

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



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Filed: 4/21/21
180th: 10/9/21
Staff: FSY-LB
Staff Report: 7/30/21
Hearing Date: 8/13/21

STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-11-302-A1

Applicant: City of Newport Beach; Attention: Andy Tran

Location: Intersection of Superior Avenue and West Coast Highway, Newport Beach, Orange County (APN: 424-041-10)

Description of Original Project Approved Pursuant to Permit No. 5-11-302:
Construction of an active recreational park of approximately 13.7 acres. The park included a baseball diamond/soccer fields, pedestrian paths, viewpoint, children's playground, restroom, and landscaping. Grading consisted of approximately 57,223 cubic yards of cut, and 36,559 cubic yards of fill.

Description of Pending Permit Amendment No. 5-11-302-A1: Construction of a western bridge abutment (structural support for a new pedestrian bridge) supported by precast concrete driven piles, wing walls, a short segment of concrete walkway over Superior Avenue connecting the new pedestrian and bicycle bridge to the existing walkway, and restoration of disturbed landscape (Coastal Sage Scrub).

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach is proposing the construction of a western bridge abutment (structural support for a bridge) located at Sunset Ridge Park. The abutment will be supported by precast concrete driven piles and wing walls. A single span concrete arch pedestrian and bicycle bridge, supported by this abutment, will be installed over Superior Avenue connecting to an existing walkway at Sunset Ridge Park. The City also proposes restoration of disturbed landscape (Coastal Sage Scrub) within the park. Upon completion of the western bridge abutment, the city states that the surrounding area will be restored to pre-construction condition. The bridge will connect the existing park to an existing parking lot and additional City park that will be expanded on the east side of Superior Avenue that is part of a separate approval by the City that has been appealed to the Commission (A-5-NPB-21-0026) and will be subject to a separate staff report.

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project amends CDP No. 5-11-302, which was issued by the Coastal Commission prior to LCP certification. The current standard of review for development within the subject area is the City's certified LCP. The primary issues raised by this application are its consistency with the biological resources, marine resources, water quality, visual resources, public access and recreation, cultural and tribal resources policies of the LCP.

The underlying coastal development permit includes 17 special conditions to protect coastal resources and maximize public access. Commission staff are recommending additional special conditions be added to the permit to ensure that the development proposed in the subject permit amendment is consistent with the LCP.

Commission staff are recommending **approval** of the coastal development permit amendment application with **one** modified underlying special condition and **six** additional special conditions. All special conditions the Commission imposed through its approval of the underlying permit would continue to apply.

The proposed project will result in an impact to Coastal Sage Scrub (Restored *Artemisia californica*-*Eriogonum fasciculatum*) located on the project site totaling 4,650 sq. ft. The City identified 3,700 sq. ft. of temporary impacts and 950 sq. ft. of permanent impacts. This impacted Coastal Sage Scrub (CSS) around the area where the bridge abutment is proposed had been planted as part of a habitat restoration project required by the underlying permit for Sunset Ridge Park. The City proposes to replant on site the 3,700 sq. ft. temporary impacted CSS at a 1:1 ratio, while planting a 950 sq. ft. area in response to the permanent impacts to the east of the project site with CSS at a 1:1 ratio also. Biologists from the Chambers Group, Inc. who surveyed the site determined that because of the quality of habitat and the non-occupation of coastal California

gnatcatcher, the affected CSS area is not ESHA. The Commission's staff biologist has reviewed this information and agrees with this conclusion. While not ESHA, the Commission can only approve projects with impacts to coastal resources if adequate mitigation to offset the impacts is provided. The City's proposed mitigation ratio is inconsistent with the City's certified LCP, CLUP Policy 4.1.1-15, that requires a mitigation ratio of 2:1 for impacts to CSS. In addition, impacts which the City considers "temporary" may be mischaracterized if such impacts will not be restored to pre-construction conditions within one year, which the Commission's staff biologist has identified as unlikely. Lastly, the proposed planting location east of the project site is located in a remote area that lacks connectivity with high grade CSS that is found in other areas adjacent to the project site. Therefore, staff recommends the Commission impose **Special Condition No. 18**, which requires the permittee to submit a Coastal Sage Scrub Restoration and Monitoring Plan that mitigates the total 4,650 sq. ft. of impacts to CSS at a ratio of 2:1 for a total of 9,300 sq. ft. on site, in an area that forms a connectivity with existing high-grade CSS.

While the environmental documents for the project indicate that the coastal California Gnatcatcher and burrowing owl are not anticipated to occur within the project footprint because of current low quality habitat, there is still potential in the future for the project to impact these special status bird species. Therefore, staff recommends the Commission impose **Special Condition No. 19**, which requires: a) pre-construction surveys for nesting birds and avoidance of nesting sites during observed nesting activities; b) pre-construction surveys for sensitive species; and c) a requirement for monitoring of the site during construction to ensure that construction activities do not result in impacts to sensitive species.

While the proposed project is not located between the first public road and the sea, it is located near the coast and adjacent to two main arterial roads providing coastal access, West Coast Highway and Superior Avenue. As such, the proposed project could result in significant adverse impacts to coastal public access, as a result, staff recommends the Commission impose special conditions to avoid any impacts: **Special Condition No. 21** requires the permittee to submit a Construction Staging Plan, and **Special Condition No. 22** requires the permittee to submit an Access Detour Plan.

Past grading has occurred on the site, but Tribal Councilmembers indicated during consultation with the City that the project is within a culturally sensitive area and a tribal monitor is necessary in the event any resources are found. Therefore, staff recommends the Commission impose **Special Condition No. 23**, which requires the permittee to submit an archaeological monitoring plan.

If approved with special conditions to preserve and enhance biological resources, marine resources, water quality, visual resources, public access and recreation, cultural and tribal resources, the proposed project will conform with the City's certified LCP.

The motion to approve the CDP application is on **Page Six**. The special conditions begin on **Page seven**.

PROCEDURAL NOTE – Coastal Development Permit Amendments:

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

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The amendment request involves changes to the previously authorized project. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit. The proposed amendment would not lessen the intended effect of CDP No. 5-11-302, because the project would continue to protect coastal resources and maximize public access. Therefore, the Executive Director accepted the amendment request.

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 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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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment 5-11-302-A1 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 amendment 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 Amendment No. 5-11-302-A1 on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the Newport Beach LCP. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the 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. CHANGES TO CONDITIONS

NOTE: Appendix C, attached, includes all standard and special conditions that will apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A1 once this amendment is issued by the Executive Director. All of the Commission's previously adopted special conditions continue to apply in the most recently approved form unless explicitly changed in this action, and the approved project includes any changes in the project description proposed by the applicant and approved by the Commission in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action are shown in the following section.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-11-302, and reflected in Appendix C, remain in effect. This permit amendment is granted subject to the following new special conditions:

Modification of Underlying Special Condition

Special Condition No. 13 of the original permit, Coastal Development Permit No. 5-11-302, shall be modified as indicated below. Language to be deleted is shown in strike-out and new language is shown in **bold and underlined**.

- 13. Other Agency Approvals.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project by the following entities; **California Department of Transportation**, California Department of Fish and ~~Game~~ **Wildlife**; U.S. Fish and Wildlife Service; Regional Water Quality Control Board, City of Newport Beach Fire Authority. The applicant shall comply with the recommendations provided by the USFWS in their April 27, 2012 letter. The permittee shall inform the Executive Director of any changes to the project required by the **California Department of Transportation**, City of Newport Beach Fire Authority; California Department of Fish and ~~Game~~ **Wildlife**; U.S. Fish and Wildlife Service; Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

New Special Conditions

The following are new Special Conditions to be added to the underlying Special Conditions.

- 18. Coastal Sage Scrub Restoration and Monitoring Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of a Coastal Sage Scrub Restoration and Monitoring Plan to offset proposed Coastal Sage Scrub impacts. The program shall quantify the area of impact and the required restoration shall be at a minimum ratio of 2:1 (restoration to impact). A qualified biologist for restoration and monitoring of the coastal sage scrub restoration site shall design the restoration and monitoring program. The coastal sage scrub restoration and monitoring program shall at a minimum include the following:
- A. 4,650 sq. ft. of impacted Coastal Sage Scrub mitigated on site at a ratio of 2:1 shall be included as part of the plan and carried out physically;
 - B. Plans for site preparation and preservation of native seed bank;

- C. Restoration plan including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;
- D. Description of the monitoring program (quantitative sampling methods such as quadrats, transects etc. and statistical analysis) that will be employed to determine the progress and ultimate success of the mitigation/restoration;
- E. Final Success Criteria. The restoration will be considered successful if the overall species composition and vegetative cover of the dominant coastal sage scrub species are similar (no more than 15% difference) to relatively undisturbed coastal sage scrub habitat in a nearby reference area (s) or as defined in the literature. Species composition shall be considered similar if all the dominant species and at least 70% of the non-dominant species at the reference site (or as defined in the literature) are present at the restored site;
- F. Monitoring and remediation in accordance with the approved final restoration program for a period of five years, or until it has been determined that success criteria have been met, whichever comes first;
- G. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year. Each report shall be a cumulative report that summarizes all previous reports. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards; and
- I. Provisions for submission of a final monitoring report to the Executive Director at the end of the reporting period. The final report must be prepared by a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report must include and analyze all of the monitoring data collected over the five-year period.

