

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-20-0197

Applicant: Los Angeles Department of Water and Power (LADWP)

Project Location: Five parcels owned by the California Department of Parks and Recreation located in Topanga State Park – Los Angeles County Assessors' Parcel Numbers ("APNs") 4431-023-901; APN 4432-002-922; APN 4432-002-923; APN 4432-002-920; APN 4432-002-919; and three adjacent privately-owned properties: APN 4431-023-028; APN 4431-039-010; APN 4431-040-012.

Project Description: Replace 38 wooden distribution poles with 38 steel distribution poles along a 2.52-mile section of an existing transmission power line and related line work; request for after-the-fact approval of temporary vegetation clearance and grading of 1.41 acres of vegetation to and around access poles.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Los Angeles Department of Water and Power (LADWP) is proposing to do work on a section of existing transmission power line in Los Angeles County, consisting primarily of the replacement of wood poles with steel pools. The proposed project is located in

Topanga State Park and three adjacent privately-owned properties, in the Santa Monica Mountain Range. The standard of review for the project is Chapter 3 of the Coastal Act.

The proposed project is part of LADWP's system-wide effort to enhance utility line safety and reliability, particularly related to wildfires and high-wind events. The California Public Utilities Commission (CPUC) designated the area of Topanga State Park as a Tier 2 High-Fire Threat District and recommended that the poles be replaced by January 1, 2020 to reduce the threat of wildfire caused by power lines.

In March 2019, without a permit, the applicant removed native vegetation on the Temescal Ridge Fire Road (fire road), including environmentally sensitive habitat area (ESHA), cleared new access paths from the fire road to the existing wooden distribution poles, which removed native vegetation, including ESHA, and placed fill from project activities into berms on the sides of the existing fire road, which resulted in water quality impacts due to soil spillover into the local watershed. In total, the unpermitted activities impacted 9.15 acres of native habitat within the coastal zone. The impacted area also includes approximately 2.72 acres of Braunton's milk-vetch (BMV) habitat. Included in that 2.72 acres is 1.61 acres of federally listed critical habit for the BMV. LADWP stopped the unpermitted work after the Commission's Enforcement staff sent a notice of violation. LADWP had completed unpermitted grading and vegetation clearance, but had not yet replaced any distribution poles.

Staff worked closely with LADWP to reach a resolution of these matters and proposed such resolution to the Commission for approval at the November 4, 2020 Commission meeting. After a public hearing on the matter, the Commission issued Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02 as proposed by staff to resolve Coastal Act violations that occurred on the project site. Under the terms of the Consent Orders, LADWP has agreed to resolve Coastal Act violations - including resolving monetary claims under the Coastal Act - by, amongst other things, restoring the areas subject to the unpermitted development and providing habitat restoration work and funding that will directly benefit habitat on and in the vicinity of the site. LADWP also agreed to obtain a Coastal Development Permit (CDP) for the pole replacement work.

The applicant now proposes to complete the pole replacement project. The proposed development in the coastal zone primarily involves removing 38 existing wooden distribution poles and replacing them with 38 steel distribution poles. In order to minimize impacts to sensitive habitat, the applicant will use helicopters to replace the poles and crews will access the pole sites from the existing fire road on foot. The main concern with the proposed development is the potential impacts to sensitive vegetation that qualifies as ESHA, including Braunton's milk-vetch, coastal sage scrub and coastal chaparral. The development will result in some temporary impacts to ESHA (primarily relating to vegetation clearance necessary to access and conduct work in the vicinity of the existing and new poles) and potential permanent removal of ESHA where the new holes are to be dug for the steel poles.

The proposed project qualifies as a repair and maintenance project under the Coastal Act but nevertheless requires a CDP, because the project involves the clearing of more than 500 square feet (0.01 acres) of vegetation and would involve the removal of vegetation within an ESHA. In considering a permit application for a repair or maintenance project, the Commission's evaluation of such projects focuses on the proposed methods of repair and maintenance and does not extend to an evaluation of the underlying existing development's conformity with the Coastal Act.

Following completion of the pole replacement, the applicant will undertake restoration of the impacted habitat area as referenced in **Special Condition 1** which requires the applicant to submit a final restoration plan prior to issuance of this CDP. The applicant contends that no grading and no permanent impacts to ESHA are anticipated as a result of the construction activities, thus **Special Condition 1** requires the applicant to conduct pre- and post-construction vegetation surveys to document on-site vegetation. In addition, **Special Condition 1** requires the applicant to mitigate for any temporary impacts to ESHA at a 1:1 ratio and to mitigate for any permanent impacts to ESHA at a 3:1 mitigation ratio. If 3:1 mitigation is not feasible on site, then an in-lieu mitigation fee amounting to \$33,874 per acre shall be required. Additionally, since Braunton's milk-vetch is a federally-listed endangered species, **Special Condition 1** requires the applicant to mitigate for any future impacts to individual specimens of Braunton's milk-vetch at a 10:1 ratio with replacement specimen plantings of Braunton's milk vetch. Furthermore, **Special Condition 2** requires a biological observer to be present during construction activities and **Special Condition 3** requires bird nesting surveys prior to construction activities during bird nesting season.

The proposed pole replacement project has the potential to adversely impact native habitat and water quality. To ensure that impacts to habitat and water quality are minimized, **Special Condition 4** requires the applicant to adhere to construction best management practices, including erosion control measures and capturing any treated wood debris.

Since the proposed development will take place on public and private lands, **Special Condition 5** requires the applicant to obtain written permission from the landowners for the proposed development, prior to the commencement of any construction activities.

