

**CALIFORNIA COASTAL COMMISSION**

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# W17a

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Hearing Date: 08/12/20

## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-17-0253-A1

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

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

**Description of Original Project Approved Pursuant to Permit No. 5-17-0253:** Cut drains (risers, approximately 48 inches in diameter) to grade, cap drain inlets and plug weep holes of drain lines in two existing unpermitted storm drains, or cap drain inlets above grade with no ground disturbance. If capping the drains occurs at grade, project area to be re-vegetated with native plant species consistent with surrounding habitat. If the project occurs above grade, no grading or vegetation removal will occur, and no re-vegetation will be necessary.

**Description of Pending Permit Amendment No. 5-17-0253-A1:** Request to extend the timing requirement of Special Condition 4 to allow removal of unpermitted drains and associated pipes to occur within five years instead of one year, as a component of a larger planned restoration project.

**Staff Recommendation:** Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION

The California Department of Fish and Wildlife seeks to amend Special Condition 4 of Coastal Development Permit 5-17-0253 to allow for removal of the unpermitted drains and associated pipes on a schedule longer than one year, thus allowing removal as a component of a larger restoration project set to occur within five years. Additionally, the proposed amendment makes the language regarding the restoration required by the underlying permit more specific to wetland habitat impacts. The standard of review for the proposed amendment is the Coastal Act.

The amendment would allow the unpermitted drains and associated development to be removed within five years as part of the larger Ballona Wetlands Restoration project to avoid duplicating impacts to Ballona Wetlands Ecological Reserve (BWER). Commission Staff recommends approval of Coastal Development Permit 5-17-0253-A1 with the change to Special Condition 4 as proposed by the applicant. All other special conditions of Coastal Development Permit 5-17-0253 would be unchanged and remain in effect, which include biological monitoring, revegetation of the impacted area, archaeological monitoring, and assumption of risk.

**PROCEDURAL NOTES:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

The Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting coastal access.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904- 5202.

## TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	4
II. CHANGE TO CONDITION.....	4
III. FINDINGS AND DECLARATIONS.....	5
A. Project Description and Background.....	5
B. Biological Resources .....	6
C. Cultural Resources .....	10
D. Coastal Act Violations .....	11
E. Local Coastal Program .....	11
F. California Environmental Quality Act.....	13

## APPENDICES

Appendix A--Standard and Special Conditions pursuant to CDP No. 5-17-0253 through CDP Amendment No. 5-17-0253-A1

## EXHIBITS

Exhibit 1 – Vicinity Map and Project Location

Exhibit 2 -- *Habitat Impacts Related to Ballona Wetlands Ecological Reserve, Playa Del Rey, CA*, prepared by Dr. Jonna Engel, CCC Senior Ecologist, July 23, 2020

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-17-0253-A1, pursuant to the staff recommendation.

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

### Resolution:

The Commission hereby approves Coastal Development Permit Amendment No. 5-17-0253-A1 on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## II. CHANGE TO CONDITION

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-17-0253, as amended, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underlined**.

## Special Conditions

- 4. Application for Coastal Development Permit.** Within 30 days of the date of approval of Coastal Development Permit No. 5-17-0253, the applicant shall perform the approved work to cap the subject drains and seal remaining weep holes. Within 180 days of the date of approval of Coastal Development Permit No. 5-17-0253, a coastal development permit application shall be submitted to the Commission for removal of the remaining unpermitted pipes and associated unpermitted development, to be carried out within ~~one~~ **five years** of Commission action on that application. The application for said Coastal Development Permit shall include a proposal to provide **restoration** ~~vegetation~~ with appropriate native species at a minimum ratio of 4:1 (~~revegetation area to area impacted by the drains~~) to address **wetland** impacts **and appropriate restoration for other habitat areas** associated with the initial installation of the unpermitted drains and associated pipes and temporal impacts to **wetland** habitat resulting from the presence of the drains. If a coastal development permit has not been issued to remove the remaining components of the drains within one year from the date of Commission action on that permit application, the Executive Director may grant for good cause additional time.

## III. FINDINGS AND DECLARATIONS

### A. Project Description and Background

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 (CDFW submitted an application for Coastal Development Permit 5-18-0884, which is scheduled for a public hearing on the same date as the subject permit amendment application). Coastal Development Permit 5-17-0253 was subject to five Special Conditions (attached as Appendix B).

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 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.

Pursuant to Special Condition 4 of Coastal Development Permit No. 5-17-0253, CDFW applied for a coastal development permit in June 2018 (CDP application No. 5-18-0884) 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.

On March 14, 2019, after Grassroots Coalition alerted Commission staff to an error in Special Condition 4 of CDP No. 5-17-0253, Commission staff issued a corrected CDP that removed the option for “appropriate abandonment” of the unpermitted drains. CDFW subsequently submitted a revised project description (the subject application) to remove the risers either immediately or through the planned, larger future restoration.