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

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

19. Avoidance of Sensitive Species.

- A. Nesting Birds. PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION ACTIVITIES between February 15 and August 31, a qualified biologist shall conduct a breeding behavior and nesting survey for birds protected by the United States Fish and Wildlife Service, California Department of Fish and Wildlife, the Migratory Bird Treaty Act, and California species of special concern within 300 ft. of the project site (500 ft. for raptors and owls). If any occupied nests of any sensitive species are discovered, construction activities within 300 ft. of the nest (500 ft. for raptors and owls) shall be monitored to ensure that construction noise levels do not exceed 65 dB peak within 100 ft. of the nest until the nest is vacated and juveniles have fledged and there is no longer evidence of a second attempt at nesting. The permittee shall implement a larger buffer if the biologist recommends a larger buffer from the nest area.
- B. Sensitive Species Monitoring. Prior to undertaking any development including, but not limited to, construction, grading, or excavation, a qualified biologist shall survey the project site to determine whether sensitive bird species, including but not limited to coastal California gnatcatcher, and/or burrowing owl, are present within 100 ft. of the project site.
- C. An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during the breeding season, and once every two weeks during the non-breeding season, during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as construction that could result in disturbances to sensitive species. Based on field observations, the biologist shall advise the permittee regarding methods to avoid significant impacts which could occur to sensitive species or habitat areas.

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

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

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

21. Construction Staging Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of Construction Staging Plans, which indicate that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the coast.

1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;
 - (b) Construction equipment, materials, or activity shall not be placed within any habitat area or within 100 ft. of any drainages or wetlands; and
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary.
2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) limits of the staging area(s);
 - (2) construction corridor(s);
 - (3) construction site; and
 - (4) location of construction fencing and temporary job trailer(s); and

The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur

without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

22. Access Detour Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit, for the review and approval of the Executive Director, two (2) full size sets of Access Detour Plans that demonstrate the following:

1. Every effort shall be made to minimize the duration of sidewalk, bike and road lane closures so that impacts upon public access are minimized;
2. The sidewalk, bicycle and road lanes should be opened; and available for use to the maximum extent feasible during construction;
3. A detour plan to re-route pedestrian and bicycle traffic shall be identified for those periods when the sidewalk and/or bicycle lane is closed for public safety purposes within the project area; and
- 4) The existing stairway adjacent to the proposed western bridge abutment will be open to the public during construction.

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

23. Cultural Resource Treatment and Monitoring Plan. By acceptance of this permit the permittee agrees to comply with the following:

A. Incorporate the following into the archeological monitoring plan:

- (i) Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of one Native American monitor from each tribal entity with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, excavation work, site preparation or landscaping activities associated with the approved development. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archeological monitoring or research plans, past archeological reports, and any other plans required

pursuant to this condition and which have been approved by the Executive Director, to each monitor;

- (ii) The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
- (iii) The Native American Monitor(s) shall be required on site until sterile soils have been reached.

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

- (i) All construction and subsurface activities that have the potential to uncover or otherwise disturb tribal cultural deposits in the area of the discovery shall cease within 50 ft. of the deposit immediately;
- (ii) The permittee shall report all discovered resources as soon as possible, by phone or email to the Executive Director;
- (iii) The professional archeological monitor on site must contact all affected groups of the Native American Tribe that are not present for on site monitoring and notify them of the discovery in order to determine the results of (iv) and (v) below;
- (iv) Significance testing may be carried out only if acceptable to the affected Native American Tribe, in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B) and in consultation with the Tribe. The Executive Director shall, in writing, determine the adequacy of the Significance Testing Plan and if it can be implemented without further Commission action, provide written authorization to proceed. The Significance Testing Plan results, if applicable, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination. If the Executive Director determines that the discovery is significant, development shall not recommence and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan consistent with Appendix B.
- (v) The treatment method or mitigation measure for the discovery shall be prepared in consultation with the Native American monitor(s), and the

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

- C. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

III. FINDINGS AND DECLARATIONS

A. Project Description and Location, Local Government Action, Prior Permit History and Standard of Review

Project Description and Location

The proposed project consists of the construction of a western bridge abutment (structural support for a bridge) located at Sunset Ridge Park. The abutment will be supported by two precast concrete 78 inch wide x approximately 70 ft. long driven piles and wing walls. A single span concrete arch pedestrian and bicycle bridge, supported by the abutment, will be installed over Superior Avenue connecting the new pedestrian and bicycle bridge to an existing walkway at Sunset Ridge Park. The City also proposes restoration of disturbed landscape (Coastal Sage Scrub) ([Exhibits No. 2-3](#)). Temporary grading consisting of approximately 164 cubic yards of cut and export outside of the Coastal Zone in order to install piles for the bridge abutment foundation. Upon completion of the western bridge abutment, the surrounding area will be restored to pre-construction condition. No landscaping is proposed other than the restoration of Coastal Sage Scrub.

The project site is located at Sunset Ridge Park, the creation of which was approved by the Coastal Commission on August 12, 2012. The park is 13.7-acres and consists of a baseball field, two soccer fields, pedestrian paths, a viewpoint, children's playground, restroom facility, and landscaping, at the northwest corner of West Coast Highway and Superior Avenue (west of Superior Avenue) ([Exhibits No. 1](#)). While the City of Newport Beach has a certified LCP and would be the permit issuing authority, the proposed

project is subject to review and approval by the Commission due to a prior condition of the original CDP Special Condition No. 14, Future Development Restriction. The project site, Sunset Ridge Park, is located within the Parks and Recreation (PR) Coastal Land Use Plan category and Parks and Recreation (PR) Coastal Zoning District. This zone is intended to provide for areas appropriate for land used or proposed for active public or private recreational use. The surrounding area is developed with a variety of uses, including residential uses to the north and southwest, commercial uses to the south, Sunset Ridge Park to the west, and Hoag Hospital to the east.

Visitors to Sunset Ridge Park currently utilize the existing 64-space surface parking lot on the east side of Superior Avenue, where Sunset View Park, a City park, is also located ([Exhibits No. 1](#)). Throughout the staff report, the parking area and Sunset View Park will be referenced as being located on the east side of Superior Avenue.

Development is also proposed at this adjacent location subject to a separate application approved by the City of Newport Beach, subject to an appeal to the Commission, A-5-NPB-21-0026-(City of Newport Beach). These two developments are linked as one project, but are being processed separately because the subject development is within the Commission's jurisdiction and the related development is within the City's LCP jurisdiction. The City approved the concrete bridge spanning Superior Avenue connecting to the existing park with the existing parking lot, which will be redeveloped, but that local CDP was appealed to the Commission. The subject CDP amendment application is solely for the bridge abutment which will be located in the footprint of Sunset Ridge Park project that the Commission approved in 2012. The primary goals of the project are to improve safety and access to Sunset Ridge Park and to increase parking availability for visitors. The project does not include changes to the Superior Avenue or West Coast Highway rights-of-way, and does not include the removal of any existing at-grade crosswalks.

Local Government Action

The proposed project has obtained local approval and the following is a timeline of the local approvals received:

A public meeting was held by the Parks, Beaches, and Recreation Commission on August 6, 2019, in the City Council Chambers. At this public meeting, that commission recommended City Council approval of the project design.

The Mitigated Negative Declaration (MND), ND2019-002, for the entire project was approved and adopted by the Newport Beach City Council on November 19, 2019 via Resolution No. 2019-102.

Changes to the project occurred after the MND was approved, including an updated bridge design. Thus, the City prepared an Addendum to the MND. The City also

prepared the Coastal Development Permit (CDP), No. CD2020-143, for the Superior Ave Pedestrian Bridge and Parking Lot project (excluding the western bridge abutment at Sunset Ridge Park). This local CD and MND Addendum was approved and adopted by the City Zoning Administrator on December 10, 2020 via Resolution No. ZA2020-082.

The subject CDP amendment application was submitted to the Commission on November 9, 2021.

The City Zoning Administrator approved a local CDP for the redevelopment of the parking lot and City park and the majority of the pedestrian bridge on December 10, 2020. On January 4, 2021, a local CDP appeal was filed for the development consisting of the parking lot and City park and majority of the pedestrian/bicycle bridge approved via Resolution No. ZA2020-082 and CDP2020-143. A de novo public hearing was conducted during the City's Planning Commission meeting on March 4, 2021 and the Planning Commission affirmed the decision of the Zoning Administrator to adopt the MND Addendum and approve the CDP via Resolution No. PC2021-005. That decision was subsequently appealed to the Coastal Commission through A-5-NPB-21-0026.

Prior Permit History

On August 12, 2012, the Commission approved Coastal Development Permit No. 5-11-302 for development located at the Northwest Corner of the Intersection of Pacific Coast Highway and Superior Avenue in the City of Newport Beach. The approved development consisted of the construction of an active recreational park of approximately 13.7 acres. The park included a baseball diamond/soccer fields, pedestrian paths, viewpoint, children's playground, restroom, and landscaping. Grading consisted of approximately 57,223 cubic yards of cut, and 36,559 cubic yards of fill. The park is located on a vacant 13.7 acre parcel owned by the City of Newport Beach (formerly owned by Caltrans). The underlying CDP also required creation or restoration of 1.5 acres of Coastal Sage Scrub habitat at an off-site location. Seventeen Special Conditions were imposed, consisting of the following: 1) Open space restriction; 2) Landscape Plan, including the creation of 5.15 acres of superior high quality native vegetation with coverage of primarily CSS, that is suitable for foraging habitat for the CAGN; 3) Parking Management Plan; 4) Lighting; 5) Fencing and Signage Plan; 6) Final Project Plans; 7) Habitat Impact Management Plan; 8) Drainage and Polluted Runoff Control Plan; 9) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 10) Construction Staging and Temporary Construction Fencing Plan; 11) Final Plans Conforming to Geotechnical Recommendation; 12) Assumption of Risk, Waiver of Liability and Indemnity; 13) Other Agency Approvals; 14) Future Development Restriction; 15) Proof of Legal Ability to Comply with Conditions; 16) Liability for Costs and Attorney Fees; and 17) Off Site Habitat Enhancement consisting of the creation or enhancement of 1.5 acres of CSS that provides foraging and breeding opportunities for the California gnatcatcher.

