2019 Commission hearing, the Commission heard public comment including testimony regarding an issue with the language in Special Condition 4 of the previously issued CDP 5-17-0253, which based on the findings the Commission provided through its approval of the permit, should have required CDFW to submit a revised project description to remove the unpermitted drains and associated unpermitted development within one year. The Commission’s findings in approving the permit did not provide CDFW the option to “appropriately abandon” the drains during the planned, larger future restoration effort. Shortly after the March 2019 Commission meeting, Grassroots Coalition notified the Commission of its intention to sue the Commission if staff did not reissue Coastal Development Permit 5-17-0253 revising Special Condition 4 to eliminate the option of appropriate abandonment. On March 14, 2019, Commission staff issued a revised CDP that deleted the option for “appropriate abandonment”, and CDFW subsequently submitted a revised project description (the subject application) to remove the risers either immediately or through the planned, larger future restoration.

According to CDFW, the Department struggled to comply with the Commission’s requirement to remove the sealed drains as a stand-alone project while at the same time complying with the Department’s mandate to manage the Reserve’s ecological values. Having sealed the drains, rendering them inert in January 2018, alternatives to removing the drains were evaluated in order to determine the least environmentally damaging project alternative in order to carry out the goals of the wetland restoration through the Department’s decision-making process, including in an EIR for the planned, larger future restoration project. The Department contends that excavations and habitat disturbance required to remove the drains and pipes will have negative effects on wetland productivity, thus CDFW does not allow such activity in an ecological reserve unless it is necessary to meet a larger habitat restoration objective. Ultimately, CDFW

determined that removing the risers as part of the larger planned restoration would be the only means to balance complying with the Revised CDP while still managing the Reserve consistent with its mandate to “protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogenous natural gene pools for the future...” (Fish and Game Code, Sections 711.7(a), 1802, 2801(h)). Thus, CDFW requested that the Coastal Commission analyze both options for 1) immediate removal of the unpermitted development, and 2) appropriate abandonment in place until the unpermitted development could be removed with the larger restoration project. The Executive Director directed staff to analyze both alternatives as co-equal options, leaving the decision to the Commission following a public hearing. In addition, in order to allow for removal of the remaining pipes and associated development on a schedule longer than one year as required by CDP 5-17-0253, and to account for mitigation discussions between CDFW and Commission biologists, CDFW applied for an amendment to that permit, 5-17-0253-A-1, in June of 2020, which will be heard concurrently with this CDP application.

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

### **The Ballona Wetlands Restoration Project**

In order to restore degraded wetland habitat and functions within the Ballona Reserve, CDFW is proposing a large-scale effort to restore, enhance, and establish native coastal wetland and upland habitats on approximately 566 acres within the Ballona Wetlands Ecological Reserve. To implement the proposal, CDFW is working with the Los Angeles County Flood Control District (LACFCD) to modify LACDA project features (e.g. the Ballona Creek channel and levee system) within the Ballona Reserve. The three main components of the Project are restoring wetlands and wetland functions within the Ballona Reserve; restoring and improving public access to the Ballona Reserve; and maintaining existing levels of flood risk management provided by the Ballona Creek channel and levee system. Initial public review for the Draft EIS/EIR began September 25, 2017, for purposes of CEQA, and the Final EIR was certified in December of 2019.

The four proposed alternatives of the BWER Restoration Project include: 1) lowering the land north of the creek, removing armored levees of Ballona Creek to create a more natural channel and creating earthen levees around the northern perimeter and north of

Culver Boulevard; 2) lowering the land north of the creek, creating earthen levees around the northern perimeter and north of Culver Boulevard to the junction between Jefferson Boulevard and up to the existing south creek levee, and restoration of Ballona Creek with a slightly smaller footprint than option one; 3) lowering the land north of the creek, constructing a new earthen levee along the northern part of the reserve parallel to Fiji Way, and creating culverts along the northern armored Creek levee; and 4) a no project alternative. According to the Department, adoption of the first three alternatives would require the unpermitted drains and pipes to be removed with grading and/or fill placement, and all of the alternatives would require them to be removed for the clearing and grubbing needed for the revegetation efforts. In addition to several figures in the Draft EIS/EIR depicting the location of the proposed levee plan in the same location as the drains which would require their removal, the Final EIR states:

*“The existing outflow pipe to the Ballona channel would be maintained, except for the two risers and two related spurs to the risers, to allow for outflow from the FWM (Culvert #5 in Figure 2-4, Alternative 1, Phase 1: Proposed Habitats). The exception would be that spur drains and associated risers and flap gates on either side of Culver Boulevard, that feed into Culvert #5, would be fully removed and spur drain connections to Culvert #5 would be sealed. The location of the former spur drains and risers would be backfilled to comply with the larger restoration plan...”<sup>1</sup>*

At this time, the projected timeline for the Ballona Wetlands Restoration Plan is approximately three to five years. CDFW has communicated to Commission staff that that moving forward, CDFW will need two years to provide the Army Corps of Engineers (ACOE) with the necessary engineering plans, and the ACOE will need an additional year to analyze and finalize the Environmental Impact Statement (EIS). Beyond that, according to CDFW, the Department will need an additional 1.5 to 2 years for additional state and local project permitting, and depending on whether the state and local processes are done in parallel or in sequence with ACOE permitting, it could be 3-5 years before all entitlements are acquired.