The proposed amendment would alter Special Condition 4 to allow for removal of the unpermitted drains and associated pipes within five years of Commission action on the permit application instead of one year, thus allowing removal of the drains as a component of the larger restoration project set to occur in the next three to five years. Additionally, the proposed amendment makes the language regarding the restoration required by the underlying permit more specific to wetland habitat impacts.<sup>1</sup> The standard of review for the proposed amendment is the Coastal Act.

## **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,*

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<sup>1</sup> CDFW also requested to modify Special Condition 4 to state that the Commission Executive Director may extend the required five-year time-frame for removal of the unpermitted pipes and drains for good cause. In addition, CDFW requested to add language to Special Condition 4 stating that removal of the unpermitted pipes and drains may occur as part of the larger restoration. Neither change to Special Condition 4 is necessary and both issues are more appropriately addressed in the pending permit application for the removal of the unpermitted pipes and drains (Application No. 5-18-0554). As the staff report and recommendation for 5-18-0554 shows, if the Commission amends this permit in the manner recommended by staff, the Commission may authorize the Executive Director to grant an extension of the five-year time-frame for good cause and approve the removal of the unpermitted pipes and drains as part of the planned restoration project, or alternatively require immediate removal of the development. Therefore, Commission staff does not recommend making these two changes to CDP No. 5-17-0253.

*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.*

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. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

Special Condition 4 of the underlying permit required CDFW to remove the unpermitted pipes and drains within one year of Commission action on that application; however, the analysis for Coastal Development Permit 5-17-0253 was limited to sealing the unpermitted drains to stop them from draining water from the wetlands, but did not fully analyze the impacts to surrounding habitat and cultural resources that would occur as a result of their excavation. An alternatives analysis is necessary to determine the least environmentally damaging option for meeting the objectives of a project consistent with the standard of review. CDFW contends that since the drains are no longer functioning because they were capped and sealed in January of 2018, that they are no longer a threat to the habitat. CDFW has informed Commission staff that it agrees that the drains should be removed and fully intends to do so. However, because the site is scheduled for a much larger restoration project, and in order to minimize disturbance and impacts to the area, CDFW proposes to remove the drains within five years when the larger restoration project gets underway. Removing the drains now will require digging them up, thereby disturbing the area, including the wetland vegetation, and then restoring the disturbed area by revegetating it. The revegetated areas would take time to fully recover to their current levels of productivity. This same area would need to be disturbed again when the larger restoration project begins, including uprooting of the recently revegetated areas, which again, would take time to fully recover to the current levels of biological productivity. Removing the drains in conjunction with the larger restoration project, as opposed to now, would minimize the disruption to the overall biological functions of the area. In addition, CDFW submitted detailed information regarding numerous prehistoric sites and cultural resources in the project vicinity that merit additional testing in order to sufficiently protect the archaeological resources in the project area.

As detailed in the proposed findings for Coastal Development Permit Application No. 5-18-0554, incorporated herein by reference, 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 still is suitable for several sensitive species that currently rely up on the vegetation and open space as habitat.

Section 30233(a) allows for dredging of wetlands only when a three-part test is satisfied: 1) the development is a permissible use under the statute, 2) there are no feasible less environmentally damaging alternatives, and 3) feasible mitigation measures have been included that minimize environmental impacts of the proposed development. Here, removal of the drains will result in dredging of wetland habitat and must satisfy the requirements of Section 30233(a). As detailed in the staff report for CDP Application No. 5-18-0554, the project will result in temporary dredging of a wetland, which is for restoration, which is a permissible use under the statute, and evidence indicates that there is a feasible less environmentally damaging alternative to immediate removal of the unpermitted drains—i.e., removal of the drains as a component of the larger restoration project that is expected to occur in the next three to five years.

Immediate removal of the drains will result in a duplication of impacts to the project area when the larger BWER Restoration occurs within the next 3-5 years. Excavating the trenches in order to remove the sealed drains and associated pipes just to excavate the same area during the BWER Restoration will result in an unnecessary duplication of impacts to the existing habitat values that Area B currently supports, which is inconsistent with the purpose for which the property was acquired by the state. Moreover, Dr. Jonna Engel, the Commission's staff ecologist, has determined that since the sealed drains are not currently withdrawing water from the habitat, to require the Department to excavate and remove the sealed unpermitted drains and pipes immediately in an area that is within the footprint of the larger BWER Restoration project would be more harmful to the habitat than necessary ([See Exhibit 2](#)).

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 3,000 square feet of

habitat was directly 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. In addition, she determined that the temporal wetland impacts associated with the drains withdrawing water from the wetlands was approximately 400 square feet which also required a 4:1 ratio ([Exhibit 2](#)). Thus, Commission staff finds that feasible mitigation measures have been included that minimize environmental impacts of the proposed development.

Therefore, Commission staff recommends approval of the proposed changes to Special Condition 4, to allow CDFW to remove the unpermitted development with the larger restoration effort, not to exceed five years, which is the least environmentally damaging alternative for the proposed project.

### C. Cultural 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. As conditioned for a monitoring plan and protection of the archeological resources, the project is consistent with Section 30244 of the Coastal Act.