Standard of Review

The City of Newport Beach LCP was effectively certified on January 13, 2017. However, the proposed project location, Sunset Ridge Park, was originally approved by the Commission on August 12, 2012, which is prior to the City's LCP certification and Special Condition 14 required the Commission to review any future improvements in the project area. Thus, the Commission remains the permit issuing authority for the development. The standard of review is the City's certified LCP .

B. Biological Resources

Coastal Land Use Plan, Environmental Sensitive Habitats, Policy 4.1.1-1 states:

Define 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 as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:

- A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
- C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.
- D. The presence of coastal streams.
- E. The degree of habitat integrity and connectivity to other natural areas. Attributes to be evaluated when determining a habitat's integrity/connectivity include the habitat's patch size and connectivity, dominance by invasive/non-native species, the level of disturbance, the proximity to development, and the level of fragmentation and isolation. Existing developed areas and existing fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures do not meet the definition of ESHA.

Coastal Land Use Plan, Environmental Sensitive Habitats, Policy 4.1.1-6 states:

Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.

Coastal Land Use Plan, Environmental Sensitive Habitats, Policy 4.1.1-14 states:

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

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

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

Coastal Land Use Plan, Environmental Sensitive Habitats, Policy 4.1.1-17 states:

In conjunction with new development, require that all preserved ESHA, buffers, and all mitigation areas, on site and offsite, be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. A management plan and funding shall be required to ensure appropriate management of the habitat area in perpetuity.

Implementation Plan, Height Limits and Exceptions, 21.30B.030, states in relevant part,

A. ESHA Designation. 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 shall be designated as an environmentally sensitive habitat area (ESHA).

...

B. Protection Required. ESHAs shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed (see subsection (F) of this section (Limits on Land Uses)). Development in areas adjacent to ESHAs shall be sited and designed to prevent impacts which would

significantly degrade such areas, and shall be compatible with the continuance of the ESHA.

Coastal Act Section 30107.5, Environmentally sensitive area, incorporated by reference in the City's certified LCP (Page 4-1), 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 activities and developments.

Coastal Act Section 30240, Environmentally sensitive habitat areas; adjacent developments, incorporated by reference in the City's certified LCP (Page 4-1), 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 Land Use Plan (CLUP) Policy 4.1.1.1-1 defines ESHA and how it is determined. CLUP Policy 4.1.1-6 requires that development adjacent to ESHA shall be designed to prevent impacts to those areas. CLUP Policy 4.1.1-14 requires mitigation for impacts to sensitive resources and Policy 4.1.1-15 identifies the mitigation ratio for allowable impacts. Implementation Plan (IP) Policy 21.30B.030 defines ESHA. Coastal Act Section 30107.5, incorporated by reference in the City's certified LCP, defines environmentally sensitive areas, as 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. Coastal Act Section 30240, incorporated by reference in the City's certified LCP, states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. In addition, it states that development in areas adjacent to ESHA 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 Sage Scrub

Coastal sage scrub (CSS) is a general vegetation type characterized by special adaptations to fire and low soil moisture. In addition to twenty or so species of perennial

shrubs, such as California sage brush, CSS is home to several hundred species of forbs and herbs, such as the California poppy. For convenience in mapping and management, CSS periodically has been divided into many types and sub-types, such as “southern coastal bluff scrub” and “Diegan sage scrub,” based on geographic location, physical habitat, and species composition.

It is important to recognize that CSS, as a habitat type, can qualify as ESHA regardless of the presence of California gnatcatchers. Indeed, if the gnatcatcher became extinct, CSS could still be ESHA. Section 30107.5 of the Coastal Act, incorporated by reference in the LCP, 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 activities and developments.” CSS is easily degraded and in fact has been destroyed by development over large areas of the state. About 2.5% of California’s land area was once occupied by CSS. In 1981, it was estimated that 85% to 90% of the habitat type had been destroyed state-wide and, in 1991, it was estimated that San Diego, Orange, and Riverside counties had lost 66% of their CSS¹. Current losses in these counties are higher and losses in the coastal zone have undoubtedly been much higher. Compared to its natural distribution and abundance, CSS is in decline because it has been destroyed by human activities.

In the heart of urban environments, CSS may still support many bird species when there is sufficient open space to include coyotes in the system. Specifically, coyotes prey on those predatory animals that prey on bird eggs and young, which enhances the survival rate of bird species in areas when coyotes are present in a biological system. CSS within urban environments can also provide refuges for sensitive bird species, such as the gnatcatcher, that may repopulate larger preserves nearby that may be severely impacted by events such as fires that reduce or destroy that preserve’s population (i.e. ‘rescue effect’). High quality CSS also may be of significant value in heavily urbanized areas by contributing to the local diversity of vegetation, even if it is so isolated as to lose much of its wildlife value. In addition, some categories of CSS, such as southern coastal bluff scrub, are so rare that they may be inherently deserving of protection wherever they are found.

It is evident that CSS is a habitat that could qualify for the designation as ESHA under the City’s certified LCP, regardless of the on-site presence of the California gnatcatcher

¹ Westman, W.E. 1981. Factors influencing the distribution of species of California coastal sage scrub. *Ecology* 62:439-455; Michael Brandman Assoc. 1991. A rangewide assessment of the California gnatcatcher. A report to the Building Industry Association of Southern California cited by J.E. O’Leary, et al. 1994, *Bibliographies on coastal sage scrub and other related malacophyllous shrublands of Mediterranean-type climates*. California Wildlife Conservation Bulletin No. 10.

or any other particular species. However, that fact does not imply that every particular stand of vegetation designated as “coastal sage scrub” is ESHA.

The western bridge abutment will impact 3,700 sq. ft. of disturbed CSS, which will be replanted following construction, and permanently impact 950 sq. ft. of CSS which will not be replanted because the area will be covered by the bridge abutment. This CSS was planted as part of a habitat restoration project in Sunset Ridge Park required by the underlying permit, but does not appear to have established as valuable habitat, as the vegetation is sparse. The City proposes to replace CSS in-kind for the temporary impacts the project will cause, at a ratio of 1:1. The City also proposes to replace the permanent impacts at a ratio of 1:1 in an area east of the bridge abutment that is currently bare with minimal vegetation ([Exhibit No. 4](#)). While the City has proposed this restoration, a Coastal Sage Scrub Restoration and Monitoring Plan has yet to be provided. That plan would also need to identify the value of the habitat which exists now, which is undetermined.

The Mitigated Negative Declaration (MND), MND Addendum and Biological Resources Technical Report prepared by the Chambers Group, Inc. for the project state that two regional sensitive wildlife species have a potential to be present within the proposed project footprint, the coastal California gnatcatcher and burrowing owl. Critical habitat has been designated in areas of Newport Beach for the coastal California gnatcatcher and is located west of the project area; however, the habitat to the east within the proposed project site portion of survey area provides low quality nesting habitat. Additionally, no coastal California gnatcatcher were observed flying or foraging closer than 480 ft. to the proposed project site; therefore, the MND and MND addendum state no impacts to coastal California gnatcatcher are anticipated to occur as a result of proposed project activities. Regarding the Burrowing Owl, the documents state that low quality habitat occurs within the eastern portion of the proposed project site; however, the proposed project site lacks connectivity to additional suitable habitat for this species. Therefore, it concludes that this species has a low potential to occur within the proposed project site. The MND and MND Addendum documents conclude that because of the quality of habitat and the non-occupation of coastal California gnatcatcher, the affected CSS area is not ESHA. The Commission’s staff biologist has reviewed this information and agrees with this conclusion.

The Commission has concluded that the area of coastal sage scrub that is subject to impacts in this proposal is not ESHA; however, the Commission can only approve projects with impacts to coastal resources if mitigation for the impacts is provided consistent with the biological resource policies of the City’s certified LCP. As stated, the applicant proposes restoration of the impacts to CSS. The proposed restoration is a key element in the Commission’s finding that the proposed project, as conditioned, is consistent with the biological resource policies of the City’s certified LCP, including CLUP Policies 4.1.1-14 and 4.1.1-15.

The City proposes to replace in-kind the 3,700 sq. ft. of “temporary” CSS impact at a ratio of 1:1 and proposes to replace the 950 sq. ft. of “permanent” CSS impact at a ratio of 1:1 also ([Exhibit No. 4](#)). However, this proposal would be inconsistent with the City’s certified LCP, specifically CLUP Policy 4.1.1-15, which states that impacts to CSS need to be mitigated at a ratio 2:1. Additionally, in previous actions, the Commission has not considered impacts to be temporary if the impacted area cannot be restored to pre-construction conditions within one year and the Commission’s staff biologist does not believe that the “temporary” CSS impacts identified by the City will be restored to pre-construction conditions within a year because it takes a longer time for CSS to establish and provide valuable habitat (evidenced by the fact that the CSS that the City restored under the original permit 11 years ago has not yet fully established).