## **Project Description**

### ***Option 1: Immediate Removal***

The project involves the removal of two drain risers and lateral culverts and connecting pipelines. The north drain pipeline consists of a 24-inch reinforced concrete pipe (RCP) approximately 90 feet in length together with a 48-inch corrugated masonry pipe (CMP) riser inflow with a concrete base structure. It also includes an outfall structure with a flap gate that drains into the main 6-foot by 10-foot reinforced concrete box structure of the freshwater drain system ([Exhibit 3](#)). The south drain pipeline consists of

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<sup>1</sup> Final EIR/EIS, Section 2.2.2.2 on page 2-86, <https://wildlife.ca.gov/Regions/5/Ballona-EIR>

approximately 88 linear feet of 36-inch RCP with the same appurtenant structures as the north drain, except with a slightly larger pipe.

The scope of work involves excavation (with an excavator or similar piece of equipment), which would be driven into BWER and used to unearth and expose the pipes and associated structures, and remove the 48-inch drain riser assembly and concrete boxes, remove the entire outlet flap gate structure flush to the wall of the Reinforced Concrete Box Culvert (RCBS), including any rebar and protruding concrete. Then, the applicant will install a galvanized steel plate over the RCBS wall opening at least 4-inches wider than the original wall penetration using stainless steel concrete anchors epoxied into the wall of the RCBS, an 8-inch concrete reinforced bulkhead extending beyond, and covering the steel plate assembly and supported by rebar anchors drilled and epoxied in the Reinforced Concrete Box (RCB) wall. A steel rebar curtain would be installed at 12-inch intervals each way tied to the rebar anchors. The bulkhead forms would rest atop undisturbed ground or compacted Class 2 Aggregate Base. After seven days, the bulkhead forms would be stripped and the area compacted to 85% relative compaction.

As pipeline sections are removed, the Contractor will begin replacing excavated material back into the trench to reduce the size and volume of spoil piles. Each trench will be backfilled, graded and smoothed, and backfill is proposed to be compacted by wheel-rolling the fill into place. No extra material is proposed to be hauled off-site, as the volume of the pipes removed will increase the amount of replacement fill. Any remaining material onsite could be used to fill the depression around the former drain inlets. Finally, disturbed areas will be hydroseeded with native grasses and vegetation for erosion control at a 1:1 ratio.

***Option 2: Full Removal with the Ballona Wetlands Restoration Project, or Within Five Years.***

The second option proposed by CDFW involves removing the sealed drains and associated pipes when CDFW implements the BWER Restoration project, which will include removal of all components of the unpermitted development, including the 48-inch CMP debris risers, their associated concrete boxes, and approximately 200 feet of RCP lateral culverts as part of the BWER Restoration. Just as in Option One, an excavator, or similar piece of equipment, would be driven into BWER and used to unearth and remove the vertical risers, concrete boxes, and lateral culverts that attach to the larger main lateral culvert leading to Ballona Creek. However, depending on which restoration alternative is selected, it is possible that two trenches would be excavated, one for each lateral culvert. Excavated soil would be stockpiled next to each trench. Excavation around the vertical risers and concrete boxes would also occur to access and remove those components. Excavated soil would be placed next to the trenches. The lateral RCP would be cut or broken away from the 10-foot by 8-foot reinforced concrete box, and the larger RCB culvert would be sealed with appropriate materials. The trench where the components would be removed would then be backfilled with previously excavated material and additional imported clean and certified weed-free fill, and then compacted to surrounding grade. All removed

components would be appropriately disposed of offsite. All impacted areas would be recontoured and/or replanted in accordance with the larger restoration project plan. In the event the BWER Restoration project does not occur within five years of Commission action on this permit, **Special Condition 3** requires the Department to remove the unpermitted development.

