

**CALIFORNIA COASTAL COMMISSION**

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# W13b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-0982

**Applicant:** Bolsa Chica Conservancy  
Patrick Brenden, Chief Executive Officer

**Agent:** Ed Mountford

**Location:** 3842 Warner Avenue, Huntington Beach, Orange County  
APN: 110-017-01

**Project Description:** Replacement of temporary Interpretive Center consisting of removal of a 1,440 square foot modular building, various storage outbuildings, and portable toilets, and installation of a new 1,440 square foot, pre-fabricated modular building, and installation of a new 1,200 square foot, pre-fabricated, modular building connected to the 1,440 square foot building.

**Staff Recommendation:** Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION

The proposed project includes replacing the Bolsa Chica Conservancy's deteriorating temporary Interpretive Center with a new, temporary Interpretive Center within the same footprint. The subject site is located within the Bolsa Chica Ecological Reserve, which is owned by the California State Lands Commission (CSLC) and managed by the California Department of Fish & Wildlife (CDFW). Both the CSLC and the CDFW support the proposed project. The subject site is located at about sea level and, based upon CoSMoS modeling, is expected to become impacted with a scenario of about 1.6 feet of sea level rise (SLR) and no storm event. SLR of 1.6 feet, under the medium high

risk aversion scenario, is expected by about the year 2050, thirty years from now. The proposed temporary structures are wheeled trailers that are relatively easily removed. The applicant proposes to remove the structures from the site when they become threatened by sea level rise hazards. The project is located adjacent to ESHA and wetland, but not in ESHA or wetland. Typically, a buffer setback would be required for development adjacent to ESHA and wetland. In this case, however, the proposed development will be within the same footprint of the development to be replaced, is temporary, and is managed by a non-profit organization and public agencies with an interest in preserving and enhancing the wetland. Moreover, the use to be removed has proved to be compatible with the ESHA and wetland over many years. This is expected to remain the same with the proposed development in the same footprint. The Interpretive Center replacement will also allow the Conservancy to continue to provide enhanced public use of the Reserve by providing interpretive displays, educational opportunities, guided tours, student field trips, and other similar programs to the general public.

Staff is recommending **approval** of the proposed development subject to special conditions intended to assure consistency with the Coastal Act policies regarding hazards, habitat, and water quality. Staff is recommending three special conditions, which require: 1) as proposed by the applicant, the temporary, wheeled trailer structures be removed from the site if they become threatened by coastal hazards from sea level rise, and that no future shoreline protective device shall be constructed; 2) implementation of special protections during the bird nesting season; and 3) implementation of water quality best management practices.

The motion to adopt the staff recommendation is on page 4. The standard of review is Chapter 3 of the Coastal Act.

**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.

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## Exhibits:

1. Vicinity Maps
2. Project Plans
3. Photos of Proposed Trailor Structure
4. CSLC Letter of Support, (5/4/2020)
5. CDFW Letter of Support (9/4/2018)
6. CDFW CEQA Form, 4/13/2020
7. Biological Assessment, LSA (3/4/2019), Figure 2
8. CoSMoS Map of Site
9. CDFW Letter Regarding Removal 12/19/2020

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 5-18-0982 pursuant to the staff recommendation.

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:

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 two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Future Sea Level Rise Impacts and No Future Shoreline Protective Device.** As proposed by applicant, in the event the temporary structures approved by this CDP become threatened by coastal hazards related to future sea level rise, the permittee or any successor entity will remove the structures from the site.

By acceptance of this permit, the permittee agrees, on behalf of itself and all other successors and assigns, that the project is new development for which there is no right to shoreline protection pursuant to Public Resources Code section 30235 or otherwise, and hereby waives on behalf of itself, and all other successors and assigns, any rights that may exist under applicable law to construct a shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. 5-18-0982, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural coastal hazards in the future.