The overall impact to CSS as a result of the project is 4,650 sq. ft. (3,700 sq. ft. + 950 sq. ft.). Mitigation at a ratio of 2:1 results in a requirement of 9,300 sq. ft. of CSS habitat to be planted on site. The City has already proposed to replant the “temporary” impacted area of CSS consisting of 3,700 sq. ft. Thus, that leaves 5,600 sq. ft. of CSS habitat to be planted on site. The City originally proposed to plant CSS in a 950 sq. ft. area that is east of the bridge abutment that is currently bare with minimal vegetation ([Exhibit No. 4](#)). However, this location is in a remote area that lacks connectivity with high grade CSS that is found in other areas adjacent to the project site. There are other areas on site where CSS mitigation would be better suited, such as the northwest corner of Sunset View Park where the CSS habitat is more productive and forms a connectivity with other adjacent CSS, as shown in [Exhibit No. 5](#). Only as conditioned to require that the overall CSS impacts be mitigated at a minimum ratio of 2:1 at a location on site that forms a connectivity with existing high-grade CSS on site can the project be consistent with the biological recourse policies of the Coastal Act. Therefore, the Commission imposes **Special Condition No. 18**, which requires the permittee to submit a Coastal Sage Scrub Restoration and Monitoring Program for the review and approval of the Executive Director that mitigates the total 4,650 sq. ft. of impacts to CSS at a ratio of 2:1 for a total of 9,300 sq. ft. on site, in an area that forms a connectivity with existing high-grade CSS. Only as conditioned is the proposed project consistent with the biological resource policies of the City’s certified LCP.

There is significant potential for adverse impacts to habitat as a result of any potential changes to the proposed project, such as a change to the bridge abutment design. Thus, the applicant must adhere to **Special Condition No. 14** in the underlying permit, which would require the City to obtain a CDP amendment or new CDP for any future improvements.

Avian Species

The Biological Resources Technical Report identified that out of 34 special status wildlife species with known records of occurrences in the study area, two regional wildlife species have potential to be present within the proposed project footprint.

The first species is the coastal California gnatcatcher, which is a federally listed threatened species and a California Species of Special Concern. The report states that while known occurrences of this species are within one mile of the study area, the habitat within the project footprint is of poor-quality nesting habitat for this species and has low potential to occur within the project site. The habitat is sparsely vegetated and is comprised of open, low lying shrubs providing poor quality nesting habitat for the species.

The second species is the burrowing owl, which is a California Species of Special Concern. While low quality habitat occurs within the eastern portion of the proposed project footprint; the proposed project site lacks connectivity to additional suitable habitat for this species. Thus, this species has a low potential to occur within the proposed project footprint.

While the coastal California gnatcatcher and burrowing owl are currently not anticipated to occur within the project footprint, there is still potential for the project to impact these special status bird species in the future. Any impacts to these species would be inconsistent with the City's certified LCP, including IP Policy 21.030B.030 and Coastal Act Section 30240, incorporated in the City's certified LCP by reference. Therefore, the Commission imposes **Special Condition No. 19**, which requires a) pre-construction surveys for nesting birds and avoidance of nesting sites during observed nesting activities; b) pre-construction surveys for sensitive species; and c) a requirement for monitoring of the site during construction to ensure that construction activities do not result in impacts to sensitive species. As conditioned, the adverse impacts to the coastal California gnatcatcher and burrowing owl would be avoided and therefore be consistent with the City's certified LCP.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the biological resource policies of the City's certified LCP, including CLUP Policy 4.1.1.1-1, CLUP Policy 4.1.1-6, CLUP Policy 4.1.1-14, Policy 4.1.1-15, IP Policy 21.30B.030 and Coastal Act Policies 30107.5 and 30240 incorporated by reference.

C. Marine Resources/Water Quality

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

Define wetlands as areas where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of hydrophytes. Such wetlands can include areas where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Wetlands do not include

areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides.

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

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

Coastal Land Use Plan, Wetland Definition and Delineation, Policy 4.2.2-3 states:

Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

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

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

...

- C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

...

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

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of

such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

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

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

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

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

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

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

Treatment Control BMPs.

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

Implementation Plan, Wetlands, Deepwater Areas, and Other Water Areas, 21.30B.040, states in relevant part:

A. Protection Required.

1. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes shall be protected, maintained and, where feasible, restored.

...

C. Wetland Buffers. A protective open space buffer shall be required to horizontally separate wetlands from development areas. Wetland buffers shall be of a sufficient size to ensure the biological integrity and preservation of the wetland. Wetlands shall have a minimum buffer width of one hundred (100) feet wherever possible.

1. Exception: Smaller wetland buffers may be allowed only where it can be demonstrated that:
 - a. A one hundred (100) foot wide buffer is not possible due to site-specific constraints; and
 - b. The proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

Section 30230 of the Coastal Act, Marine Resources; maintenance, incorporated by reference in the City's certified LCP (Page 4-1), 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, Biological productivity, water quality, incorporated by reference in the City's certified LCP (Page 4-1), states:

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

Section 30233 of the Coastal Act, Diking, filling or dredging; continued movement of sediment and nutrients, incorporated by reference in the City's certified LCP (Page 4-47), states in part:

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

...

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

The City's certified IP Section 21.30B.040 states that the biological productivity of and the quality of wetlands shall be protected, maintained and where feasible restored. CLUP Policy 4.2.2-3 and IP Policy 21.30B.040 identify the minimum setbacks for wetlands and also indicate that setbacks less than 100 ft. are allowed pursuant to specific reasons. Coastal Act Section 30230, incorporated by reference in the City's certified LCP, states that marine resources shall be maintained, enhanced and where feasible, restored. Coastal Act Section 30231, incorporated by reference in the City's certified LCP, states that the biological productivity and the quality of wetlands shall be protected, maintained and where feasible restored. Coastal Act Section 30233, incorporated by reference in the City's certified LCP, states that the filling of open coastal waters shall be permitted where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects.

1. Wetland

The proposed western bridge abutment is located greater than 100 ft. from a wetland located along Superior Avenue ([Exhibit No. 4](#)). In addition, the project does not result in fill of the wetland. The LCP requires a minimum 100 ft. setback from wetlands unless there are site specific conditions which justify a reduced setback. The subject development is consistent with the LCP requirement as the western bridge abutment is approximately 112 ft. from the wetland. However, replanting of the Coastal Sage Scrub which will be impacted by construction activities adjacent to the western bridge abutment will encroach minimally into the 100 ft. wetland buffer area by approximately 7 ft. Thus, during construction and while the CSS is being replanted, there will be an approximately 93 ft. buffer from the wetland, which is less than the LCP requirement. The applicant states that the bridge abutment has been sited in the only location that will provide connectivity with the existing developed pathway within the park and parking lot, and that the construction area has been minimized. Thus, there is a site constraint that would justify a reduced wetland buffer temporarily during construction. Pursuant to the LCP (CLUP Policy 4.2.2-3 and IP Policy 21.30B.040), a reduced buffer is allowed if the narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance. A biological analysis has been conducted in conjunction with the MND and concludes that that the reduced buffer still protects the wetland. The Commission's biologist has also reviewed this analysis and agrees with the analysis' conclusion. Planting native plants near the wetland will not decrease the function of the wetland, and may improve the function. Thus, the setback is consistent with the marine resources and biological productivity policies of the City's certified LCP.

2. Lighting

Lighting details are unclear based on the notes on the proposed plans, but lighting appears to be proposed at the western bridge abutment. Lighting that is not controlled could have adverse effects upon the adjacent habitat and be consistent with the Coastal Act regarding biological productivity. The applicant has indicated that lighting will be directed downward to prevent light scatter. However, a lighting plan indicating other additional measures is necessary to make sure that the lighting will not have any adverse impacts to habitat. For example, lighting should be shielded using the best available dark skies technology and designed to avoid light spill. Only as conditioned to reduce lighting impacts can the project be found consistent with the City's certified LCP, including IP Policy 21.030B.040 and Coastal Act Section 30231, incorporated in the City's certified LCP by reference. To ensure that the proposed lighting does not impact habitat, such as wetland resources, the applicant must adhere to **Special Condition No. 4** in the underlying permit, which requires the permittee to submit a Lighting Plan for the Executive Director's review and approval. As conditioned, the project would be consistent with the City's certified LCP.

3. Construction Impacts to Water Quality

Construction will occur near coastal waters. As such, there is a possibility that construction phase activities could result in adverse water quality impacts and be inconsistent with the marine resource and biological productivity policies of the City's certified LCP, including CLUP Policy 4.3.2-6. In addition, there is a possibility that improper staging and storage of equipment could have impacts on water quality.

Potential construction phase impacts include discharges into Newport Bay and coastal waters via rain or urban runoff due to improper storage or placement of construction materials, debris, or waste. These potential adverse impacts upon the marine environment could reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column.

In order to assure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, the applicant must adhere to **Special Condition No. 9** in the underlying permit, which requires appropriate storage and handling of construction equipment and materials to avoid the potential for pollutants to enter coastal waters. As conditioned, the project would be consistent with the marine resources and biological productivity policies of the City's certified LCP.

Besides adhering to the construction Best Management Practices (BMPs) as required by Special Condition No. 9 above, a Storm Water Pollution Prevention Plan (SWPPP) should be prepared for the proposed project that would specifically deal with water quality on site during construction. The applicant acknowledges that a SWPPP needs to be development for the project site, but such a plan has not yet been development. Therefore, it is necessary to impose **Special Condition No. 20**, which requires the permittee to submit a Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the Executive Director. As conditioned, the project would be consistent with marine resource and biological productivity policies of the City's certified LCP.