## B. Biological Resources

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233 (a) of the Coastal Act states:

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

- 1. New or expanded port, energy, and coastal-dependent industrial facilities, including commercial facilities.*
- 2. Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- 3. In open coastal water, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

4. *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
5. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
6. *Restoration purposes.*
7. *Nature study, aquaculture, or similar resource dependent activities.*

*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.*

*Section 30107.5 of the Coastal Act defines environmentally sensitive habitat or ESHA as:*

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Although CDFW did not provide information regarding the construction methods utilized to install the unpermitted drains and pipes, or the extent of soil disturbance that resulted in their installation, plans submitted for their removal identify construction work limits necessary to remove the pipes, and provide sufficient detail to determine the amount of ground disturbance that occurred and habitat that was presumably directly impacted with their installation ([Exhibit 5](#)). According to the plans, the installation of the north drain impacted approximately 10,019 square feet of habitat area, which was determined by Dr. Engel to include annual grassland and/or non-native monoculture. The south drain installation impacted approximately 11,761 square feet of habitat area, which Dr. Engel determined to be 8,761 square feet of annual grassland/non-native monoculture and 3,000 square feet of wetland vegetation. According to Commission staff's senior biologist Dr. Jonna Engel, the mitigation ratio for impacts to the annual grassland/non-native monoculture should be at least 0.5:1, however direct impacts to wetland vegetation and temporal impacts from dewatering the wetland must be mitigated at a 4:1 ratio based on previous Commission action, the uncertainty involved with wetland restoration projects, and the temporal loss of water being removed from wetland habitat over the last 24 years.

### **Marine Resources**

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and

entrainment, controlling runoff, *preventing depletion of ground water supplies and substantial interference with surface water flows*, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Due to past development within Area B of the BWER including oil drilling, pipelines, road construction, and farming, only portions of the area contain wetlands based on the wetlands delineation conducted by Wetland Research Associates for the Coastal Conservancy in 2011 ([Exhibit 4](#)). According to the above referenced wetland delineation, the subject drain north of Culver Boulevard is not specifically located within a delineated wetland, however the drain south of Culver Boulevard is located in a delineated wetland ([See Exhibit 4](#)).

### ***Impacts to Wetlands***

Section 30233(a) of the Coastal Act permits the diking, filling, or dredging of wetlands consistent with other Coastal Act policies only where: 1) the activity is one of seven identified permissible uses, 2) there are no feasible less environmentally damaging alternatives and 2) feasible mitigation measures have been provided to minimize adverse environmental effects. Here, the project involves the removal of unpermitted drains and associated pipes that were installed in the Ballona wetlands without a permit, onsite revegetation for the area impacted by pipe removal, as well as an off-site mitigation plan for willow habitat restoration and pampas grass eradication for impacts of the installation of the unpermitted drains/pipes. Taken together, the purpose of the project is to improve the overall quality of the Ballona wetlands. Nevertheless, components of the project will result in both filling and dredging of wetlands and must be analyzed for consistency with Section 30233(a) of the Coastal Act. The project consists of removal of the unpermitted drains and associated pipes, under two potential time-lines (either immediately, or within 5 years as part of the BWER project), onsite vegetation if the pipes are removed immediately, as well as CDFW's proposed plan to provide offsite mitigation to offset the impacts to the wetlands by the unpermitted drains/pipes. The offsite mitigation area will occur in riparian/wetland habitat which includes 0.6 acre of non-native species eradication and willow habitat restoration, and will not result in the diking filling, or dredging of wetlands.

### **Removal of the Pipes**

The proposed excavation to expose and remove the unpermitted drains and pipes qualifies as temporary dredging of a wetland. In addition, in the event the BWER Restoration Project does not occur within five years of Commission action on this permit, or if one of the alternatives selected for the BWER Restoration Project does not involve excavation of the north and south drains, the drains' connection to the main drain line that runs from the Ballona Freshwater Marsh to Ballona Channel (approved with CDP No. 5-91-463) will need to be sealed off from the unpermitted pipes, necessitating the installation of two galvanized steel plates with two 8-inch concrete bulkheads, which are considered fill in a wetland. In addition, the habitat areas disturbed by removal of the pipes are proposed to be revegetated with native grasses and plants at a 1:1 ratio which does not result in the diking, filling or dredging of wetlands. Since all aspects of the proposed project will occur within or adjacent to

wetlands, **Special Condition 5** requires best management practices be implemented to ensure the biological productivity and the quality of coastal waters is not compromised to ensure consistency with Sections 30230 and 30231.

CDFW's Proposed Offsite Mitigation Plan

Although the unpermitted drains were sealed and rendered inert in January 2018<sup>2</sup>, Special Condition 4 of Coastal Development Permit 5-17-0253 requires that the follow-up permit to remove the unpermitted drains include a proposal to provide habitat restoration with appropriate native wetland species at a minimum ratio of 4:1 (revegetation area to area impacted by the drains) to address direct impacts associated with their initial installation, and the temporal impacts of dewatering the habitat resulting from the presence of the drains in this location since approximately 1996. Such impacts include draining the water from the wetland and depriving the vegetation and wildlife of the water that would otherwise have been retained in the wetland but for the presence of the drains. CDFW's proposed mitigation plan would result in 0.6 acre of non-native species eradication and willow habitat restoration, and will not result in the diking filling, or dredging of wetlands.

As stated, based on the plans provided by the Department, the direct impacts to wetland habitat around the south drain included approximately 3,000 square feet of wetland vegetation which must be mitigated at a 4:1 ratio, which results in 12,000 square feet of required mitigation for direct impacts.