Commission staff recommends that the Commission **APPROVE** CDP application 5-20-0197, as conditioned. The motion is on page 5.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Location](#)

[Exhibit 2 – Site Photographs](#)

[Exhibit 3 – Map of Alternative 1 of the Alternatives Analysis Submitted by the Applicant](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit No. 5-20-0197 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Mitigation for Temporary and Permanent Impacts to ESHA.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final detailed restoration plan for restoration of the project site to pre-construction conditions, including a plan to restore and monitor temporarily disturbed ESHA and any permanent impacts to ESHA, including but not limited to, Braunton's milk-vetch, coastal sage scrub, and coastal chaparral.
 - A. The applicant shall submit a description of the vegetation survey methods it will implement to identify ESHA (including, but not limited to, Braunton's milk-vetch, coastal sage scrub, and chaparral habitat) that may be affected by project activities approved by this CDP. The proposed survey methods shall be consistent with protocols of the March 20, 2018 California Department of Fish and Wildlife Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities, except as modified below:
 - a. The biologists shall conduct pre-construction vegetation surveys no later than thirty days prior to any ground disturbing activities at each work location. Surveys shall include photographs of the ESHA including coastal sage scrub, chaparral, and woodland habitat and any special status species in the project area.
 - b. The biologists shall identify the type and location of the ESHA and any sensitive species and shall show the locations on a detailed map in relation to areas slated to be affected by project activities.
 - c. Based on survey results, the biologists shall recommend any modifications at each of the project's proposed work locations that will avoid or minimize potential adverse effects to ESHA (e.g., relocating staging areas).
 - d. The applicant shall submit, for Executive Director review and approval, the survey results, the biologists' recommendations, and any proposed work location modifications that will avoid or minimize adverse effects to ESHA prior to construction.
 - e. Sixty days after construction activities have terminated, the applicant shall submit post-construction surveys that utilize the same survey methods as the pre-construction surveys.

- f. Any difference in vegetation (i.e., reduction of vegetation cover) of ESHA shall require restoration of any temporarily affected areas to their pre-construction condition at a 1:1 mitigation ratio as described in **Subsection B** below. If restoration is not possible, the impacts to ESHA shall be considered permanent and shall be mitigated at a minimum ratio of 3:1 as described in **Subsection C** below.

B. Temporary Impacts to ESHA. Any temporary impacts to ESHA, including temporary use of the access paths (as authorized by this CDP), shall be mitigated at a 1:1 ratio. Said plan may be consistent with the final restoration plan submitted to the Coastal Commission to comply with the obligations of Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02, requiring complete restoration of vegetation in the coastal zone to pre-development conditions.

C. Permanent impacts to ESHA.

- a. Any future permanent impacts to ESHA, including coastal sage scrub and chaparral, shall be mitigated on site at 3:1 ratio. If 3:1 is not feasible on site, then an in-lieu mitigation fee amounting to \$33,874 per acre is required.
- b. New poles shall not be sited where Braunton's milk-vetch (BMV) species exist, as that would result in permanent impacts to ESHA. If it is not feasible to avoid impacts to BMV, the BMV shall be relocated on site. Any permanent impacts to any individual specimens of BMV, including removal, replacement, or relocation, shall be mitigated at a 10:1 ratio with replacement BMV specimen plantings.

The applicant shall undertake development in accordance with the approved final plan. Any changes to the restoration plan shall require an amendment to this CDP, or a new CDP, unless the Executive Director determines that no amendment is legally required.

- 2. **On-Site Biological Observer.** The project biologist(s) shall be present at active project work sites during all project construction activities involving vegetation clearing, pole replacement and the use of any helicopters, trucks or heavy equipment. The biologist shall perform daily surveys of the project site(s) prior to the start of work to check for the presence of sensitive wildlife species. If a sensitive species is detected during one of these daily surveys, project activities shall not commence until the individual or group has left the area. During project activities, the biological observer shall monitor for the presence of sensitive wildlife in or near the project area. At project sites or in situations where a single observer cannot reasonably provide coverage of the entire active work area, additional observers shall be provided. The observer(s) shall have the appropriate safety and monitoring equipment adequate to conduct their activities. For monitoring purposes, the observer(s) shall establish an avoidance zone that encompasses the entire active work site and no less than a 25-foot buffer around the work site, where applicable. The observer(s) shall have the authority to temporarily halt any project activity that could result in harm to a sensitive species entering within the avoidance zone, and to suspend those activities until the animal has left the area. The biological

observer shall ensure that new poles are sited to avoid any new impacts to ESHA. If new impacts to ESHA are not avoidable, the appropriate mitigation ratios shall apply, consistent with **Special Condition 1**.

3. **Timing of Construction and Bird Nesting Surveys.** By acceptance of this permit, the applicant agrees to avoid, to the maximum extent feasible, construction activities that generate noise greater than 60 dB(A) during bird nesting season at the project edge, from February 15th through September 15th. If project construction is necessary during the bird nesting season, a qualified biologist with experience in conducting bird nesting surveys shall conduct a minimum of one survey within 72 hours of initiating construction activities. Monthly surveys for nesting birds shall also be conducted during construction activities. If during preconstruction or monthly surveys, raptor nests are identified within 500 feet of the project site, or active nests of any bird species are identified within 300 feet, noise monitoring shall be conducted and construction activities shall not occur until a qualified biologist determines that the young have fledged, the nest has been abandoned, or noise monitoring indicates that noise levels remain below a 60 dB(A) equivalent continuous noise level at the location of the nest. If this level is exceeded, feasible noise attenuation measures shall be implemented to reduce noise levels at active nests to at or below 60 dB(A) (except as necessary for emergencies with written approval by the Executive Director of the Commission after consultation with the California Department of Fish and Wildlife and U.S. Fish and Wildlife).

The monitoring biologist shall halt construction activities if he or she determines that the construction activities may be disturbing or disrupting the nesting activities. The monitoring biologist shall make practicable recommendations to reduce the noise or disturbance in the vicinity of the active nests or birds. This may include recommendations such as (1) turning off vehicle engines and other equipment whenever possible to reduce noise, (2) installation of temporary sound barriers or sound blankets, and (3) utilizing alternative construction methods and technologies to reduce the noise of construction machinery. The monitoring biologist shall review and verify compliance with these avoidance boundaries and shall verify that the nesting effort has finished in a written report. Unrestricted construction activities may resume when the biologist confirms no active nests are found. Bird nesting surveys shall be provided to the Executive Director of the Commission and to the California Department of Fish and Wildlife and U.S. Fish and Wildlife offices within 72 hours of locating any nests.

4. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction related requirements:
 - A. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.

- B. The permittees shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the sea is protected from sedimentation. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
- C. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
- D. To capture any treated wood debris and sawdust during pole removal, any debris and sawdust from the treated poles will need to be captured in-place, to the maximum extent feasible, during removal to prevent the degradation of water quality within the local watershed. All debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- E. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- F. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- G. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- H. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is in the coastal zone, a CDP or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- I. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- J. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- K. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- L. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- M. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related

- materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- N. All BMPs shall be maintained in a functional condition throughout the duration of construction activity

- 5. Permission from Landowners.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, the applicant shall obtain written permission from the landowner(s) or land manager(s) for all of the parcels subject to this CDP for the proposed development. The applicant shall submit the written permissions to the Executive Director.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

The project site is in the eastern portion of the Santa Monica Mountain range, inland of the Palisades Highlands community in Los Angeles County ([Exhibit 1](#)). The project site is made up of eight separate parcels: five parcels owned by the California Department of Parks and Recreation, located entirely in Topanga State Park, and three adjacent privately-owned parcels.

The project site is located along Temescal Ridge Fire Road (fire road), which is a popular public access trail that allows visitors easy access to the Santa Monica Mountains and the Backbone Trail (a trail that allows visitors to traverse the Santa Monica Mountain range). The fire road is the main access road in the project area and maintenance of this road is typically conducted by the Los Angeles County Fire Department, Topanga State Parks, and by LADWP. The project site and the surrounding lands are large, unfragmented areas of native habitat that support a wealth of native plants and animals. The Commission has, in past actions, classified this area as environmentally sensitive habitat area (ESHA) and is described more in the Environmentally Sensitive Habitat Area and Biological Resources Section of this report. Additionally, Braunton's milk-vetch (BMV), a federally listed endangered species by the United States Fish and Wildlife Service (USFWS), is found in the project area.¹

In 2019, LADWP identified the area of Topanga State Park as a priority area for pole replacement due to changes by the CPUC designating the area as a Tier 2 High-Fire Threat District.² According to CPUC recommendations, the replacement of poles was to be completed by January 1, 2020 (see GO 95, Rule 18(A)(2)(ii))³ to mitigate the threat of fire. The current wooden poles in Topanga State Park were installed between 1935 and 1955 and are past their useful service life. The project's objective is to increase

¹ 16 U.S.C. Ch. 35 § 1531 et seq.; 50 C.F.R. 17.12(h) (listing).

² <https://ia.cpuc.ca.gov/firemap/>

³ https://www.cpuc.ca.gov/gos/GO95/go_95_rule_18.htm

power system reliability, provide service to the Pacific Palisades, and to increase fire safety within Topanga State Park and the neighboring residential communities including Pacific Palisades, Encino, and Tarzana.

LADWP proposes to fire-harden an existing utility line in the coastal zone by replacing 38 existing wooden poles with 38 steel poles. LADWP proposes to excavate a hole for each of the 38 new replacement poles using hand tools: a shovel (the shovel is 12' or 10' long), a digging bar and a tamp. Each hole will be approximately 9 feet deep and slightly bigger than 1-2 feet in diameter (the diameter of the new steel poles is 1-2 feet). Spoils from new pole excavations would be temporarily placed around the new poles for use in backfilling the hole of the adjacent removed wooden pole. Once the new hole has been dug, a helicopter will be used to deliver and set each new pole. Once each new pole has been installed, the existing 34.5 kV conductor wire would be moved onto the new pole. Then, the old wooden pole would be pulled out by helicopter and transported to the main construction staging yard, where it would be removed via truck to an authorized facility for recycling or disposal outside the coastal zone. In some cases, the existing conductor wire has deteriorated and will need to be cut out and replaced, which will require use of a drum roller on the fire road. The line would be completely de-energized during this process for the time needed to safely install the new line.

In order to implement the pole replacement project and to enable access to some pole work sites, LADWP requests after-the-fact approval of temporary vegetation clearance and grading of 1.41 acres of native habitat, all of which, in this location, is identified as ESHA. Photographs of the site are shown in [Exhibit 2](#).

After the pole replacement project is finished, all work areas will be restored to pre-construction conditions. This would occur through removal of all construction materials and debris, restoring the fire road, restoring the access paths, restoring all vegetation, and restoring the berms. Under the Consent Orders,⁴ the applicant will restore a 9.15-acre area that was impacted by the unpermitted development in the coastal zone (which includes the 1.41 acres that the applicant is seeking temporary approval for), an additional 17.52 acres of damaged habitat outside the coastal zone, and will pay a mitigation fee totaling \$1,947,500 to remedy the violation (see Section F: Unpermitted Development).

Project History

On or around March of 2019, without authorization under the Coastal Act, the applicant began the distribution pole replacement project from the Palisades Highlands community in Pacific Palisades (within the coastal zone) to Mulholland Drive in the Encino/Tarzana area of the San Fernando Valley (outside the coastal zone). On July 7, 2019, a member of the public (who is familiar with BMV) was hiking on the subject site and observed the applicant's ongoing project. The next day that same member of the

⁴ [Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02](#)

public sent the applicant an e-mail message alerting the applicant's staff of the presence of BMV in the area where the applicant was working. In an e-mail message response, the applicant thanked the member of the public for bringing the presence of the plant to its attention; despite this, eight days later, that same member of the public visited the site and discovered the applicant's crews had continued the power pole replacement work located within the BMV critical habitat area.

In the coastal zone, the unpermitted development included 2.05 acres of widening of the fire road and 1.41 acres impacted by the creation of new access paths (including impacts to pole pad areas) that crop out from the fire road. The impacted area from the unpermitted fire road widening, creation of new access paths and impacted area around the pole pads is 3.46 acres. In addition, the applicant placed fill from project activities into small berms on the sides of the fire road, which allowed loose soil to fall from the fire road down to the ravine, thereby impacting the local watershed. The work performed by the applicant damaged an estimated 9.15 acres of native habitat in the coastal zone, including approximately 183 individual specimens of BMV.