2. **Construction Timing and Sensitive Bird Species Surveys.** For any construction activities occurring between February 15 and September 1, the applicant shall retain the services of a qualified biologist or environmental resources specialist (hereinafter, "environmental resources specialist") to conduct nesting bird surveys in order to determine the presence of songbird and raptor and owl species. The applicant shall ensure that the environmental resources specialist also monitors project operations. At least 30 calendar days prior to commencement of any project operations, the applicant shall submit the name and qualifications of the environmental resources specialist, for the review and approval of the Executive Director. The applicant shall ensure that all project construction operations occurring between February 15 and September 1 shall be carried out consistent with the following:

- A. A qualified environmental resources specialist with experience in conducting nesting bird surveys shall conduct the surveys 30 calendar days prior to construction activities within 500 feet of the project. A follow-up survey must be conducted 3 calendar days prior to the initiation of construction, and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.

- B. If an active nest of any songbird is found within 300 feet of the project, or an active nest for any raptor species is found within 500 feet of the project, the

applicant shall retain the services of an environmental resources specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The nest shall not be removed or disturbed. The environmental resources specialist shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The environmental resources specialist shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site(s). If construction noise exceeds a peak level of 65 dB at the nest(s) site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction shall cease and shall not recommence until either new sound mitigation can be employed or the birds have fledged.

C. If an active nest of a federally or state-listed threatened or endangered species or bird species of special concern is found within 300 feet of the project, or an active nest for any species of raptor is found within 500 feet of the project, the applicant shall notify the appropriate State and Federal Agencies within 24 hours, and appropriate action specific to each incident will be developed. The applicant shall notify the California Coastal Commission by e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.

D. The environmental resource specialist shall be present during all construction activities during the bird nesting/breeding season if an active nest is identified, until the birds have fledged.

E. The environmental resource specialist shall require the applicant to cease work should any breach in compliance with this condition occur, or if any unforeseen sensitive habitat issues arise. The environmental resources specialist shall immediately notify the Executive Director if activities outside the scope of the subject CDP occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be required to submit a revised or supplemental program to adequately mitigate such impacts.

### **3. Construction Best Management Practices.**

**A.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:

1. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;

2. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
3. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
4. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include but are not limited to the placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
5. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and stored as far from a storm drain inlet and any receiving waters as possible.

**B.** Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

1. The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from any receiving waters and storm drain inlets as possible;
2. The permittee shall develop and implement spill prevention and control measures;
3. The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
4. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Location

The subject site is located at 3842 Warner Avenue, in an unincorporated area of Orange County. The site is located just inland of the southeast corner of the intersection of Warner Avenue and Pacific Coast Highway, within the Bolsa Chica Ecological Reserve. The subject site is the location of the Bolsa Chica Wetlands Interpretive Center ([Exhibit 1](#)). The Interpretive Center is owned and managed by the Bolsa Chica Conservancy (BCC). The Interpretive Center currently consists of a 1,440 square foot prefabricated modular building that houses environmental/wildlife interpretive displays, classrooms, a laboratory, a small library, and support offices. The Interpretive Center site currently also includes several small out-buildings used for storage of equipment and tools for education and habitat restoration programs (three free standing storage sheds), and two portable toilets. There is also an on-site 23 vehicle parking space parking lot, plus one bus parking space, that serves the Interpretive Center and users of the public trails of the Bolsa Chica Ecological Reserve.

The proposed project would replace the existing 1,440 square foot modular structure that is in disrepair with a new 1,440 square foot prefabricated modular structure in the same location and footprint. The project also proposes to add a new 1,200 square foot prefabricated modular structure to replace and consolidate the various storage outbuildings. The 1,200 square foot new structure would be located within the same area of the outbuildings and would also provide new public restrooms to replace portable outhouses currently on site. In addition, the new building would provide support offices for Conservancy staff. The two structures will be joined by a 4' by 4' enclosed hallway, which will be topped with an open, wood frame, 24 foot high (above grade) tower (no glass). All of the proposed development will be located within the currently developed footprint. The site is already served by water, sewer and electrical facilities. The maximum height of both structures will be 14 feet above existing/finished grade. ([Exhibit 2](#))

The proposed tower would consist of a wood frame (with no glass), measuring 4 feet x 4 feet and rising 11 feet above the roof of the proposed 13-foot-tall buildings. The proposed tower would be built in accordance with bird-safe designs by excluding glass and artificial light to minimize the risk of collisions by birds flying through the area. Both of the proposed structures are trailers with trailer hitches and wheels ([Exhibit 3](#)).