The temporal impacts of dewatering the wetlands surrounding the south drain since 1996 were assessed, in part, by utilizing the hydrology study submitted by the applicant for the original permit application to seal the drains (Coastal Development Permit 5-17-0253), which analyzed the hydrologic conditions surrounding the subject unpermitted drains, and the impacts the drains had on the hydrology of the surrounding area (*Hydrologic Analysis for Freshwater Marsh Outlet Drain Risers*, prepared by PSOMAS for Playa Capital Company, LLC and CDFW on September 27, 2017). The report found that the volume of water generated in these basin areas during the 2-year, 5-year, 20-year, 25-year, and 100-year storm events range from 6,900 to 33,000 cubic feet (cu-ft.) for the area north of Culver Boulevard, and between 25,600 and 122,600 cu-ft. south of Culver Boulevard. An additional 100-year storm event calculation for the larger of the two areas that are upstream of the risers was also analyzed for the area affected surrounding the south drain, which was determined to be an approximately 400 square feet around the south side of Culver Boulevard, which determined that a volume of 53

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<sup>2</sup> Air bubbles have been observed emanating from the riser by an interested party and acknowledged by the Department. The Department estimates that the bubbles emanate from a small leak in the seal that was installed on the riser in January of 2018. The Department does not believe the risers are draining significant amounts of water during significant rain events, but Special Condition 1 requires the Department to submit revised plans to address the hole(s) in the south drain and any future breaks in the sealant that may occur.

cu-ft. of runoff during a 100-year storm event could drain into the area immediately around the riser south of Culver Boulevard.

The report concluded that the storm drain risers had no appreciable effect on the surrounding hydrology because the tops of the risers are set at a higher elevation (approximately one foot above the small roadway drainage swale located along the northern edge of Culver Boulevard, and one at approximately the existing level ground elevation south of Culver Boulevard) than the surrounding low-lying areas where ponding occurs, and the drainage swales effectively diverted excess surface water away from the drain risers. With regard to the weep holes, the study concluded that because they were “not open to the free flow of water except at the very top of each riser” and were “below the ground surface and not accessible to any runoff flows”, that they did not drain a significant amount of water. However, through Commission staff observations during a site visit and video submitted by a member of the public demonstrating how the weep holes functioned during a rain event, evidence was presented to the Commission demonstrating that the relatively large weep holes located at grade and slightly higher than grade level did in fact drain water that would otherwise have been retained in the wetland during a rain event, which was determined to be determinantal to the surrounding wetland habitat.

Therefore, based on elevation plans for the area surrounding the south drain, aerial images of the habitat surrounding the south drain, and the PSOMAS Hydrology study, approximately 400 square feet of wetland area was impacted by the dewatering from the south drain, which when mitigated at a 4:1 ratio as required by CDP 5-17-0253, results in 1,600 square feet of wetland habitat to be mitigated. Thus, the direct impacts and temporal impacts to the wetland surrounding the south drain resulting from the installation and presence of the drains is 12,000 sq. ft. +1,600 sq. ft. = 13,600 square feet.

#### Allowable Use

Section 30233(a) of the Coastal Act limits development within wetlands, such as at the subject site, to seven specific uses. One of the uses under Section 30233 for which development within wetlands is allowed, is restoration. The proposed temporary dredging (excavation and removal of the unpermitted development) will remove unpermitted development from a wetland, thereby restoring the wetland. Furthermore, the installation of galvanized steel plates and bulkheads to seal off the Ballona Freshwater Marsh main drain line will restore the functionality of the permitted main drain line, which qualifies as an incidental public service purpose which includes maintenance of existing outfall lines. Thus, these components of the proposed project are allowable uses under Section 30233.

#### Feasible Less Environmentally Damaging Alternatives

Section 30233(a) of the Coastal Act also requires that development in wetlands may be approved only where there are “no feasible less environmentally damaging alternatives.” The applicant has proposed either to remove the unpermitted drains and associated pipes immediately, or to remove the unpermitted drains and pipes in the future as part of

the Ballona wetlands restoration project, and to provide mitigation for the area impacted by the unpermitted development. These alternatives will be evaluated to determine which is the least environmentally damaging alternative, and also whether there are any other less environmentally damaging alternatives to the project options proposed by the applicant.