On July 25, 2019, a conservation analyst for the California Native Plant Society informed Commission staff that the applicant's distribution pole replacement project appeared to significantly disrupt ESHA including endangered species. On July 31, 2019, Commission staff sent an e-mail message to the applicant to inform its staff that it must cease all development in the coastal zone until the applicant obtained a CDP from the Commission for the work. At that time, Commission staff also informed the applicant that almost all of the area where development occurred is ESHA that it provides habitat for a federally listed endangered species. On August 14, 2019, Charles Holloway of LADWP's Environmental Affairs called Commission staff and committed to resolve the matter. On August 16, 2019, Commission Enforcement staff sent a notice of violation letter to the applicant notifying them of the specific Coastal Act violations on the subject site and described the process to resolve the matter; three days later the respondent sent a letter pledging to work with the Commission towards a mutual resolution. On August 28, 2019, Commission Enforcement and Planning staff met in person with the applicant, and staff from USFWS and Department of Parks and Recreation (DPR) to discuss the next steps to address this matter. During that meeting Commission staff discussed the significance of the violations and requested a survey on the extent of habitat damage. The applicant expressed a desire to properly permit the project and discussed different options regarding how to align the transmission power lines. Commission staff informed the applicant that the Commission may only approve the least environmentally damaging alternative with the smallest amount of clearance of ESHA.

On March 2, 2020, the Commission's Executive Director issued a Notice of Intent to Commence Cease and Desist and Restoration Proceedings ("NOI") to Martin L. Adams the General Manager and Chief Engineer at LADWP. After receiving the NOI, the applicant and Commission staff, in coordination with USFWS and DPR staff, worked to arrive at a resolution. As part of the resolution, the applicant is required to apply for a CDP from the Coastal Commission.

On November 4, 2020, after a public hearing on the matter, the Commission issued Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02 as proposed by staff to resolve Coastal Act violations that occurred on the project site.

B. Permit Authority, Extraordinary Methods of Repair and Maintenance

The proposed project qualifies as a repair and maintenance project, as it consists of maintenance of an existing utility line through replacement of less than 50% of the existing utility line, defined as all of its components (substations, the existing fire road, poles and anchors, and wires). Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the object of the repair and maintenance activities. This proposed project would not result in any enhanced capacity or expansion of the existing power line.

However, even if a project qualifies as a repair and maintenance project under Section 30610(d), the Commission retains authority to review certain “extraordinary methods of repair and maintenance” of existing structures that involve a risk of substantial adverse environmental impact as described in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part (emphasis added):

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: ...

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; **provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.**

Section 13252 of the Commission administrative regulations (14 CCR 13000 et seq.) provides, in relevant part, for the following (emphasis added):

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:...

(3) **Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area**, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

- (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials
- (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean....

Section II-B-2-d of the document entitled "Repair, Maintenance and Utility Hookup Exclusions from Permit Requirements" adopted by the Commission on September 5, 1978 states the following, in relevant part:

d. Grading, Clearing and Removal of Vegetation. Excluded activities shall not extend to the construction of any new road to the site of the work. In cases involving removal of trees exceeding 12 inches dbh, grading of any undisturbed area of greater than 500 sq. ft, or clearing of more than 500 sq- ft. of brush or other vegetation, the utility shall consult with the Executive Director of the Regional Commission to determine whether the project involves removal of major vegetation such that a permit is required. A coastal permit is not required for removal of minor vegetation for maintenance purposes (tree trimming, etc.) for safety clearances.

The proposed project presents a risk of substantial adverse environmental impact pursuant to Section 30610 of the Coastal Act and Section II-B-2-d of the 1978 Utility Exclusions because it involves the removal of greater than 500 sq. ft. of vegetation and the removal of vegetation within ESHA. The proposed pole replacement project therefore requires a CDP under Section 30610 of the Coastal Act, Section 13252 of the Commission regulations, and Section II-B-2-d of the 1978 Utility Exclusions.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. In other words, the Coastal Commission's authority over repair and maintenance activities applies only to the methods by which a repair and maintenance activity is carried out. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the underlying existing development's conformity with the Coastal Act.

C. Environmentally Sensitive Habitat Area and Biological Resources

Section 30107.5 of the Coastal Act states:

“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 activity and developments.

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

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

Sections 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.

Coastal Act Section 30231 requires that the biological productivity and quality of coastal waters be maintained to a level appropriate to maintain optimum populations of marine organisms and for the protection of human health. Coastal Act Section 30232 requires protection against the spillage of crude oil, gas, petroleum products, and hazardous substances, and requires that effective containments and clean-up procedures be provided for accidental spills that do occur. Coastal Act Section 30240(a) provides for increased protection and scrutiny to any development in that area. Coastal Act Section 30240(b) requires that development in areas adjacent to environmentally sensitive habitat area (ESHA) 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.

The landscape in the project area is gently sloped along a series of ridgelines with steeper slopes immediately adjacent to the Temescal Ridge Fire Road (fire road). The project area consists of chaparral habitat, coastal sage scrub, and Braunton's milk-vetch (BMV), all of which, in this location, the Commission identifies as ESHA. The ESHA vegetation communities on site serve as food, foraging habitat, and shelter for many species of native animals. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quails, greater roadrunners, Bewick's wrens, coyotes, and coast horned lizards. Most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

As described above, the project site is located within the Santa Monica Mountain range, with the majority of the proposed development occurring inside Topanga State Park ([Exhibit 1](#)). The Santa Monica Mountains comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal Southern California. This type of ecosystem is only found in five localities in the world: the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia. Throughout the world, this ecosystem has suffered severe loss and degradation from human development. As of early 2000, only "18 percent of the Mediterranean community type remain[ed] undisturbed."⁵

However, in the Santa Monica Mountains, an estimated 90 percent of this valuable habitat is free from development and a large percentage is also relatively pristine and unfragmented. As a result, much of the Santa Monica Mountains Mediterranean ecosystem is a mosaic of vegetation types (e.g. coastal sage scrub, chaparral, oak woodland) linked together ecologically. The Commission found that areas of native habitat in the Santa Monica Mountains that are unfragmented are rare and especially valuable because of their relatively pristine character, physical complexity, and biological diversity. The Commission then determined that these areas could also be easily disturbed by human activities and development and therefore rose to the level of ESHA. In numerous prior actions, the Commission has declared areas that meet this criteria in the Santa Monica Mountains ESHA. As discussed above, however, because the proposed project consists of repair and maintenance activities associated with the existing utility line, the Commission reviews only the consistency of the proposed method of maintenance with Coastal Act ESHA policies, and not the consistency of the underlying existing development.