Given that the drains were effectively sealed in January 2018 rendering them non-functional and inert, the negative impacts to habitat and cultural resources as a result of duplicating excavation efforts in this location for immediate removal and for the larger planned BWER Restoration, Commission staff recommends the timing restriction of **Special Condition 4** be approved and allow the removal of the unpermitted

development to occur with the larger restoration project, for a time period not to exceed five years.

#### **D. 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 Ballona Ecological Reserve, roughly a tenth of a mile north of the Ballona Freshwater Marsh.

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

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

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

Commission staff initially became aware of the unpermitted drains in 2013 and noted the presence of the violations in a letter to Playa Capital Company dated June 12, 2013 letter. A subsequent letter in April 11, 2014 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 (CDFW submitted an application for Coastal Development Permit 5-18-0884, which is scheduled for a public hearing on the same date as the subject permit amendment application).

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.

Pursuant to Special Condition 4 of Coastal Development Permit No. 5-17-0253, CDFW applied for a coastal development permit in June 2018 (CDP application No. 5-18-0884) 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.

The proposed amendment would alter Special Condition 4 to allow for removal of the unpermitted drains and associated pipes within five years of Commission action on the permit application instead of one year, thus allowing removal of the drains as a component of the larger restoration project set to occur in the next three to five years.

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. As noted above, CDFW submitted an application for Coastal Development Permit 5-18-0884, which is scheduled to be heard by the Commission on the same day as this application, to remove the unpermitted drains in conjunction with the BWER Restoration Project.

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.

### **E. Local Coastal Program**

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

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

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

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

### **F. California Environmental Quality Act**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

## **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 Amendment Request No. 5-17-0253-A1

## **APPENDIX B – Standard and Special Conditions pursuant to CDP No. 5-17-0253 through CDP Amendment No. 5-17-0253-A1**

**NOTE:** Appendix B includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-17-0253-A1. This will result in one set of adopted special conditions.

### **STANDARD CONDITIONS**

- 1. Notice of Receipt and Acknowledgment.** The permit amendment 5-17-0253-A1 is not valid and development authorized by permit amendment 5-17-0253-A1 shall not commence until a copy of the permit amendment, 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 two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for the permit, as modified by the application for the permit amendment, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
- 6. 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.
- 7. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **SPECIAL CONDITIONS**

- 1. Biological Monitor.** By acceptance of this permit, the applicant agrees that:  
An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such

as dredging or construction that could result in disturbances to the Raptors or sensitive species in the area. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The applicant shall not undertake any activity that would disturb habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.

**2. Revegetation of Impacted Area.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, if there is ground disturbance, the applicant shall submit for review and written approval of the Executive Director, a final revised detailed revegetation plan to restore disturbed habitat to offset impacts associated with the project. Required revegetation shall be at a minimum ratio of 1:1 for the temporary impacts associated with the proposed work. The revised plan shall identify the final location and size of the proposed acreage/square foot revegetation area. A biologist qualified in the preparation of plans to restore vegetation consistent with the surrounding habitat shall design the revised landscaping/revegetation plan. The plan shall at a minimum include the following:

- A. Revegetation plan including planting map, plant palette, source of plant material, and schedule of plant installation, watering, erosion control, soil fertilization and weed abatement;
- B. Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of the dominant perennial species are similar to relatively undisturbed vegetation of the same type in nearby reference areas. Species composition shall be considered similar if all the dominant species and at least 80% of the non-dominant species at the reference site are present at the restored site.
- C. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first.

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

**3. Archaeological Resources**

Prior to construction, if there is ground disturbance, the applicant shall retain the services of an independent qualified archaeologist and appropriate Native American consultant with appropriate qualifications acceptable to the Executive Director. The

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

4. **Application for Coastal Development Permit.** Within 30 days of the date of approval of Coastal Development Permit No. 5-17-0253, the applicant shall perform the approved work to cap the subject drains and seal remaining weep holes. Within 180 days of the date of approval of Coastal Development Permit No. 5-17-0253, a coastal development permit application shall be submitted to the Commission for removal of the remaining unpermitted pipes and associated unpermitted development, to be carried out within ~~one~~ **five** years of Commission action on that application. The application for said Coastal Development Permit shall include a proposal to provide ~~restoration~~ **vegetation** with appropriate native species at a minimum ratio of 4:1 (~~revegetation area to area impacted by the drains~~) to address **wetland** impacts **and appropriate restoration for other habitat areas** associated with the initial installation of the unpermitted drains and associated pipes and temporal impacts to **wetland** habitat resulting from the presence of the drains. If a coastal development permit has not been issued to remove the remaining components of the drains within one year from the date of Commission action on that permit application, the Executive Director may grant for good cause additional time.
5. **Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the applicant, the California Department of Fish and Wildlife, acknowledges and agrees (i) that the site may be subject to hazards from accumulation of methane; (ii) to assume the risks to the applicant, the California Department of Fish and Wildlife, and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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