## 1. Project Alternatives

The applicant studied three alternative methods to remove the drains and associated pipes as required by Coastal Development Permit 5-17-0253. Alternatives the applicant analyzed include: 1) immediate removal (within 30 days) of all components of the unpermitted development; 2) temporarily abandoning the pipes in place by filling the vertical risers with concrete until they are removed during the overall restoration project; and 3) temporarily leaving them in-situ (sealed and nonfunctional) until they are removed with the overall restoration project, or within five years if the BWER Restoration has not occurred. The first alternative would disturb the area of the Reserve where the drains are located twice (i.e. first when removing the risers immediately, prior to the overall restoration project, and a second time when the same area would be disturbed again during the larger restoration), doubling the disruption of the habitat. The second alternative of adding concrete to the vertical pipes would result in additional "fill" of the wetland. The third alternative offers the least ground disturbance and does not involve any additional unnecessary fill. The first two alternatives require far more ground disturbance and heavy mechanized equipment which could disturb potential cultural resources that may be located at varying depths of the soil surrounding the unpermitted drains and associated pipes, and harmful to the surrounding habitat, which are more fully addressed in Section D of this staff report. The third alternative, which includes temporarily leaving the sealed drains in place, to be removed during the overall restoration project, would minimize ground disturbance and wetland impacts, and is therefore the environmentally preferable alternative.

### *Alternative 1: Immediate Removal*

As discussed, full removal of the existing risers and lateral culverts would directly impact approximately 21,780 square feet of BWER habitat. Earth moving equipment, and associated excavation would impact existing native upland and wetland vegetation near the southern riser and native upland vegetation above the lateral culverts. Pickleweed (*Salicornia* sp.) alliance is known to occur in the vicinity of the south riser. This vegetation community is considered a CNDDDB special status alliance (CDFW 2010). The north riser components (debris riser, concrete box, and approximate 90-foot lateral culvert) are located in an area of BWER that has not been delineated as a wetland. This riser is located within a roadside swale composed of iceplant (*Carpobrotus edulis*) and castor bean (*Ricinus communis*) and the lateral culvert extends out through a mix of both native and non-native herbaceous vegetation including mulefat (*Baccharis salicifolia*), coyote brush (*Baccharis pilularis*), crown daisy (*Glebionus coronaria*) and mustard (*Brassica* sp.). According to surveys from 1990, vegetation in the vicinity of these risers prior to its installation consisted of either roadside weeds comprised primarily of non-native annual grasses dominated by Brassica (*Brassica* sp.) with the

only native species consisting of weedy upland species such as horseweed (*Conyza canadensis*) occurring sparsely.

Moreover, both the South Coast marsh vole (*Microtus californicus stephensi*), a CDFW species of special concern, and the imperiled wandering skipper (*Panoquina errans*) are known to occur within or adjacent to the project area. The project site is adjacent to or within potentially suitable or known occupied habitat for the burrowing owl (*Athene cunicularia*), south coast marsh vole (*Microtus californicus stephensi*), and San Bernardino ring-necked snake (*Diadophis punctuatus modestus*). Therefore, although the vegetation in the area has been heavily disturbed for agriculture and other uses which has left the vegetation in the vicinity of the risers to be dominated by either roadside weeds and non-native upland species, it is still suitable for several sensitive species that currently rely up on the vegetation and open space as habitat.

Finally, excavating the trenches in order to remove the sealed drains and then excavating the same area again during the BWER Restoration, which is expected to occur within five years, would result in multiple disturbances to the habitat in a relatively short period of time, disrupting the existing habitat values that Area B currently supports, which is inconsistent with the purpose for which the property was acquired by the state. Although the project includes a restoration plan to restore the area impacted by the unpermitted drains/pipes, it is preferable from an environmental resource protection perspective to limit the overall amount of wetland and habitat disturbance, as there is always a risk that restoration efforts will not be successful. Thus, CDFW has consistently maintained that removing the unpermitted drains and pipes as part of the overall restoration project is the least environmentally damaging approach to removal of the development. Therefore, an alternative has requiring immediate removal of the drains and pipes will result in the most wetland impacts and ground disturbance that is detrimental to the surrounding habitat and potential cultural resources and is therefore not the least environmentally damaging alternative.

*Alternative 2: Remove Risers, Fill the Vertical Pipes with Concrete to temporarily "Abandon in Place", then Remove During Overall Restoration Project*

The second alternative would cut and remove the above-grade portions of the existing risers and corrugated metal pipes (CMPs) using a Sawzall, and then fill the CMPs and reinforced concrete pipe (RCP) with approximately 4.5 cubic yards of concrete slurry utilizing a CMP or cylindrical concrete form to "appropriately abandon" each drain with concrete until they are to be removed with the BWER Restoration project. The concrete would be pumped from a truck located on Culver Boulevard and would require four construction workers approximately 2.5 days to complete.

While filling the vertical risers with concrete is a commonly accepted method of pipe abandonment, this alternative would result in approximately 4.5 cubic yards of fill in a wetland (as the vertical riser in the south drain is in a wetland), which is not necessary

as the drains are already sealed. Also, when the area is excavated for removal of the pipes, it will be more difficult to remove a concrete-filled pipe than to remove the pipes in their current state, which is hollow, as it will likely require heavier equipment and more excavation to remove. Furthermore, because the drains were sealed in January of 2018 and are currently non-functional, filling them with concrete is an unnecessary step that is not necessary for restoration of the wetland and would not be an allowable use of fill. Therefore, this is not the least environmentally damaging alternative.