⁵ Memorandum from Dr. John Dixon to Coastal Commission Ventura Staff. "Designation of ESHA in the Santa Monica Mountains". March 25, 2003

Proposed Project and Project Alternatives

Proposed Project – The pole replacement project involves replacement of the existing wooden distribution poles with new steel poles. The applicant will use hand tools to excavate a hole for each of the 38 new replacement poles in the coastal zone. Once the new hole has been dug, a helicopter will be used to deliver and set each new pole. Once each new pole has been installed, the existing 34.5 kV conductor wire would be moved onto the new pole. Then, the old wooden pole would be pulled out by helicopter and transported to the main construction staging yard, where it would be removed via truck to an authorized facility for recycling or disposal. In cases where the conductor wire is compromised, the applicant will use a drum roller on the existing fire road to cut and replace the wire and install new conductor wire. The purpose of the proposed project is fire safety and prevention. No expansion of transmission capacity would occur as a result of the proposed project. In addition to the public safety elements of this proposal, the proposed project would also reduce the potential for wildfires to impact existing habitats in the utility line corridor through utility line-caused wildfires.

To minimize impacts to ESHA, the applicant proposes to use helicopters to replace the poles and crews will access the pole sites from the existing fire road on foot. Additionally, the applicant proposes to require project personnel to be informed of the biological constraints of the project by participating in a worker environmental awareness program. The program would include information about the distribution and habitat needs of any special-status species that may be present, in particular Braunton's milk-vetch (BMV), and project-specific measures to protect such species. Upon completion of the training program, personnel shall sign a form stating they have attended the training program and understand all protection measures. Copies of program materials would also be maintained at the staging yard for workers to reference as needed, and for personnel new to the project and requiring training. In addition, the applicant proposes to have a qualified biologist monitor construction during project activities within the BMV areas. The biological monitor shall ensure that construction workers stay within the designated footprints of the construction work zones to avoid trespass on foot or in vehicles into adjacent areas. The future footprint of ESHA impact has been minimized through pole-specific work site design for each of the 38 poles. The total impact footprint is the cumulative total of proposed work at 38 pole-specific work sites in the coastal zone, so impacts to ESHA are avoided, or minimized as much as possible. The applicant would only use the existing fire road (not the widened portions)⁶ to access the distribution poles.

The applicant previously constructed access paths through ESHA to access the utility poles, which was unpermitted. In this permit application, LADWP seeks after-the-fact authorization for the temporary clearance and grading of 1.41 acres of native vegetation removed prior to applying for this permit to allow access to and around some pole work

⁶ The widened portions of the fire road are not being authorized by this CDP and will be fully restored under the Consent Orders.

sites for repair and maintenance activities. Therefore, in total, the project will temporarily impact 1.41 acres⁷ after the pole replacement work and will then be completely restored, as explained in the subsection Mitigation Requirements under this CDP below. The project is not expected to result in permanent impacts to ESHA in the project area, although the location and composition of vegetation in the project area may change over time and could be different when LADWP begins repair and maintenance work.⁸

The method of proposed repair and maintenance must comply with Section 30240 of the Coastal Act and ensure that environmentally sensitive habitat areas are protected against significant disruption of habitat values, and that development is designed to prevent impacts that would significantly degrade ESHA. In order to do so, the Commission typically evaluates alternatives to the project to determine if there are feasible alternatives that would minimize impacts and requires mitigation of unavoidable impacts to ESHA. All 1.41 acres of the temporary impacts to ESHA were necessary to implement the proposed pole replacement work because access to poles needed to be established prior to the pole replacements project.

The no project alternative is not feasible because the existing wooden fire poles are beyond their useful service life and not replacing them would result in a higher fire risk at the project site and for the neighboring residential communities including Pacific Palisades, Encino, and Tarzana. The distribution line is also essential to providing service to communities in the Pacific Palisades. Additionally, not replacing the poles soon could result in additional work in the future resulting from the continued use of the aged, wooden distribution poles. Because the proposed project area is within and adjacent to ESHA, the project must protect against significant disruption of habitat values, and prevent impacts that would significantly degrade ESHA.

The applicant provided an alternatives analysis with two alternatives to the proposed project. The overall impacts of the proposed project, Alternative 1, and Alternative 2 are summarized in Table 1 below:

Table 1: Summary of Impacts for the Proposed Project, Alternative 1, and Alternative 2

	Total CZ Disturbed Area	BMV Impacts in the CZ
Proposed Project	1.41 acres	0.34 acres
Alternative 1	2.1 acres	1.03 acres
Alternative 2	8.19 acres	1.03 acres

⁷ 1.41 acres is included in the 9.15 acres impacted in the coastal zone.

⁸ For example, BMV ESHA germinates after fire disturbance or mechanical scarification, resulting in often large swings in population depending on the fire cycle and site disturbance. It is possible that there is more BMV in the project area now than there was prior to the unpermitted development.

Alternative 1 – The first alternative is to replace the 10 existing poles that are currently in BMV ESHA with new steel poles as close as possible to the fire road. This alternative is shown in [Exhibit 3](#). The applicant defines as close as possible in their analysis as 25 feet from the edge of the fire road. The fire road cannot be encroached upon, as it provides fire response access into the Santa Monica Mountains. Thus, while the poles could be moved closer to the existing fire road, they would not be moved within the existing fire road. In addition, the hilly topography of the area where the 10 poles are located prevents the new alignment from being very close to the existing fire road, which is not in a straight line.