The Bolsa Chica Ecological Reserve is an approximately 1,400-acre coastal estuary, connected to the ocean through the tidal inlet at the southern end of the Bolsa Chica, about 800 feet north of Seapoint Street. Habitats include open water, mudflats, salt marsh, coastal dunes, seabird nesting islands, riparian, and freshwater marsh. More than 200 avian species have been identified at Bolsa Chica. The reserve is very popular with birders and photographers. The Bolsa Chica Ecological Reserve (BCER) is one of



the largest wetland ecosystems remaining in California. The Bolsa Chica Conservancy (BCC) provides wetlands education programs for the public. In 2017, the BCC served 54,000 students, visitors, and volunteers. Annually, an estimated 90,000 visitors enjoy outdoor nature viewing, hiking and multiple educational programs hosted by BCER's three non-profit organizations (BCC, Amigos de Bolsa Chica, and the Bolsa Chica Land Trust).

The current Interpretive Center was constructed in 1994 pursuant to CDP No. 5-93-093 which allowed: "Placement of a prefabricated modular 1440 square foot, 12-foot-high structure within the existing parking lot area of the Bolsa Chica Ecological Reserve. The structure is proposed as a temporary interpretive center and will provide interpretive displays, a small library, a small research facility and work space for personnel of the Bolsa Chica Conservancy and the California Department of Fish and Game."

The Interpretive Center was originally proposed as temporary in 1993 and the proposed project is also proposed as temporary. Since the inception of the Conservancy in 1989, the modular Interpretive Center on the Bolsa Chica Ecological Reserve has been considered temporary. The permanent home of the Conservancy's Interpretive Center has long been envisioned for Harriett Weider Regional Park on the Huntington Mesa at the south end of the Bolsa Chica Ecological Reserve. In 2017, the Conservancy was gifted forty acres on the Huntington Mesa by Signal Landmark. The forty-acre property is part of Harriett Weider Regional Park where the County of Orange has approved in concept an interpretive center in partnership with the Conservancy. Fundraising efforts remain on-going to support construction of the new Center. However, there is currently no date certain for when the new Center will be in place and it is not expected to begin construction for a number of years.

The Bolsa Chica Ecological Reserve, including the subject site, is owned by the California State Lands Commission (CSLC), and managed by the California Department of Fish and Wildlife. The applicant (Bolsa Chica Conservancy) has a current lease agreement with CSLC for the Interpretive Center that runs to June 25, 2031. In addition, a lease amendment was approved by the CSLC for the proposed project on June 23, 2020. The CSLC staff have sent a letter of support for the proposed project ([Exhibit 4](#)). The Bolsa Chica Ecological Reserve is owned by the CSLC, and managed by the California Department of Fish & Wildlife (CDFW). As the manager of the Reserve, CDFW has also sent a letter of support for the proposed project ([Exhibit 5](#)). In addition, as lead CEQA agency, CDFW issued a CEQA categorical exclusion for the proposed project ([Exhibit 6](#)).

#### Standard of Review

The subject site is located in the Bolsa Chica area of unincorporated Orange County. There is not certified Local Coastal Program for this area of the County. The standard of review is the Chapter 3 policies of the Coastal Act.

## **B. Environmentally Sensitive Habitat Area**

Section 30107.5 of the Coastal Act defines Environmentally Sensitive Area as follows:

“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.