*Alternative 3: Leave Drains and Pipes In-Situ (Sealed and Nonfunctional), then Remove During Overall Restoration Project*

The third alternative would remove the drains, which are an unnatural feature that degrades the surrounding habitat value and, thus, will facilitate restoration of the wetland ecosystem. However, the third alternative would not immediately remove the drains and associated pipes and, instead, would allow CDFW additional time in which to remove the development as part of its anticipated restoration project for the wetland. Therefore, the third alternative would not disturb the wetland habitat twice in a period of five years. Coastal Commission staff ecologist Dr. Jonna Engel determined in her memo:

*“Given that removing the debris drain risers and pipes now would mean that the area would be disturbed twice and that I find that the drains are not currently adversely impacting BWER, I agree with CDFW that leaving the drains in place for future removal during the large scale restoration is the most parsimonious/least environmentally damaging approach” (Exhibit 7).*

The third alternative would allow the drain removal to occur when CDFW implements the larger restoration project for the Ballona wetlands, which is expected to occur within the next 3 to 5 years and will also include components designed to improve the wetland habitat immediately following removal of the unpermitted drains and pipes and will maintain the habitat over time (rather than disrupting the habitat a second time just as it is re-establishing). Thus, alternative three is the least damaging environmental alternative.

## **2. Mitigation**

Section 30233 of the Coastal Act requires that wetland projects include mitigation measures to minimize adverse environmental effects of wetland fill and dredging. As discussed above, the two proposed project options will result in removal of the unpermitted drains/pipes temporarily impacting approximately 21,780 and approval of an offsite mitigation plan to offset habitat impacts of the unpermitted development, and may result in both fill and temporary dredging of wetlands.

Special Condition 4 of Coastal Development Permit 5-17-0253 required that the follow-up permit to remove the unpermitted drains include a proposal to provide habitat restoration with appropriate native wetland species at a minimum ratio of 4:1

(revegetation area to area impacted by the drains). The mitigation would address direct impacts associated with their initial installation, and the temporal impacts of dewatering the habitat resulting from the presence of the drains in this location since approximately 1996. Such impacts include draining the water from the wetland and depriving the vegetation and wildlife of the water that would otherwise have been retained in the wetland but for the presence of the drains.

At the time the staff report for CDP 5-17-0253 was written December 1, 2017, Commission staff had not yet fully analyzed the habitat impacts caused by the installation of the unpermitted drains and associated pipes, including the types of habitat and vegetation that were impacted. Because staff had incomplete information at that time, and in an effort to be most protective of coastal resources, staff recommended Special Condition 4 which was approved by the Commission and required that CDFW provide a revegetation plan with appropriate native wetland species at a minimum ratio of 4:1 (restoration area to area impacted by the drains). However, as addressed in greater detail in her memo, Dr. Engel ultimately determined that only 3,000 square feet of habitat impacted by the south drain included wetland vegetation meriting 4:1 mitigation, while the rest of the habitat consisted of annual grassland/non-native monoculture which required a mitigation ratio of 0.5:1.

The installation of the north drain resulted in approximately 10,019 square feet of impacts to terrestrial habitat, which has been determined to be all annual grassland/non-native monoculture, and which must be mitigated at a ratio of 0.5:1 (restoration area to area impacted by the drains) based on previous Commission actions which have set established the habitat value. Therefore, the required mitigation for the impacts associated with the north drain is 5,009.5 square feet. The installation of the south drain resulted in approximately 11,761 square feet of impacts to terrestrial habitat, which has been determined to be 8,761 square feet of annual grassland/non-native monoculture, and 3,000 square feet of wetland vegetation. Since the mitigation ratio for direct impacts to annual grassland/non-native monoculture is 0.5:1 (8,761 sq. ft. x 0.5 = 4,380.5 sq. ft.) based on previous Commission actions, and the mitigation ratio for direct impacts to wetland vegetation is 4:1 (3,000 x 4 = 12,000 sq. ft.), the mitigation area for initial drain and pipe installation for both drains is 21,390 square feet (5,009.5 + 4,380.5 + 12,000 = 21,390 square feet). Finally, the temporal impacts of dewatering the habitat since approximately 1996 is 400 square feet at a 4:1 ratio is 1,600 square feet (400 x 4 = 1,600 square feet). Therefore, the total mitigation required for the project is 22,990 square feet (21,390 sq. ft. + 1,600 sq. ft.= 22,990 sq. ft.).