The applicant contends that moving the existing 10 wooden poles that are currently within BMV ESHA closer to the fire road would result in additional impacts to BMV ESHA because there is BMV ESHA located adjacent to the fire road as well ([Exhibit 2](#)). With this alternative, all the BMV ESHA impacts from the proposed project would still occur (0.34 acres) and an additional 0.69 acres of BMV ESHA would be impacted. The total impact of Alternative 1 would be 2.1 acres in the coastal zone, including 1.03 acres of impact in BMV ESHA. Additionally, due to the bends in the fire road and the topography of the fire road, the relocation of the 10 poles would require additional ground disturbance, poles, guy wire supports, and anchors for the alignment proposed under Alternative 1. Due to the new ground disturbance required to take place under Alternative 1 for the pole realignment, there may also be new impacts to other special-status species known to exist in the project area such as the coast horned lizard, coastal whiptail, club haired mariposa lily, and Plummer's mariposa lily. These special-status species have a potential to be present along the edge of the fire road, which would constitute an increased potential for impact when compared to the proposed project. Thus, based on the identified environmental impacts of the modified pole alignment, this alternative would not result in the best alternative for protection of ESHA. Alternative 1 would result in 2.1 acres of impact in the coastal zone.

Alternative 2 – The second alternative is to install all new poles as close as possible to the fire road. As mentioned above, the applicant defines as close as possible in the analysis as 25 feet from the edge of the fire road. As mentioned in Alternative 1, the fire road cannot be encroached upon, as it provides fire response access into the Santa Monica Mountains. Thus, while the poles could be moved closer to the existing fire road, they would not be moved within the existing fire road. In addition to the encroachment rules, the hilly topography of the area where the new poles would be located prevents the new alignment from being very close to the existing fire road, which is not in a straight line. The applicant contends that moving the location of all poles closer to the fire road would result in additional impacts to BMV ESHA because there is some BMV located adjacent to the fire road. In fact, due to the bends in the fire road and the topography of the fire road, the relocation of all the poles would require additional ground disturbance, poles, guy wire supports, and anchors for the alignment proposed under this alternative. Specifically, Alternative 2 would result in 1.03 acres of impacts to BMV ESHA while the proposed project would only result in 0.34 acres of impacts to BMV ESHA. Due to the new ground disturbance required to take place under Alternative 2 for the pole realignment, there may also be new impacts to other special-

status species known to exist in the project area (as mentioned in Alternative 1). Alternative 2 would result in 8.19 acres of impact in the coastal zone.

The proposed project's method of repair and maintenance would avoid or lessen the environmental impacts of the development consistent with the applicable policies of Coastal Act Section 30240. The impacts associated with the proposed project are less than the total impacts associated with Alternative 1 and Alternative 2. Thus, Commission staff finds that the proposed project represents the feasible alternative that minimizes adverse impacts to ESHA to the maximum extent practicable.

Mitigation Requirements under this CDP

In order to avoid significant disruption of, or significant impacts to, ESHA, the project must include appropriate mitigation for all temporary and permanent impacts to ESHA. Here, LADWP seeks authorization for repair and maintenance of the existing utility line that would temporarily impact 1.41 acres of ESHA in the coastal zone. Permanent impacts to ESHA are not expected to occur; however, it is possible that habitat species and composition could change before LADWP begins the work authorized by this permit.

For temporary impacts to ESHA associated with necessary vegetation clearance and grading, LADWP proposes to restore the affected areas to their pre-construction condition at a 1:1 mitigation ratio. Specifically, the temporary vegetation clearance and grading of 1.41 acres to and around access poles that would be approved by this permit would be restored, which is consistent with the requirements of the Commission's Consent Cease and Desist and Consent Restoration Orders, approved by the Commission on November 4, 2020.

For permanent impacts to ESHA, which, as explained above, are not anticipated as a result of the proposed pole replacement work, the mitigation ratio shall be 3:1. If 3:1 mitigation is not feasible on site, then an in-lieu mitigation fee amounting to \$33,874⁹ per acre shall be required. In addition, since BMV is a federally-listed endangered species, the mitigation ratio for any future impacts to individual specimens of BMV shall be replacement with new BMV specimen plantings at a 10:1 ratio. The Commission has, in past actions, required a 10:1 mitigation ratio for the loss of special status species, such as oak trees.¹⁰ BMV is endemic to Los Angeles County and limited to carbonate soils (limestone outcrops) which are themselves uncommon within coastal sage scrub, chaparral, and grassland communities where it is known to exist, with fewer than 20

⁹ Although the proposed project is not under the jurisdiction of the Santa Monica Mountains LUP, it is appropriate to use the mitigation fee from its current Habitat Impact Fee Study (which is referenced in the May 2020 draft of the Santa Monica Mountains North Area Community Standards District) and amounts to \$33,874 per acre.

¹⁰ 4-12-088 (<https://documents.coastal.ca.gov/reports/2014/5/W22a-5-2014.pdf>) and 4-13-0632 (<https://documents.coastal.ca.gov/reports/2015/1/W34a-1-2015.pdf>)

extant occurrences in the hills and mountains surrounding the Los Angeles Basin in Southern California; therefore, a 10:1 mitigation ratio is required for the loss of BMV.