Section 30240 of the Coastal Act states that:

(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 30121 of the Coastal Act defines wetlands as follows:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

In addition to the above Coastal Act Sections, Section 30233 allows diking, filling, or dredging of wetlands, only for specific, enumerated uses, and only for the least environmentally damaging alternative, and when adequate mitigation is provided. In this case, the proposed development will occur adjacent to, but not within, wetlands. No diking, filling, or dredging of wetland will result from the proposed project.

The subject site is located within the northwest corner of the Bolsa Chica Ecological Reserve (Reserve). The Reserve is approximately 1,400 acres, representing one of the largest remaining salt water marshes in Southern California. With five plant communities, and its use as a rest stop for migratory birds, nursery for marine life, and haven for rare and endangered species, the Reserve abounds with a multitude of wildlife. Most of Bolsa Chica is salt marsh. In addition to salt marsh habitat, the Reserve also includes coastal strand/sand dune, coastal sage scrub, freshwater wetlands, and riparian woodland. Saltwater flows into the Reserve's wetlands from both Anaheim

Bay/Huntington Harbour and an ocean inlet located just north of Seapoint Avenue. Non-native plants also persist within the Reserve.<sup>1</sup>

A Biological Resources Assessment (Assessment) was prepared for the proposed project by LSA (3/4/2019). The Assessment describes the subject site as follows:

“The project site consists primarily of developed land containing a paved parking lot, a portable building structure, and storage sheds and is mostly surrounded by the Bolsa Chica Ecological Reserve (Reserve). The Reserve protects and maintains (e.g., with habitat restoration conducted by the Conservancy) the adjacent native habitats, which include salt marsh and coastal mixed scrub. Figure 2 illustrates the identified habitats within the survey area, which includes the project site plus a 100-foot buffer around it.”

Figure 2 of the Assessment is included as [Exhibit 7](#) of this staff report. The Assessment found that within the project site and the 100 feet surrounding the site (but not including the area of Warner Avenue and developed area across Warner Avenue), the following habitat types are present:

**Coastal Mixed Scrub**<sup>2</sup> (Based on Scrub 2.0 of the Habitat Classification System): Scrub vegetation consists of drought-deciduous, low, soft-leaved shrubs and herbs. This area of scrub, hereby referred to as Coastal Mixed Scrub, within the 100-foot buffer of the project site is dominated by fourwing saltbush (*Atriplex canescens* var. *canescens*), Brewer’s saltbush (*Atriplex lentiformis* ssp. *breweri*), California encelia (*Encelia californica*), California box-thorn (*Lycium californicum*), and coastal prickly pear (*Opuntia littoralis*).

**Salt Marsh** (6.1 of the Habitat Classification System): Salt marsh occurs along the coast in estuarine habitats that are (or were historically) tidally influenced. Salt marsh (southern coastal saltmarsh) consists of halophytic perennial herbs and low shrubs that occur on regularly (or historically) flooded or saturated clay and silt soils that are high in salts. The dominant species observed during the survey include pickleweed (*Salicornia* sp.), salt grass (*Distichlis spicata*), shore grass (*Distichlis littoralis*), saltwort (*Batis maritima*), alkali heath (*Frankenia salina*), California sea lavender (*Limonium californicum*), fourwing saltbush (*Atriplex canescens* var. *canescens*), Brewer’s saltbush (*Atriplex lentiformis* ssp. *breweri*), sea-blite (*Suaeda* sp.), and spiny rush (*Juncus acutus*). Nonnative small-flowered ice plant (*Mesembryanthemum nodiflorum*) was also observed throughout the area.

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<sup>1</sup> <https://bolsachica.org/the-wetlands/plants/>

<sup>2</sup> Not an exact category in the Orange County Habitat Classification System, but a mixture of scrub types.

**Urban and Commercial** (15.1 of the Habitat Classification System): Urban and commercial land cover includes all buildings, pavement, and highway rights-of-way. This area includes the building, shed structures, portable toilets, and paved parking lot within the project area.