To fulfill the mitigation requirement of Special Condition 4 of Coastal Development Permit 5-17-0253, CDFW is proposing offsite mitigation approximately .35 mile southeast of the location of the drains, that proposes to clear the project area of the existing non-native pampas grass and restore approximately 26,136 square feet of willow habitat, including both overstory species such as arroyo willow (*Salix lasiolepis*) and mulefat (*Baccharis salicifolia*), which will be installed as vegetative cuttings, and understory consisting of California blackberry (*Rubus ursinus*) cuttings, seed, or container stock in Southeast Area B adjacent to the freshwater marsh. Dr. Engel has worked with CDFW biologists to determine the appropriate location for the mitigation

site, which was strategically chosen for its position in terms of prevailing wind and outer boundary of pampas grass invasion so as to facilitate non-native species eradication, prevent invasive re-invasion, and complement future large scale non-native invasive removal efforts. Furthermore, the mitigation site is in an area of BWER that is outside the footprint of the large-scale restoration so it will not be disturbed in the future. In her memo, Dr. Engel determined:

*“In this case the mitigation site is within the BWER and watershed, proximal to the impact site (apprx. 0.35 acres distant), and in habitat invaded by non-native invasive species. While the drains are located primarily in upland habitat invaded by several non-native invasive species, the mitigation site is lower in elevation and is invaded by non-native pampas grass that is within a larger riparian/wetland habitat characterized by native willow habitat that supports native wildlife including the federally endangered least Bell’s vireo (*Vireo bellii pusillus*).*

*“The mitigation plan involves removing pampas grass and any other invasive non-native species and planting native arroyo willow (*Salix lasiolepis*), mule fat (*Baccharis salicifolia*), and California blackberry (*Rubus ursinus*). The long-term goal of the mitigation is to sustain native vegetation and provide suitable habitat for native wildlife including the least Bell’s vireo. It is my professional opinion that the proposed mitigation is appropriate mitigation for the original construction of the debris drain risers and pipes and wetland impacts at the south drain riser.”*

As determined by Dr. Engel, the proposed mitigation project will address the impacts of the affected habitat and includes appropriate mitigation for impacts to the wetlands resulting from the installation of the unpermitted drains and pipes over time. Because the proposed project is intended to restore portions of the Ballona wetland and includes mitigation for impacts of the drains/pipes, the project contains adequate mitigation measures for any adverse impacts of the proposed project. In addition, the project has been conditioned to require CDFW to submit a final restoration and monitoring plan that provides more details regarding the specific herbicide proposed for pampas grass eradication on the mitigation site as addressed by **Special Condition 2**. Therefore, Commission staff finds the proposed development as conditioned is consistent with the requirements of Section 30233.

### **C. Environmentally Sensitive Habitat Areas**

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 continuation of those habitat and recreation areas.*

Several of the habitat types surrounding the unpermitted drains qualify as Environmentally Sensitive Habitat Areas (ESHA), which are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. In addition, development adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuation of those habitat areas.

As stated above, some wetland areas within the Ballona wetland area are considered environmentally sensitive habitat areas and provide habitat for many species of marine fish, migratory shore birds, and endangered species, including the California least tern and Belding's savannah sparrow. According to Commission staff's senior ecologist Dr. Jonna Engel:

*“Based on the location of the debris drains within the BWER, the presence of patches of saltmarsh species (Feb. 11, 2019 CDFW Letter) around the south drain riser, and the potential occupation of the area surrounding both drains by sensitive species including the South Coast marsh vole, burrowing owl, San Bernardino ring-necked snake, and wandering skipper, much of the area would likely rise to the level of environmentally sensitive habitat (ESHA) and wetland as defined by the Coastal Act”*

The proposed project includes removal of unpermitted development to restore the habitat value of the project area, and an off-site habitat restoration project that qualifies as a resource-dependent restoration project. Furthermore, the temporary dredging that is proposed to excavate around the drains and pipes in order to remove them is proposed to be revegetated. Thus, as conditioned, the proposed removal of the unpermitted drains and associated pipes and restoration plan are also consistent with Section 30240 of the Coastal Act.

## **D. Cultural and Archaeological Resources**

Section 30244 of the Coastal Act states:

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

The applicant submitted a confidential map indicating all known archaeological sites within a half-mile radius of the project sites based upon the *Phase I Cultural Resources Assessment, Ballona Wetlands Ecological Reserve Restoration Project*, prepared by Bonterra Psomas in November, 2015. A total of 42 cultural resources have been

previously recorded within a 0.25-mile radius of the Project site including one archaeological district (Ballona Lagoon Archaeological District [BLAD]), one prehistoric archaeological site (CA-LAN-54), six historic-period archaeological sites (CA-LAN-1970H, 3784H, -3982H, -4714H, -4715H, and -4716H), and five historic-period built resources (P-19-176734, -187805, -192323, -192324, and -192325) (PSOMAS, 2015).