4. Post-Construction Impacts to Water Quality

The proposed project is considered development and there is an opportunity to improve water quality. However, the project site, Sunset Ridge Park, already has a Drainage and Runoff Control Plan as previously required by Special Condition No. 8 and thus post construction water quality will already be dealt with by that plan. Thus, no additional measures are necessary to deal with post construction water quality. As previously conditioned for a Drainage and Runoff Control Plan (Special Condition No. 8), the project would be consistent with the marine resources and biological productivity policies of the City's certified LCP.

5. Resource Agency Approval

The City has communicated with the Regional Water Quality Control Board (RWQCB) regarding their review of the proposed project and they have indicated that a Clean Water Act Section 401 Water Quality Certification was not necessary. The City has also communicated with the California Department of Fish and Wildlife (CDFW) regarding review of the proposed project. CDFW stated that based upon the previously submitted Lake and Streambed Alteration Notification 1600-2010-0224-R5, the Department remains in alignment with its previous conclusion (No Agreement Needed letter, dated April 10, 2013) that there will be no significant impact to fish and wildlife resources and no additional approvals are needed from them. Special Condition No. 1, requires a mitigation ratio of 2:1 for impacts to Coastal Sage Scrub and identification of a revised on site, mitigation location for the Coastal Sage Scrub consistent with the LCP requirement. However, additional consultation between the City and other agencies may be required, and may result in changes to the mitigation ratio or location.

To ensure that the proposed project adheres to the requirements from these resource agencies, as well as others as applicable, the applicant must adhere to **Special Condition No. 13** in the underlying permit, as amended, which requires the permittee to comply with all requirements, requests and mitigation measures from the California Department of Transportation (Caltrans), California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFWS), Regional Water Quality Control Board (RWQCB), and City of Newport Beach Fire Authority with respect to preservation

and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. As conditioned, the project would be consistent with marine resource and biological productivity policies of the City's certified LCP.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the marine resources and biological productivity policies of the City's certified LCP, including CLUP Policies 4.2.2-1, 4.2.2-2, 4.2.2-3, 4.2.3-1, 4.3.1-8, 4.3.2-1, 4.3.2-6, 4.3.2-7, IP Policy 21.30B.040 and Coastal Act Policies 30230, 30231 and 30233, incorporated by reference.

D. Visual Resources

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

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

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-6 states:

Protect public coastal views from the following roadway segments:

- Superior Avenue from Hospital Road to Coast Highway

Coastal Land Use Plan, Coastal Views, Policy 4.4.2-1 states in relevant part:

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3 with the exceptions described below. As with all permitted development, exceptions to the Shoreline Height Limitation Zone shall only be allowed when it is designed and sited to protect existing views to and along the ocean and scenic coastal areas, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

...

- C. Governmental facilities may be allowed to exceed the height limit where the increase in height is necessary to accommodate design features required for the facility to function, such as lifeguard towers, tsunami warning sirens, and

architectural design features that accommodate emergency vehicles or essential equipment.

Implementation Plan, Height Limits and Exceptions, 21.30.060, states in relevant part,

...

C. Increase in Height Limit.

...

2. Height Limit Areas. The height limit areas shall be as follows:

- c. Nonresidential, Shoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is twenty-six (26) feet and the base height limit for structures with sloped roofs is thirty-one (31) feet. The height of a structure may be increased up to a maximum of thirty-five (35) feet with a flat roof or forty (40) feet with a sloped roof through the approval of a coastal development permit application as provided above. The shoreline height limit shall apply to all nonresidential coastal zoning districts and mixed-use coastal zoning districts within the boundaries of the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

...

- D. Exceptions to Height Limits. In cases where the exception to a height limit requires the approval of a coastal development permit, the review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit as described below only after first making all of the findings in subsection (C)(3) of this section, in addition to the findings required in Section 21.52.015(F).

16. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) where the increase in height is necessary to accommodate design features required for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.). (Ord. 2019-5 §§ 3, 4, 2019; Ord. 2016-19 § 1 (Exh. A)(part), 2016)

Section 30251 of the Coastal Act, Scenic and visual qualities, incorporated by reference in the City's certified LCP (Page 4-70), 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...

The City's certified LCP contains policies that protect scenic and visual resources: CLUP Policies: 4.4.1-1, 4.4.1-6, 4.4.2-1, and IP Policy 21.30.060. Coastal Act Section 30251, incorporated by reference in the City's certified LCP, states that scenic and visual resources shall be protected.

Public views of the coast are provided at Sunset Ridge Park, including from higher elevations than the highway, commercial, and residential development below. Based on the applicant's simulations, views of the coast will not be impacted by the proposed western bridge abutment and bridge as shown in "Figure 4-1: Updated Bridge Design Ocean Viewpoint" in the MND Addendum dated October 2020 ([Exhibit No. 6](#)). Existing blue water views from these park elevations will remain and existing view angles which are currently obstructed by residential structures will not be obstructed by the proposed bridge abutment and bridge. No views from designated scenic highways or trails would be impacted. As such, the proposed project will not impact scenic and visual resources as protected by the City's certified LCP, including CLUP Policy 4.4.1-1 and Section 30251 of the Coastal Act, incorporated by reference in the City's certified LCP. Impacted public views of the coast are already present and the proposed project would only impact those already affected views and not impact public coastal views from the park. In addition, the proposed western bridge abutment and bridge will not impact coastal public view as one travels down Superior Avenue toward Coast Highway. Similar to the views from the higher elevations from the park discussed earlier, the views from Superior Avenue are not of the beach or ocean. As such, only already impeded views of the coast will be impacted by the proposed project. The City's certified LCP identifies available public views from Sunset Ridge Park in LUP Map Coastal Views Map 4-3 and also identifies Superior Avenue as a coastal view road per CLUP Policy 4.4.1-6. As the proposed project would not impact coastal public views from Sunset Ridge Park and from Superior Avenue, the proposed project would be consistent with the visual resource policies of the City's certified LCP.

The project site is located within the Shoreline Height Limit Area of the City's LCP, where the base height limit for nonresidential structures with flat roofs is 26 ft. Pursuant to IP Section 12.30.060.C, the LCP has provisions that allow an increase in height to a maximum of 35 ft. with a flat roof with approval of a CDP. In this case, the proposed height of the bridge abutment at its tallest point would be approximately 32 ft., which is taller than the allowed 26 ft, but is less than the allowed maximum height of 35 ft. As

stated, the LCP does includes provisions that allow an increase in height than what is allowed in the Shoreline Height Limit Area with approval of a CDP. One such provision states that structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a where the increase in height is necessary to accommodate design features required for the facility to function. Regarding the proposed project, the City has indicated that the bridge is a government facility and that the height of the proposed western bridge abutment and bridge is necessary to provide adequate vertical clearance for vehicular traffic to travel along Superior Avenue and to provide a bridge with compliant slope for the walking surface to be American with Disabilities Act (ADA) compliant, and to provide necessary guardrails and projectile barriers. As such, the need for the increase in height above what is allowed in the Shoreline Height Limit Area is consistent with the City's certified LCP. In addition, processing of the CDP for the proposed project, including the increase in height above what is allowed in the Shoreline Height Limit Area, is consistent with the City's certified LCP.

The bridge abutment height is not out of scale with the surrounding area as it is actually lower than the residential structures to the north of the project and also Sunset Ridge Park.

The City has indicated that there is a portion of an existing California Department of Transportation (Caltrans) scenic easement in the area on the Sunset Ridge Park property where the proposed western bridge abutment will be located. The City is finalizing an agreement with Caltrans to remove this portion of the scenic easement. As discussed above, the proposed project does not result in adverse impacts to coastal public views and is consistent with the visual and resource policies of the Coastal Act and of the City's certified LCP. To ensure that the proposed project adheres to the requirements from this agency, as well as others as applicable, the Commission imposes **Special Condition No. 13**, as amended, which requires the permittee to comply with all the requirements of Caltrans.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the visual resource policies of the City's certified LCP, including CLUP Policies: 4.4.1-1, 4.4.1-6, 4.4.2-1, IP Policy 21.30.060 and Coastal Act Policy 30251 of the Coastal Act, incorporated by reference in the City's certified LCP.

E. Public Access and Recreation

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

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

Coastal Land Use Plan Policy, Shoreline Access, Policy 3.1.1-7 states,

Continue to protect the public's right of access to the sea where acquired through historic use or legislative authorization. Where substantial evidence of prescriptive rights exists, actively pursue public acquisition or require access easements as a condition for new development.

Coastal Land Use Plan Policy, Shoreline Access, Policy 3.1.1-9 states,

Protect, expand, and enhance a system of public coastal access that achieves the following:

- Maximizes public access to and along the shoreline;

...

the aesthetic values of the area by providing for the collection of litter.

The City's certified LCP contains policies regarding public access and recreation CLUP Policies 3.1.1-1, 3.1.1-7, and 3.1.1-9.