**Disturbed** (16.1 of the Habitat Classification System): Disturbed areas either lack vegetation or are dominated by a sparse cover of ruderal vegetation. Species observed in the disturbed areas were nonnative weeds, including mustard species (*Brassica* sp.), common dandelion (*Taraxacum officinale*), and small-flowered ice plant.

The Assessment further states: “Native wildlife habitat is present in the immediate vicinity of the project site. Within the project footprint, the developed condition does not provide suitable nesting or foraging habitat for many local wildlife species. However, there is suitable nesting and foraging habitat within the surrounding area.”

The existing and proposed development will be located within the footprint of the existing developed parking lot (designated Urban and Commercial in the Assessment). The Assessment states: “The majority<sup>3</sup> of the proposed project will be built in the portion of the project site that is already developed (i.e., the areas where the building, storage sheds, portable toilets, and pavement currently exist).”

Given the prevalence of sensitive habitat and species, it is clear that the undeveloped parts of the Reserve are Environmentally Sensitive Habitat (ESHA). It is also clear that the area of the Reserve adjacent to the proposed development site constitutes ESHA and wetland. However, the area where development is proposed is not ESHA or wetland, but is adjacent to both. Section 30240(b) requires that development in areas adjacent to ESHA be sited and designed to prevent impacts which would degrade them and that the development be compatible with the continuance of the habitat area. The proposed development will not result in any fill of (or other direct development in) wetlands, but in order to assure protection of wetlands, the Commission typically imposes a development setback from wetlands; most often the setback ranges from 50 to 100 feet from the edge of the wetland. However, in this case, both the existing and proposed development footprint will be within just a few feet at its closest point on the south and western parts of the project footprint. Elsewhere the proposed structures will be surrounded by existing parking lot, but still less than 100 feet from wetland. However, there is no place onsite that would meet the 100-foot buffer setback. In addition, the proposed development will be within the same footprint of the existing development to be removed. While a buffer is preferred, in this case the existing development has not

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<sup>3</sup> The proposed development previously included a deck that would have extended into and over saltmarsh, but the deck is no longer part of the proposed project. Thus, all of the proposed project will be located within the already developed footprint.

interfered with the adjacent coastal salt marsh's continuance. Because of the evidence available from the existing development, and the fact that there will be no change to the development footprint, the Commission is able to conclude that the proposed development will not create any significant disruption to the salt marsh habitat values.

In addition, it's worth acknowledging that the purpose of the proposed development is to continue to provide interpretation of the habitat and related educational opportunities to the public. The applicant, the Bolsa Chica Conservancy, is a non-profit whose mission statement is: "Inspire and connect all generations through community involvement and leadership in hands-on restoration and education in wetland science, coastal ecology and environmental conservation." The BCC offers a number of programs for the public, including field trips and guided tours of the Reserve. Some specific programs the BCC offers include the Community Action Restoration Education (CARE) program, a K-12 interactive hands-on STEM-based educational initiative that focuses on coastal ecology, wetland science and environmental conservation; the Youth Leadership in Environmental Action Program (YLEAP) is designed to engage students in middle/high school (12-17 years old) to cultivate youth leaders by providing them with knowledge and skills that help motivate and inspire others to protect and preserve coastal resources; and, Wetland Exploration Program (WEP), a hands-on science research program that exposes middle school and high school students to the real-life study and exploration of ecosystems and habitat restoration. In addition, in collaboration with the California Department of Fish and Wildlife (DFW) and the California Department of Parks and Recreation, since 2010 the Bolsa Chica Conservancy (BCC) offers Eyes On Nest Sites (EONS) to monitor nesting success of the endangered California Least Tern and threatened Western Snowy Plover colonies at the Bolsa Chica Ecological Reserve. Many of the field trips provided by the BCC allow students from areas that may not otherwise experience wetlands to learn about them.

The proposed replacement of the Interpretive Center will allow the BCC to continue to provide these opportunities to the public. The proposed replacement will improve the services and opportunities provided at the site by the BCC, by increasing indoor interpretive display space and classroom space, as well as providing indoor restroom facilities.