In assessing restoration and mitigation proposals, the Commission prefers to address habitat impacts through in-kind efforts in which the same habitat that is impacted is provided through mitigation requirements. Here, following completion of the pole replacement, LADWP will undertake restoration of the impacted habitat area of 1.41 acres. The applicant submitted a draft restoration plan, by Aspen Environmental Group, dated August 2020, which outlines the plan for the restoration that will take place. The draft restoration plan will restore the habitat impacted by the project activities to what existed prior to the unpermitted development. The plan describes the biological setting, restoration goals, planting methods, success criteria, and reporting standards that will be utilized within the coastal zone. The applicant contends that the area to be restored in the coastal zone is subject to active restoration techniques which consist of initial site preparation, pre-installation weeding, hydroseeding, broadcast seeding, and container planting, plant protective measures such as signage, individual cages, and fencing, placement of fine and course woody debris, and, finally, irrigation, weeding, and routine maintenance and monitoring. The draft restoration plan includes revegetating the area with native species which are consistent with the desired native habitat to restore the site to pre-development conditions. The draft resources management plan was submitted prior to the completion of this CDP application and is not a finalized restoration plan. Under the Consent Orders, the applicant has agreed to submit a final restoration plan which details the requirements for the restoration plan. As mentioned, the 1:1 mitigation ratio for any temporary impacts approved by this CDP will overlap with the Consent Orders restoration requirements and will be fully restored to pre-development conditions. Thus, the final restoration plan shall be submitted prior to issuance of the CDP, as required by **Special Condition 1**.

As discussed, the project is not expected to result in permanent impacts to ESHA; however, the composition and location of native vegetation within the project site may change before LADWP commences development, and native vegetation that qualifies as ESHA could occur in areas that would be impacted by proposed development. Therefore, to ensure all impacts to ESHA will be mitigated, both permanent and temporary, **Special Condition 1** requires the applicant to submit pre- and post-construction surveys to quantify any impacts to special status species during construction activities and to mitigate for the difference between pre-and post-conditions at a 3:1 ratio (permanent impacts) and 1:1 ratio (temporary impacts). Any 3:1 mitigation for permanent impacts, required pursuant to **Special Condition 1**, would be in addition to restoration and mitigation required by the Commission's Consent Orders. Additionally, to ensure that wildlife species are not negatively impacted during construction, **Special Condition 2** requires a biologist to be present at the active project work sites during all project construction activities involving vegetation clearing, pole replacement and the use of any helicopters, trucks or heavy equipment.

Construction-related activities could adversely affect nesting birds in the project area and this habitat qualifies as ESHA. In particular, the project area consists of chaparral habitat, coastal sage scrub, and BMV, all of which, in this location, the Commission

identifies as ESHA. Major vegetation exists on site that serves as food, foraging habitat, and shelter for many species of native animals. Characteristic bird wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners and Bewick's wrens. Most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis. To ensure that nesting bird ESHA is protected and not adversely impacted by excessive noise pollution, **Special Condition 3** requires the applicant to avoid, to the maximum extent feasible, construction activities that generate noise greater than 60 dB(A) during bird nesting season. If project construction is necessary during the bird nesting season, **Special Condition 3** also requires a qualified biologist with experience in conducting bird nesting surveys to conduct a minimum of one survey within 72 hours of initiating construction activities. In addition, construction activities, including the use of construction vehicles, could result in the accidental discharge of fuel, spills or other debris that could negatively affect sensitive habitats. To help prevent such spills and ensure adequate response measures are in place, **Special Condition 4** requires the applicant to adhere to construction best management practices.

For the reasons described above, the Commission finds that the method of repair and maintenance proposed for this project, as conditioned by **Special Conditions 1, 2, 3, and 4** will be carried out in a manner that protects environmentally sensitive habitat areas against any significant disruption of habitat values and is therefore consistent with the environmentally sensitive habitat area policies of Coastal Act.

D. Visual Resources

Coastal Act Section 30251 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.

As mentioned, the proposed project is mostly in Topanga State Park. The visual character of the area is dominated by predominantly undeveloped hillsides and utility lines within the project corridor. An existing fire road is on-site and is used by LADWP, State Parks, as well as recreational users. The existing utility line is visible to anyone working or recreating in the hillside area.

The proposed project involves replacing existing wood poles with new steel poles which are more resistant to high wind and fire threats. The existing wooden poles range between 45 to 50 feet in height and have an approximate diameter of 1 to 2 feet. The proposed new poles are approximately 70 feet in height (depending on the topography) and have an approximate diameter of 1 to 2 feet at the base and taper to a narrower diameter at the top. The increased height of the new poles is not anticipated to result in significant adverse visual impacts. The new replacement poles are proposed to be

located approximately 3-5 feet from the existing wooden poles. The new poles would be placed within the existing utility line corridor. No new permanent lighting is proposed as part of the project.

The proposed project would include the use of construction-related equipment, which would be noticeable to recreational users. This effect would be temporary and of short duration, as the proposed project is anticipated to take approximately 6 months. The primary staging area is at the northern fire road entrance near Greenbriar Drive; however, some construction staging will also be on the fire road closest to each of the poles. Thus, the presence of construction-related equipment and staging would not result in a significant or long-term effect to the visual character of the area.

For these reasons, the Commission finds that the proposed project is designed to protect coastal views and is compatible with the character of the area, and is consistent with Section 30251 of the Coastal Act.

E. Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The applicant placed some of the fill from the unpermitted development into berms on the sides of the existing fire road, which has led to some spillover into the local watershed. This has the potential to result in an increased sediment load and turbidity in the local watershed. To prevent the degradation of coastal water quality, special conditions require that the applicant use erosion control BMPs within the project site as required in **Special Condition 4** to implement construction-phase sediment-control and erosion-control BMPs to minimize erosion on the exposed surfaces around the pole locations and on the access paths. Fiber rolls are required to be installed around the access path boundaries and on downslopes away from the pole installations to protect

against erosion. To prevent wildlife entanglement and plastic pollution, **Special Condition 4** also prohibits the applicant from using plastic netting during construction activities, allowing only 100% biodegradable (not photodegradable) natural fiber netting to be used.

The project uses a low impact strategy to remove and install all replaced steel poles. This strategy restricts the use of vehicles and construction equipment from disturbing the project-site and uses hand-crews to excavate the existing wooden poles and backfill the new poles. In addition, it is possible that the existing wooden poles may have been treated with creosote or other wood preservatives; therefore, removing the treated wood poles from the construction area could adversely impact the surrounding environment. Creosote-treated wood has potential to release polycyclic aromatic hydrocarbons (PAHs), which are toxic to water quality and can accumulate in sediment. Thus, to capture any treated wood debris and sawdust during pole removal, **Special Condition 4** also requires the applicant to capture/vacuum in-place any debris and sawdust from the potentially treated poles to prevent the degradation of water quality within the local watershed.