The project site is not located between the nearest public road and the sea or shoreline. In addition, the project site currently does not provide vertical or lateral access to the waterfront, nor would the proposed project provide such access. However, the project site is located near the coast and the proposed project will provide additional access to Sunset Ridge Park, which the public can visit to enjoy public amenities and scenic views in the Coastal Zone. Pursuant to the City's certified LCP, public access to the shore must be protected and, where feasible, expanded and enhanced. The project site is also located adjacent to Superior Avenue and West Coast Highway, which provide access to the coast. The proposed construction may adversely impact coastal access by impeding travel on these roads. The applicant has not provided the timeline for the construction of the project or indicated if these roads may be subject to temporary closures which may affect travel on these roads and thus impact public access to the coast. In addition, an existing public stairway adjacent to the proposed western bridge abutment that leads from Sunset Ridge Park to Superior Avenue and West Coast Highway may be adversely impacted during construction leading to impeded access to the park, a coastal public amenity. While the City has indicated that a construction fence will be installed along the eastern side of the stairway to allow it to be open during construction, no plans have been provided indicating this. Impeding the public's ability

to use these two main coastal roads, Superior Avenue and West Coast Highway, to access public access amenities in the area, as well as impacting access to Sunset View Park, a public amenity in the Coastal Zone, would be inconsistent with the City's certified LCP. Only as conditioned to protect and where feasible expand public access to the shore, can the project be consistent with the public access and recreation policies of the City's certified LCP. Thus, the Commission imposes **Special Condition No. 21**, which requires the applicant to provide a Construction Staging Plan that ensures that access along West Coast Highway and Superior Avenue, two main arterial roads to public access in the area, are not adversely impacted by the proposed project. In addition, the Commission imposes **Special Condition No. 22**, which requires the permittee to provide an Access Detour Plan that ensures that the proposed project will not impact public access to Sunset Ridge Park and specifically will not impede public access along the existing public stairway adjacent to the proposed western bridge abutment that leads from Sunset Ridge Park to Superior Avenue and West Coast Highway. As conditioned, the proposed project would avoid adverse impacts to public access consistent with the City's certified LCP.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the public access and recreation policies of the City's certified LCP, including CLUP Policies 3.1.1-1, 3.1.1-7, and 3.1.1-9.

F. Cultural and Tribal Resources

Coastal Land Use Plan Policy, Paleontological Cultural Resources, Policy 4.5.1-1 states,

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

Coastal Land Use Plan Policy, Paleontological Cultural Resources, Policy 4.5.1-2 states,

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

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

Coastal Land Use Plan Policy, Paleontological Cultural Resources, Policy 4.5.1-3 states,

Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.

Coastal Land Use Plan Policy, Paleontological Cultural Resources, Policy 4.5.1-4 states,

Where in situ preservation and avoidance are not feasible, require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Orange County, whenever possible.

Coastal Land Use Plan Policy, Paleontological Cultural Resources, Policy 4.5.1-5 states,

Where there is a potential to affect cultural or paleontological resources, require the submittal of an archeological/cultural resources monitoring plan that identifies monitoring methods and describes the procedures for selecting archeological and Native American monitors and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Procedures may include, but are not limited to, provisions for cessation of all grading and construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options to allow for significance testing, additional investigation and mitigation.

Coastal Act Section 30244, Archaeological or paleontological resources, incorporated by reference in the City's certified LCP (Page 4-82), states:

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

The City's certified LCP contains policies that protect paleontological cultural resources: CLUP Policies: 4.5.1-1, 4.5.1-2, 4.5.1-3, 4.5.1-4, 4.5.1-5, and Coastal act Section 30244, incorporated by reference in the City's certified LCP. The City's LCP

states that reasonable mitigation measures shall be required where development would adversely impact archaeological resources. These resources may include sacred lands, traditional cultural places and resources, and archaeological sites, including places or objects that possess historical, cultural, archaeological or paleontological significance and include sites, structures, or objects significantly associated with, or representative of earlier people, cultures and human activities and events.

Additionally, the City's certified Local Coastal Program (LCP) contains policies that protect paleontological cultural resources: Coastal Land Use Plan (CLUP) Policies: 4.5.1-1, 4.5.1-2, 4.5.1-3, 4.5.1-4, and 4.5.1-5.

During the local review process for the proposed project, a Mitigated Negative Declaration and a subsequent MND Addendum were processed by the City. The Native American Heritage Commission (NAHC) took confirmed that a search of its Sacred Lands File was positive for the presence of Native American cultural resources within 0.5 mile of the project area or surrounding vicinity. Thus, the City submitted AB 52 notification letters to two Native American Tribal governments or Tribal representatives. Of the two Tribes or Tribal representatives, the City received response from one tribe, the Gabrielino Band of Mission Indians – Kizh Nation requesting that a monitor from their tribe oversee ground -disturbing construction work. The Tribe requested consultation and during this consultation the Tribal councilmembers indicated that the project is within a culturally sensitive area. There was past grading on the site, but Tribal Councilmembers indicated that the project is within a culturally sensitive area and the City of Newport Beach proposed to retain a Tribal monitor. After the City applied, Commission staff contacted the Tribal governments consistent with the Tribal Consultation Policy. There was no further consultation. Without requiring a Tribal monitor, unmitigated impacts to archeological resources may occur. Only as conditioned to require a Tribal monitor on site to identify any potential archaeological resources impacts can the project be found consistent with the City's certified LCP, including CLUP Policy 4.5.1-5 and Section 30244 of the Coastal Act, incorporated by reference in the City's certified LCP. To ensure that a monitor is retained on site due to the sensitive nature of the area and because it was recommended by the local tribal government, the Commission imposes **Special Condition No. 23**, which requires the permittee to submit an archaeological monitoring plan. The plan shall include provisions for both Professional Archeologists and Native American monitors to be present during soil disturbance. As conditioned, the proposed project is consistent with the City's certified LCP which requires reasonable mitigation measures be provided to offset impacts to archaeological resources.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with the archaeological resource policies of the City's certified LCP.

G. Local Coastal Program (LCP)

The City of Newport Beach LCP was effectively certified on January 13, 2017. However, the proposed project was originally approved by the Commission on August 12, 2012, which is prior to the City's LCP certification. Thus, the Commission remains the permit issuing authority for the development, which the applicant has submitted an amendment for that is the subject of this staff report. The standard of review for development is the City's certified LCP. As conditioned, the proposed development is consistent with the City's certified LCP.

H. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach Community Development Department is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach processed a Mitigated Negative Declaration (SCH No. 2019099074) adopted by the City on November 19, 2019 and an MND Addendum adopted December 10, 2020. Mitigation Measures proposed included those that dealing with impacts to habitat for sensitive wildlife and sensitive wildlife species, protection of a wetland, and potential impacts to cultural and paleontological resources.

As conditioned, the Commission finds that 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. The Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Approval-In-Concept from the City of Newport Beach dated October 30, 2020

Mitigated Negative Declaration and Addendum No. ND2019-002

Biological Resources Technical Report prepared by Chambers Group, Inc. dated June 2019

Jurisdictional Delineation Report prepared by Chambers Group, Inc. dated September 2019

City of Newport Beach Coastal Development Permit No. CD2020-143

City Council Resolution No. 2019-102

Zoning Administrator Resolution No. ZA2020-082

Planning Commission Resolution No. PC2021-005

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

- A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
 3. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the deposits are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.
- B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the

Executive Director. The Supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archeological Plan.

1. If the Executive Director approves the Supplementary Archeological Plan and determines that the Supplementary Archeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Supplementary Archeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archeologists convened in accordance with current professional practice. Representatives of Native American groups with documented ancestral ties to the area shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

APPENDIX C – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CPD NO. 5-11-302 THROUGH CDP AMENDMENT NO. 5-11-302-A1

Note: This Appendix C provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-11-302, as approved by the Commission in its original action and as modified and/or supplemented by all subsequent amendments up through amendment number 5-11-302-A1. Any changes, pursuant to amendment A1, from the previously approved special conditions are shown in **bold and underlined**. Thus, this Appendix C provides an aggregate list of all currently applicable adopted special conditions.

STANDARD CONDITIONS AND SPECIAL CONDITIONS

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Open Space Restriction

A. No development, as defined in section 30106 of the Coastal Act, shall occur in Environmentally Sensitive Habitat Areas and 50-ft. buffers to Environmentally Sensitive Habitat Areas located on the subject site as described and depicted in the Memorandum by Dr. Jonna Engel attached as Exhibit 7 to the staff report dated July 27, 2012 except for the following development as described and shown on the final plans approved by the Executive Director pursuant to Special Condition 6:

- 1) Restoration activities, including removal of non-native vegetation, installation of native vegetation, installation and removal of temporary irrigation devices;
- 2) One-time and temporary grading activities within buffers necessary for the proposed construction of the water infiltration trench and underground drainage culvert;
- 3) Removal of non-native species, in accordance with Special Condition 2;
- 4) The one-time installation of gravel and low curb to the existing maintenance access road, as shown on Exhibit 4 to the staff report dated July 27, 2012
- 5) The following development, if approved by the Coastal Commission as an amendment to this coastal development permit:

Activities necessary for restoration of native habitat, maintenance or repair of water quality management features or drainage devices, in-kind repair or replacement of existing maintenance access road, or construction of pedestrian paths.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE PERMIT (NOI) FOR THIS PERMIT, the permittee shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit 7 attached to the staff report.

C. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal

Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification or amendment thereof - remains in existence on or with respect to the subject property.