### Nesting Bird Surveys

The Bolsa Chica Ecological Reserve is known as one of the best birding spots in Southern California due to the presence of a variety of birds that use the area, including some rare birds. Rare birds that are known to occur in the Reserve include Belding's savannah sparrow, burrowing owl, Ridgway's rail, and western snowy plover. Some of the many other species of birds that use the area include various types of herons, egrets, terns, and raptors such as white tailed kites, northern harriers, osprey, and a variety of hawks. More than 200 avian species have been identified at Bolsa Chica. Due to the proximity of the ESHA and wetlands of the Bolsa Chica Ecological Reserve, and

their known use by a great variety of birds, protection of birds during nesting season must be assured.

Section 30240 requires that environmentally sensitive habitat areas be protected against any significant disruption of habitat values. It is important to assure that the proposed development not interfere with potential nesting bird ESHA. In order to prevent interference with breeding birds, certain steps must be incorporated into the proposed project. These steps include that, if any work is conducted during the bird breeding season (February 15 through September 1), a nesting bird survey, conducted by a qualified biologist or ecological resources specialist, must be performed prior to any construction activities. And if any active nests are discovered, work may only occur farther than 300 feet from any active songbird nest and farther than 500 feet from any active raptor nest. In addition, decibel levels must be kept at or below a peak of 65 dB at the nest(s) site(s). Additionally, if construction activities occur during the breeding season, the work must be monitored by a qualified biologist or ecological resources specialist. These measures are necessary to find the proposed development consistent with Section 30240's requirement to protect against significant disruption of ESHA by avoiding impacts to sensitive nesting birds, and generally to sensitive bird use of the area. **Special Condition 2** imposes these requirements which are necessary to assure that adverse impacts to nesting bird species in the Bolsa Chica Ecological Reserve are avoided.

### Conclusion

The subject site is located outside of, but adjacent to ESHA and wetland. No diking, filling or dredging of wetland will occur with the proposed project. Section 30240 of the Coastal Act requires that that development in areas adjacent to ESHA be sited and designed to prevent impacts which would degrade the ESHA and to be compatible with the continuance of the habitat area. The proposed development will not result in development in ESHA or wetland. The proposed project would maintain the existing developed footprint and would not expand any closer to the wetland and ESHA. The lack of the typically imposed habitat buffer in this case will not create adverse impacts. The habitat has continued to exist with the existing development at the site without adverse impacts; and replacement within the same footprint is expected to avoid adverse impacts to the adjacent habitat. In addition, uses dependent upon ESHA are allowed within ESHA. Such a use includes nature study. The proposed project would facilitate nature study. Finally, the proposed project would allow the Interpretive Center to continue to provide a valuable service to the general public. As conditioned to protect nesting birds during the bird breeding season, the proposed project is consistent with Sections 30233 and 30240 of the Coastal Act.

### **C. Sea Level Rise Hazards**

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The subject site is within the Bolsa Chica Ecological Reserve, which lies at an elevation near sea level. The site is located at the edge of the Bolsa Chica wetlands, which are connected to Huntington Harbour through a nearby tide gate under Warner Avenue. Warner Avenue fronts the subject site. In addition, the ocean lies approximately 600 feet west of the site, across Pacific Coast Highway and Bolsa Chica State Beach ([Exhibit 1](#)). Huntington Harbour is known to flood now under king tide and/or storm conditions. Pacific Coast Highway along the Bolsa Chica Ecological Reserve also floods under current conditions during storm events.

Due to its low-lying location between the oceanfront, the wetlands, and the harbor, the site is in an inherently dynamic and potentially hazardous area, which may be at risk from potential erosion and flooding hazards. These hazards may be exacerbated by expected future sea level rise. In this geographic area, the main concerns raised by development are potential exposure of the proposed development to coastal flood and/or erosion hazards and whether these future hazardous conditions might eventually lead to a request to build a shoreline protection device to protect the proposed development. Flooding at and near the site could also impact roadways and other infrastructure, limiting access to the site and damaging necessary public services (such as roads and utilities).