CA-LAN-54 is a prehistoric archaeological site originally recorded in the 1950's by William Deane as a shell midden. Excavations in 2014 uncovered human burial features, ground and pecked stone artifacts, chipped stone artifacts (including dart-sized projectile points and bone artifacts, such as barbs, awls and tubes/beads). This site was radiocarbon dated to 2,770 (+/-40) to 3,880 (+/-50) years B.P. The site was determined to be eligible for listing in the National Register by the ACOE with concurrence from the State Historic Preservation Office (SHPO) on February 1, 2001 (OHP 2012a), as a contributor to the BLAD. Given the potential for buried resources, additional testing is warranted.

To ensure there are no impacts to sensitive cultural resources, the Commission imposes **Special Condition 4**, which requires the applicant to have an archaeological monitor present during any ground disturbing activities to inspect the materials. **Special Condition 4** also requires both Professional Archeologists and Native American monitors be present during soil disturbance. Cultural history can aid in cultural resource location and identification on a project site and can assist in the preliminary resource investigations prior to site preparation. At a minimum, Native American groups should be notified of impending development through the CEQA process, but in order to maximize protection of archeological and cultural resources, these groups should be invited to participate in preliminary investigations and project review and/or design. Additionally, reports and results of investigations should be shared with Native American groups for feedback, commentary, and peer-review. As conditioned for a monitoring plan and protection of the archeological resources, the project is consistent with Section 30244 of the Coastal Act.

## **E. Coastal Act Violations**

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

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

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

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

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

On December 14, 2017, the Commission approved Coastal Development Permit 5-17-0253 requiring California Department of Fish and Wildlife (CDFW) to seal two unpermitted drains located within Area B of the Ballona Wetlands Ecological Reserve within 30 days, and to submit an application to remove the drains and associated pipes within 180 days of Commission action on the underlying permit (by December 14,

2018), with the work to be carried out within one year of Commission action on the application to remove it.

In January of 2018, CDFW sealed the drains by inserting a metal sleeve into the interior of both risers to cover all of the weep holes, and sealed the weep holes and drain lids with marine-grade structural epoxy adhesive (suitable for potable water contact), and bolted down the lids with L-brackets to ensure the lids could not be removed.

Although the applicant has capped the unpermitted drains as an interim measure to eliminate the functioning of the drains until such time as the drains are removed, the applicant did not propose to include removal of the drains in the application for Coastal Development Permit No. 5-17-0253, and, thus, violations have remained on the subject property.

Pursuant to Special Condition 4 of Coastal Development Permit No. 5-17-0253, CDFW in June 2018 submitted this application with two project alternatives, which proposed to either: 1) “appropriately abandon the drains” by filling the vertical risers with concrete until such time as the drains could be removed with the larger BWER Restoration Project, or 2) leave the sealed drains in place without filling the vertical risers until the drains are removed during the larger BWER Restoration Project. In addition, Special Condition 4 of Coastal Development Permit 5-17-0253 required that this follow-up permit application include a proposal to provide habitat restoration with appropriate native wetland species at a minimum ratio of 4:1 (revegetation area to area impacted by the drains). The habitat restoration is required to address direct impacts associated with their initial unpermitted drain installation, and the temporal impacts of dewatering the surrounding habitat areas that has occurred because of the presence of the drains in this location since approximately 1996. **Special Condition 2** requires submittal and implementation of a final habitat restoration and monitoring plan.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant’s subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

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

## **F. California Environmental Quality Act (CEQA)**

Section 13096 of the Commission’s administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (“CEQA”),

Public Resources Code Section 2100, et seq. Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding findings in support of the decision to approve the CDP application are incorporated herein by reference. The findings discuss the relevant coastal resource issues with the proposal, identify potential significant environmental effects, and reflect that changes or alterations have been required as conditions of approval or incorporated into the project to avoid or substantially lessen any significant impacts to coastal resources. The findings include responses to all comments raising significant environmental points regarding the project.

As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will substantially lessen all adverse environmental impacts have been required as a special condition or have been incorporated into the project. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, complies with the applicable requirements of the Coastal Act to conform to CEQA, Public Resource Code Section 2100, et seq.

APPENDIX A—SUBSTANTIVE FILE DOCUMENTS

- Certified Playa Vista Land Use Plan, City of Los Angeles, 1986.
- Coastal Development Permit Application No. 5-17-0253
- *Hydrologic Analysis for Freshwater Marsh Outlet Drain Risers*, prepared by PSOMAS for Playa Capital Company, LLC on September 27, 2017
- Coastal Development Permit Application No. 5-18-0554
- *Ballona Wetlands Restoration Project Environmental Impact Report*, State Clearinghouse No. 2012071090, prepared for California Department of Fish and Wildlife, South Coast Region
- *Draft Ballona Wetlands Ecological Reserve Willow Restoration Plan*, California Department of Fish and Wildlife, dated July 6, 2020.

## **APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES**

- A. An applicant seeking to recommence construction following discovery of the 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 changes 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 findings 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 appendix 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 the special condition. 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 convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. 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. Furthermore, upon completion of the peer 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.