2. Landscaping Plan.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of revised final landscaping plans prepared by an appropriately licensed professional that meet the following requirements:

- 1) The plan shall demonstrate that:
 - a) The revised final landscaping plans shall be in substantial conformance with the plan received in the Commission's office on March 13, 2012, but shall have been modified to 1) Remove invasive species (e.g., *Cortaderia* sp., *Carpobrotus edulis*) from all areas on the subject site, including those areas outside the grading limits (i.e. those marked as Existing - Not to Be Disturbed on the landscaping plan attached to the staff report); 2) Remove non-native species that are similar in appearance to invasive species (e.g., *Pennisetum* sp.) from the plant planting list to avoid inadvertent replacement with invasive varieties in the future; 3) Remove non-native species from the planting list that have a propensity for dispersal (e.g., *Acacia* sp.); 4) Create 5.15 acres of superior high quality native vegetation with coverage of primarily CSS, that is suitable for foraging habitat for the CAGN; 5) Remove the area known as the Southeast Polygon, which was subject to Commission Cease and Desist Order CCC-11- CD-03 and Restoration Order CCC-11-RO-02, from the landscaping plan, as such landscaping has already been authorized by such orders. The applicant shall comply with the requirements of the Cease and Desist and Restoration Orders in those areas.
 - b) All planting shall provide 85 percent coverage within 90 days and shall be repeated if necessary to provide such coverage, unless the Executive Director determines that such a requirement would result in

adverse impacts to areas of native habitat on the site and establishes a different coverage requirement.

- c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
 - d) Each landscaped area on the site, except for the area designated as Turf Area on the landscaping plan submitted to the Commission's office on March 13, 2012, shall be suitable to provide foraging habitat for the California gnatcatcher. The majority of the species used shall be consistent with the Coastal Sage Scrub vegetation community type.
 - e) No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. With the exception of the proposed Turf Area, all plants shall be native to coastal Orange County and appropriate to the habitat type and be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). The Turf Area shall consist of either artificial turf or a species that minimizes the amount of irrigation required.
 - f) No irrigation, except for temporary irrigation necessary to establish plantings, shall occur within ESHA and 50 foot buffers to ESHA. Temporary irrigation lines within ESHA and buffers to ESHA shall be either removed or capped in place once plants have been established. Irrigation on areas of the site other than ESHA and buffers to ESHA shall be limited to the minimum amount necessary to maintain active growth of plant species while preventing creation of a severe fire hazard.
- 2) The plan shall include, at a minimum, the following components:
- a) A map showing the type, size, quantity and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features

- b) A schedule for installation of plants.
- 3) The landscaping plan shall include the following requirements printed on the plans:
- a) The permittee shall be responsible for ensuring that non-native landscaping within the park is maintained to prevent spill-over into ESHA or buffers to ESHA.
 - b) The permittee shall be responsible for ensuring that no non-native or invasive species persist within ESHA or buffers to ESHA. Within the first 5 years since commencement of use of the park facility by the public, the permittee shall be authorized to remove non-native or invasive species from ESHA and buffers to ESHA. Such removal shall occur a minimum of once per year. After this period, the permittee shall submit an application for an amendment to this permit or for a new Coastal Development Permit for the removal of vegetation within ESHA.
 - c) After 5 years since the public has been allowed access to park facilities, the removal or trimming of vegetation within buffers to ESHA or ESHA, including but not limited to removal or trimming for fire hazard management purposes, shall require an amendment to this coastal development permit or a new coastal development permit.
 - d) No removal, pruning or other maintenance of vegetation, other than in the proposed "Turf" area, shall occur during the breeding season of the California gnatcatcher, which is between February 15 and August 31.
 - e) Five years since commencement of use of the park facility by the public the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the

Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

- B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Parking Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) full sized copies of a Parking Management Plan. The plan shall be prepared by a qualified professional and shall include the following:
 - 1) A schedule for management of games/use of the ball fields, to ensure that adequate parking is provided for the park use and for the existing uses of the public parking lot. Games shall be scheduled to avoid peak beach use periods such as summers and holidays to the extent possible as proposed in City of Newport Beach letter dated July 20, 2012, attached as Exhibit 22 to the staff report.
 - 2) Provision of a signage plan that shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions.
 - 3) Provisions to limit the usage of the maintenance access road to only City maintenance vehicles and City operated shuttles as a reasonable accommodation for members of the public with impaired mobility consistent with applicable ADA requirements.
 - 4) Provisions to reduce the number of shuttle trips to the park site to the minimum necessary to allow members of the public with impaired mobility to access the park site.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan, including any

change in the intensity of use of the access road, shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Lighting

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised plans to protect landscaped and habitat areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting plan is effective at preventing lighting impacts upon adjacent environmentally sensitive habitat. The proposed lighting plan shall include, but not be limited to, the following elements: lighting on the site shall be limited to the minimum amount necessary to light accessways and for security and be designed to avoid impacts to native habitat areas on the site; lighting will be limited to 3.5 foot bollards within areas of walkways with cut-off louvers and will be positioned, directed or shielded so as to minimize artificial lighting from reflecting into native habitat; no skyward-casting lighting or portable light generators shall be used on the site; the lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Fencing and Signage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fencing and signage plan showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. The fencing and signage plan shall incorporate the following requirements:

- A. Fencing on the project site shall be located where it will not result in adverse impacts to ESHA.
- B. To the maximum extent feasible, all fencing on the site shall be designed to allow the unimpeded ingress, egress and traversal of wildlife, including the coyote.

- C. If state requirements regarding oil field security prevent traversal of wildlife, including the coyote, across the proposed oil field security fence separating the park site from Newport Banning Ranch, the permittee shall enact measures to exclude nest predators from the subject site, specified in Special Condition 7.
 - D. The proposed oil field security fence between the park site and Newport Banning Ranch shall be removed at the time the fencing is no longer required by state law.
 - E. The fencing plan shall include provisions for signing and fencing to discourage human intrusion into ESHA and buffers to ESHA. The fencing shall be designed in a manner that creates a delineation between areas of native habitat and the public areas of the park.
 - F. Signs prohibiting entrance of the public into the native habitat areas and identifying their sensitive nature shall be posted at reasonable intervals and likely points of entry along the west side of the park. The plan shall include samples of such signage.
 - G. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 6. Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of final project plans. The final set of plans shall include:
- 1) Final Grading and Site plans which are in substantial conformance with the plans received in the Commission's office on March 13, 2012, but which have been revised to comply with a 50 foot buffer from areas of ESHA which excludes grading activities, except in areas where the applicant has demonstrated to the Executive Director's satisfaction that such grading is necessary for the construction of the proposed water infiltration swale and undergrounded drainage culvert.
 - 2) Final detailed planting plans, consistent with the requirements of Special Condition 2
 - 3) All locations of utilities on the project site
 - 4) Plans showing park improvements, such as the public restroom, benches, tables, walkways, ball field and associated structures

- 5) Drainage Plans, which show flow lines and the water quality management features required on the site, as required in Special Conditions 8
- 6) Fencing and Signage Plan, as required in Special Condition 5
- 7) Plans showing areas subject to Open Space Restriction as required in Special Condition 1
- 8) Construction Staging and Fencing Plans as required in Special Condition 10

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

7. Habitat Impact Management Plan

- A. Avoidance of Listed Species. The permittee shall staff a qualified monitoring biologist on-site during all CSS clearing and any other project-related work with the potential to impact sensitive species. The biologist must be knowledgeable of the biology and ecology of sensitive species with the potential to occur on the project site and wetland ecology. The following measures shall be taken prior to and during construction:
- 1) Pre-construction surveys shall be conducted within 10 days of the start of construction by a qualified biologist to determine the presence of any sensitive species with the potential to occur on the project site.
 - 2) A qualified biologist shall be present daily during construction in locations with the potential to support sensitive species, and to monitor for these species. The biologist will be authorized to stop work if threats to any sensitive species are identified during monitoring.
 - 3) Construction shall be scheduled to avoid the breeding seasons of special status species that are found to be present in the construction area, including, but not limited to, the California gnatcatcher.
 - 4) If any burrowing owls, cactus wrens, or other federally or state listed species are discovered on or near the project site, all work in the area shall cease and Fish and Wildlife and the Executive Director of the Commission shall be contacted to assess any potential risk of significant adverse effects to listed species and the possible need for further coordination. No construction shall continue until both Fish and Wildlife and the Executive Director of the Commission have determined that

further coordination of construction activities are sufficient to avoid potential effects to listed species. If the Executive Director of the Commission determines that an amendment to this coastal development permit is legally required to address the potential risk of significant adverse effects to listed species, the permittee agrees, by acceptance of this permit, to comply with the Executive Director's determination and apply for an amendment to this coastal development permit.

- 5) Prior to and during the clearing of any CSS or other suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area away from birds. In addition, the biologist shall walk ahead of clearing equipment to flush birds towards areas of habitat that will be avoided. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by the clearing of CSS.
- 6) Prior to initiating clearing and/or project construction during the gnatcatcher breeding season, the biological monitor shall meet on-site with the construction manager and/or other individual(s) with oversight and management responsibility for the day- to-day activities on the construction site to discuss implementation of the relevant avoidance/minimization/mitigation measures for gnatcatcher. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.
- 7) The permittee shall submit weekly reports (including photographs of impact areas) to the Executive Director and the Wildlife Agencies during initial clearing of CSS and/or project construction within 100 feet of avoided CSS during the gnatcatcher breeding season. The weekly reports shall document that authorized CSS impacts were not exceeded, work did not occur within the 100-foot setback during the gnatcatcher breeding season except as approved by the Executive Director, and general compliance with all conditions. The reports shall also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports shall specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes shall be available upon request by the Executive Director. If the Executive Director of the Commission determines that the report indicates the construction activities are causing a potential risk of significant adverse effects on the environment and determines that an amendment to this coastal development permit is legally required to address these effects, the permittee agrees, by

acceptance of this permit, to comply with the Executive Director's determinations and apply for an amendment to this coastal development permit