USGS CoSMoS, the best available regional sea level rise modeling tool, shows that the subject site and surrounding area may be significantly impacted by future sea level rise ([Exhibit 8](#)) and related flooding. Based on CoSMoS modeling the site will begin to become threatened with about 1.6 feet of sea level rise (SLR) and no storm event. SLR medium-high risk aversion projections for the Los Angeles tide gauge indicate that 1.6 feet of SLR is expected to occur at about the year 2050, thirty years from now. Typically, the Commission considers the life of a proposed project to be 75 years. The proposed project is expected to become threatened well prior to a 75-year life.

However, the proposed structures are proposed to be temporary. Indeed, the two structures are trailers, with wheels and trailer hitches ([Exhibit 3](#)). The applicant acknowledges the location of the site is subject to future flooding and other impacts related to SLR. In proposing the project as temporary, the applicant proposes that, should the structures begin to become threatened, the trailers will be hauled offsite, to the applicant's (BCC) property within the Harriett Weider Regional Park on the Huntington Mesa. With regard to the BBC's SLR adaptive plan, the applicant states:

“To summarize, the Conservancy’s adaptive management strategy for sea level rise is to continue to monitor the flooding posed by king tides and sea level rise and, if necessary, in cooperation with [Calif.] Fish and Wildlife as the onsite property manager, develop short term measures to mitigate any potential flooding impacts. In the long-term, should the need ever arise for the Conservancy to vacate the current location, the strategy would be to relocate the Conservancy’s modular facilities to Harriett Weider Regional Park on property owned by the Conservancy.”

In a letter from the California Department of Fish & Wildlife (CDFW) the State agency responsible for managing the Bolsa Chica Ecological Reserve, in a letter dated 12/19/2019 ([Exhibit 9](#)) supports this strategy, stating:

“As the State agency responsible for managing the Bolsa Chica Ecological Reserve (Reserve), located in Huntington Beach, the Department recognizes that the temporary modular buildings operated by the Bolsa Chica Conservancy (Conservancy) can be moved off the Reserve if it ever became necessary to protect State resources. The Department is aware that the Conservancy’s long-term vision is to build a permanent interpretive facility on County property adjacent to the reserve and that the Conservancy will continue to operate from the Reserve’s north parking lot for at least another decade or so (2030 – 2035).”

In its letter cited above ([Exhibit 9](#)), the CDFW asserts that the proposed structures will be “above the level of current flooding and they are higher than flooding levels that may be anticipated over the coming decade due to sea level rise.” ([Exhibit 2](#)). Moreover, in this case, should the proposed development become threatened in the future from coastal hazards due to future SLR, the applicant has proposed to remove the wheeled trailer structures and relocate them to property already in the applicant’s possession on higher ground on the Huntington Mesa in Harriet Weider Regional Park, the anticipated location of its future permanent Interpretive Center. Moreover, it is possible that the future permanent Interpretive Center may come to fruition within the thirty-year timeframe beyond which this subject site’s resilience becomes questionable. Additionally, the applicant could not construct a shoreline protection device at the site without the site owner’s (CSLC) and the manager’s (CDFW) permission.

The Commission’s primary concern when considering development in areas subject to SLR hazard is whether such development would eventually lead to a request for a future shoreline protection device. However, in this case, the applicant has already put forth a viable alternative to a shoreline protection device to protect the proposed (temporary) structures: relocation off site and out of harm’s way. **Special Condition No. 1** is imposed to memorialize that the proposed project includes removal of the temporary trailers should they become threatened by coastal hazards related to SLR in the future. The special condition also memorializes the agreement and understanding that the project is new development for which there is no right to shoreline protection. Section 30253 of the Coastal Act requires that new development minimize risks to life



and property in areas, such as the subject site, of high flood risk; and that new development assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability of the site or surrounding area or in any way require the construction of protective devices. As proposed, the temporary, wheeled trailer structures will be removed from the site, rather than protected in place, should they become threatened in the future. Removing the temporary structures when they become threatened will minimize risks associated with the development. As conditioned, to require the removal be carried out as proposed, the development is consistent with Section 30253 of the Coastal Act.