As conditioned, the proposed development is consistent with Sections 30230 and 30231 of the Coastal Act.

F. Unpermitted Development

Prior to submitting this permit, the applicant performed various acts of unpermitted development that were violations of the Coastal Act. In total the applicant, without authorization from this Commission, graded 9.15 acres of native habitat that the Commission found to be ESHA when issuing Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02 on November 4, 2020. Included in the 9.15 acres is 2.72 acres of BMV habitat and within the 2.72 acres is 1.61 acres of federally listed critical habit for the BMV. In total, 183 of the federally listed endangered species BMV were destroyed. The applicant performed two primary types of violations: expanding the Temescal Ridge Fire Road (fire road) and creating new access paths that crop out from Temescal Ridge Fire Road towards the distribution poles. While performing this grading the applicant destroyed the vegetation found on top of the soil, therefore the applicant removed “major vegetation” (as that term is used in the Coastal Act) from the subject site. The major vegetation the applicant removed is mainly coastal sage scrub and chaparral, which the Commission, as stated above, classified as ESHA in this area. Additionally, as a result of the grading activity described, a substantial amount of material was placed on the side of the fire road and the access paths. Due to the topography of the area, in some area, these built-up areas on the side of the road (or berms) were cast over the edge of the trail down the sides of the hills. This material (or spoil), further damaged vegetation downhill by crushing it. The spoil also has the potential to erode into the local watershed.

As stated above, the Commission resolved the applicant’s Coastal Act liabilities when it issued Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02. Under those Consent Orders, the applicant agreed to

restore all 9.15 acres of habitat on-site as well as 17.52 acres of sage scrub and chaparral habitat off-site (outside the Coastal Zone) and to pay monetary fees to both mitigate for the temporary loss of habitat as well as to resolve its Coastal Act liabilities. Additionally, Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02 required the applicant to apply for this permit requesting after-the-fact approval of some of the development.

Although development occurred prior to the 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 application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit.

G. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The project site is located in the eastern portion of the Santa Monica Mountain range, inland of the Palisades Highlands community. Hiking and bicycling paths exist on the fire road as well as some of the access paths. Motor access through the area is restricted to Los Angeles County Fire Department, Topanga State Parks, and by LADWP. Pedestrian-only access is available from the south through Via Las Palmas Street (in Pacific Palisades). The applicant estimates that the proposed project will take approximately 6 months to complete. During construction, the primary staging area is located at the northern fire road entrance near Greenbriar Drive. Additionally, construction vehicles, equipment, and some materials are primarily staged within the existing fire road nearest to each pole location. For the safety of the public, the applicant contends that construction activities will temporarily affect public access for hikers and bikers while the poles are flown in via helicopters; however, public access will be restored immediately after.

The proposed development will not have a significant adverse impact on public access to the coast or to nearby recreational facilities and the proposed development conforms to Sections 30210 and 30211 of the Coastal Act.

H. Local Coastal Program

The Coastal Act required that the Commission consider the effect on a local coastal program when it approves a project. The Commission is prevented from approving projects that might prejudice the completion of local coastal program.

Section 30604 (a) of the Coastal Act states:

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 (commencing with Section 30200).

In 1978, the Commission approved a work program for the preparation of Local Coastal Programs in a number of distinct neighborhoods (segments) in the City of Los Angeles. In the Pacific Palisades, issues identified included public recreation, preservation of mountain and hillside lands, and grading and geologic stability. Geologic stability was one of the primary issues because of the number of landslides that had occurred in the sixties and early seventies.

The City has submitted five Land Use Plans (LUP) for Commission review and the Commission has certified three (Playa Vista, San Pedro, and Venice), though the Playa Vista LUP was not accepted by the City. However, the City has not prepared a Land Use Plan for Pacific Palisades. In the early 1970s, a general plan update for the Pacific Palisades had just been completed. When the City began the LUP process in 1978, with the exception of two tracts (a 1200-acre and 300-acre tract of land) that were then undergoing subdivision approval, all private lands in the community were subdivided and built out. The Commission's approval of those tracts in 1980 meant that no major planning decisions remained in the Pacific Palisades. The tracts were approved on appeal by the Commission: A-381-78 (Headlands) and A-390-78 (AMH). Consequently, the City concentrated its efforts on communities that were rapidly changing and subject to development pressure and controversy, such as Venice, Airport Dunes, Playa Vista, San Pedro, and Playa del Rey. To date, the City of Los Angeles has six LCP segments, all of which are uncertified.

With the proposed conditions that address, habitat protection and water quality related to the project and the general area, approval of the proposed development will not prejudice the City's ability to prepare a local coastal program in conformity with Chapter 3 of the Coastal Act. The Commission, therefore, finds that the proposed project is consistent with the provisions of Section 30604(a) of the Coastal Act.

I. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The Coastal Commission's review and approval of land use proposals has been certified by the Secretary of the Natural Resources Agency as the functional equivalent of environmental review under CEQA (14 Cal. Code of Regs. § 15251(c)). The preceding findings of this staff report, incorporated herein by reference, disclose the relevant coastal resource impacts of the proposed project. The Commission has imposed special conditions to minimize temporary and permanent impacts to environmentally sensitive habitat areas and water quality. The applicant has demonstrated that the project will minimize adverse impacts to water quality and biological resources. The Commission finds that the proposed project, as conditioned, is consistent with the requirements of the Coastal Act and CEQA.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

CDP Application No. 5-20-0197 and associated file documents

Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (May 20, 2018).

Memorandum from Dr. John Dixon to Coastal Commission Ventura Staff. “Designation of ESHA in the Santa Monica Mountains”. March 25, 2003

California Coastal Commission Enforcement Notice of Violation Letter, dated August 16, 2019

California Coastal Commission Enforcement Notice of Intent to Commence Cease and Desist and Restoration Proceedings, dated March 2, 2020