## **D. Public Access**

Section 30210 of the Coastal Act states:

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

Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided, and that development not interfere with the public's right to access the Coast. The proposed project will allow continuation of public tours, educational opportunities, and similar programs for the general public's benefit. The Bolsa Chica Ecological Reserve includes a network of public trails. The proposed project will not interfere with the public's continued use of these trails. In fact, the proposed project will allow better enjoyment of those trails by providing interpretive displays and education about the Reserve for use by the general public to enhance their enjoyment and understanding of all the Reserve has to offer while on the public trails. Moreover, an important aspect of public access is the provision of public restrooms. The proposed development will replace the existing outhouses on site with indoor restroom facilities, improving the public experience. The project, overall, will be beneficial to public access. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Section 30210 of the Coastal Act and regarding maximizing public access.

## **E. Visual Resources**

Section 30251 of the Coastal Act states:

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

character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The subject site is visible from the public trails in the Bolsa Chica Ecological Reserve and from Pacific Coast Highway, a major public access corridor. The proposed project would replace the deteriorated structure on site and the assortment of out buildings and various storage areas with two new structures within the existing footprint. This would improve the visual nature of the site by replacing the deteriorating with a new one and consolidating the remaining variety of structures and storage into the new structure. In addition, the project would remove the existing outhouses on site, and replace them with new interior restroom facilities, also improving the visual nature of the site. The project, overall, will be beneficial to visual resources. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Section 30251 of the Coastal Act.

## **F. Water Quality**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The proposed development has the potential for construction discharge of polluted runoff from the project site into the wetlands. The storage or placement of construction

material, debris, or waste in a location where it could be discharged into wetlands could result in an adverse impact on the marine environment.

The applicant is proposing measures to address water quality concerns, including: the proposed buildings would have standing seam metal roofs with gutters and downspouts that drain to cisterns. This would be an improvement in onsite drainage compared to existing conditions, as excess runoff is not currently captured for reuse. Further, the walkways around the proposed buildings and from Warner Avenue to the buildings would be surfaced with permeable pavers to allow rain to percolate into the soil.

To further protect water quality, **Special Condition No. 3** is imposed, which identifies additional construction related measures to be incorporated into the project during construction. These measures include methods for the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter the wetlands. By incorporating the water quality protection measures into the proposed development, as conditioned, the project minimizes the effect of construction activities on the marine environment. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality.

## H. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program ("LCP") only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The subject site is located within the Bolsa Chica area of unincorporated Orange County. There is no certified Local Coastal Program for the area. The proposed development has been conditioned to conform to the hazards, habitat protection, and water quality policies of Chapter 3 of the Coastal Act. As conditioned, the proposed development is consistent with the policies in Chapter 3 of the Coastal Act. Therefore, approval of the proposed development will not prejudice the County's ability to prepare a Local Coastal Program for the Bolsa Chica area that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

## I. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned, 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 California Department of Fish & Wildlife (CDFW) is the lead agency responsible for certifying that the proposed project is in conformance with CEQA. CDFW determined that in accordance with CEQA, the project is Categorically Exempt from Provisions of CEQA, citing CEQA Guidelines Section 15302 (replacement of existing facility). However, 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 CEQA.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require: 1) removal of the structures from the site if they become threatened from coastal hazards; 2) protection of sensitive bird species; and, 3) implementation of water quality measures, drainage plan, and landscaping as proposed.

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.

5-18-0982

Bolsa Chica Conservancy

## APPENDIX A

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### **SUBSTANTIVE FILE DOCUMENTS**

1. Coastal Development Permit Amendment Application No. 5-18-0982 and associated file documents.
2. Coastal Development Permit No. 5-93-093 and associated file documents.
3. Biological Resources Assessment, LSA, 3/4/2019.