- 8) The limits of vegetation removal will be delineated in all areas adjacent to preserved vegetation by bright orange plastic fencing, stakes, flags, or markers that are clearly visible to personnel on foot and in heavy equipment.
- B. Park Operations.
- 1) Trash cans located in the park shall contain closed lids sufficient to prevent trash from escaping due to wind or animal dispersion.
 - 2) No human intrusion into habitat areas shall occur within the breeding season of the California gnatcatcher.
 - 3) Access Road. No impacts to ESHA resulting from usage of the maintenance access road are authorized by this Coastal Development Permit. It is the City's responsibility to ensure that usage of the maintenance access road does not result in impacts to ESHA areas. The City shall monitor usage of the maintenance access road to ensure that no impacts occur as a result of usage of the access road. Upon discovery of any impacts to ESHA, the City shall submit an application for a new Coastal Development Permit or an amendment to this Coastal Development Permit for restoration of the affected area.
 - 4) Special Events. The only development authorized by this permit is the use of the park for ball fields. Any other use of the park, such as the use of the park for temporary special events, may require a Coastal Development Permit. At least 180 days in advance of a temporary special event which is planned to occur on the site, the permittee shall submit a written letter with a description of the proposed temporary event to inquire whether a Coastal Development Permit is required.
 - 5) No amplified speakers shall be allowed on the site.
- C. Monitoring Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall develop, in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service as appropriate, and submit for review and written approval of the Executive Director, a final monitoring plan which includes, but is not limited to, the following requirements:

- 1) During the first five years since commencement of use of the park facility by the public, human intrusion into habitat areas shall be assessed annually and submitted for the review of the Executive Director. If the Executive Director determines that the sign and fencing plan approved by the Executive Director is not effective at preventing human intrusion into sensitive habitat areas, the permittee shall submit a request for amendment to this Coastal Development Permit proposing additional measures to prevent intrusion into sensitive areas. The amendment request shall include a report by a qualified biologist describing the assessments performed, the problems encountered, and whether the suggested strategies will be effective at preventing human intrusion. A copy of this report shall also be sent to the Carlsbad office of the US Fish and Wildlife Service. Six years after commencement of use of the park facility by the public, the permittee shall submit a summary of the assessments performed and a record of their implementation to the Executive Director and the Carlsbad office of the US Fish and Wildlife Service.
 - 2) Provisions for monitoring of the impact of predation by domestic pets on the California gnatcatcher. A qualified biologist shall monitor the presence of domestic and feral cats on the subject site, and submit annual monitoring reports for 5 years after completion of grading documenting the degree of usage of the site by domestic and feral cats.
 - 3) Provisions for implementation of a Cowbird monitoring and eradication program. The site shall be surveyed annually for the presence of the brown-headed cowbird (*Molothrus ater*) on the project site.
- D. Nest Predator Exclusion Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, a program for the removal of nest predators, including the brown-headed cowbird and domestic and feral cats from the project site shall be submitted for the review and approval of the Executive Director. A qualified biologist shall design the eradication program. The program shall be designed to reduce the prevalence of nest predators on the project site to reduce potential impacts to the California gnatcatcher. The program shall include, but shall not be limited to, provisions for trapping, public education, and installation of additional fencing, if consistent with the Fencing and Signage Condition, above. Any development, as defined in Section 30106 of the Coastal Act, which is required to enact the Nest Predator Exclusion Program shall require an amendment to this Coastal Development Permit, unless the executive director determines that no permit is required.

The Nest Predator Exclusion Program shall be enacted if either:

- 1) upon review of the final fencing plan, the Executive Director determines that fencing on the site will not allow wildlife, including the coyote, sufficient mobility to the park site, or:
- 2) Upon review of the reports from the monitoring program, the Executive Director determines that cowbirds or domestic or feral cats are posing a significant risk to the California gnatcatcher or other sensitive species on the project site

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

8. Drainage And Polluted Runoff Control Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified licensed professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plan shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather runoff leaving the developed site. The consulting licensed civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- 1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre- development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- 2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- 3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops and hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, vegetated swales, and infiltration trenches.

- 4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application. To the maximum extent feasible, the irrigation system must be capable of matching the water demand of the vegetation with the quantity of water delivered to the vegetation.
- 5) All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
- 6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary.
- 7) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- 8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner
- 9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
- 10) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the permittee /landowner or successor-in- interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the permittee shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

- 11) The final Drainage and Runoff Control Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. Storage Of Construction Materials, Mechanized Equipment And Removal Of Construction Debris

- A. The permittee shall comply with the following construction-related requirements:
 - 1) No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or 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. BMPs shall include, but are not limited to: 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 as far away from a storm drain inlet and receiving waters as possible.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity.

Selected BMPs 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 the 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 stormdrain, open ditch or surface water; and
- 4) The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

10. Construction Staging and Temporary Construction-Fencing Plan:

- A. All construction plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that the California Coastal Commission has not authorized any impact to wetlands or other environmentally sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands and other sensitive habitat consistent with this approval. The plan shall include the following requirements and elements:
 - 1) Wetlands and any other environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
 - 2) Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to ESHA. The barriers shall be a minimum 8 feet tall and one-inch thick in those areas adjacent to occupied gnatcatcher habitat. Solid physical barriers shall be used at the limits of grading adjacent to all other ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking, fencing shall be removed upon completion of construction.

- 3) No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as noted in the final habitat management plan approved by the Executive Director.
- 4) No construction materials, debris, or waste shall be placed or stored where it may enter sensitive upland habitat or wetlands, storm drain, receiving waters, or be subject to wind erosion and dispersion;
- 5) No construction equipment shall be stored within any ESHA, wetlands or their buffers.
- 6) The plan shall demonstrate that:
 - a. Construction equipment, materials or activity shall not occur outside the staging area and construction zone and corridors identified on the site plan required by this condition; and
 - b. Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands or other sensitive habitat;
- 7) The plan shall include, at a minimum, the following components:
 - a) A site plan that depicts:
 - i. limits of the staging area(s)
 - ii. construction corridor(s)
 - iii. construction site
 - iv. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat
 - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Final Plans Conforming To Geotechnical Recommendations

- A. All final design and construction plans shall be consistent with all recommendations contained in Geotechnical Study For The Proposed Sunset

Ridge Park Project For The Environmental Impact Report (EIR), Superior Avenue And Pacific Coast Highway, City Of Newport Beach, California, dated August 19, 2009. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two full sets of plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

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

13. Other Agency Approvals. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project by the following entities; **California Department of Transportation (Caltrans)**, California Department of Fish and **Wildlife**; U.S. Fish and Wildlife Service; Regional Water Quality Control Board, City of Newport Beach Fire Authority. The applicant shall comply with the recommendations provided by the USFWS in their April 27, 2012 letter. The permittee shall inform the Executive Director of any changes to the project required by the **California Department of Transportation**, City of Newport Beach Fire Authority; California Department of Fish and **Wildlife**; U.S. Fish and Wildlife Service; Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the permittee

obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

- 14. Future Development Restriction.** This permit is only for the development described in Coastal Development Permit No. 5-11-302. Pursuant to Title 14, California Code of Regulations, section 13253(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(b) shall not apply. Accordingly, any future improvements the proposed park access road, ball fields, grass warm-up field, landscaped areas, children's playground, restroom, and other structures described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)- (b), or the intensification of use of the maintenance access road, shall require an amendment to Permit No. 5-11-302 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.
- 15. Proof of Legal Ability to Comply With Conditions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall demonstrate the permittee's legal ability or authority to undertake development located on the adjacent property known as Newport Banning Ranch.
- 16. Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 17. Off-Site Habitat Enhancement.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall develop, in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service as appropriate, and submit a final detailed habitat restoration and monitoring program to create or enhance 1.5 acres of coastal sage scrub (CSS) that provides foraging and breeding opportunities for the California gnatcatcher located at either: Upper Buck Gully Canyon, Big Canyon, or John Wayne Gulch, for review and written approval of the Executive Director. A qualified restoration biologist shall design the restoration and monitoring program.

- 1) The plan shall include, at a minimum, the following components:
 - a) Evidence that the City has the authority to carry out the restoration activities at the restoration site and to ensure its permanent protection through utilization of an open space deed restriction, open space easement, or other form of legal protection over the property that runs with the land found acceptable by the Executive Director unless the area is already subject to legal protection over the property that runs with the land that the Executive Director determines is equivalent.
 - b) Plans depicting existing vegetation, topography, and any existing structures in the area.
 - c) Plans for site preparation and preservation of native seed bank;
 - d) Plant palette, coastal sage scrub habitat design that includes location of individual plant species, source of plant material (must consist of locally derived native stock), plant installation methods, erosion control plans, soil fertilization plans if necessary, and weed abatement. If temporary irrigation is required, the method and time of watering should be described. All irrigation infrastructure must be removed by the end of the monitoring period.
 - e) Success criteria based on quantitative sampling of an appropriate (relatively undisturbed) Orange County CSS reference site (s).
 - f) Plans for maintenance and quantitative and qualitative monitoring.
 - g) Plans for annual reports and a final report at the end of five years.
- 2) The restoration and monitoring program shall at a minimum include the following requirements:
 - a) Creation or enhancement of breeding and foraging habitat for the California gnatcatcher through: a) elimination of existing invasive or non-native species; and b) installation of plant species that are appropriate Orange County CSS community members and which serve as important foraging and nesting habitat for the California gnatcatcher.
 - b) The designated restoration site shall be located in an area of existing degraded CSS. The restoration site shall be located where it will not be subject to fuel modification activity or other disturbance.
 - c) The restoration program shall include, at a minimum, the following long-term maintenance requirements: periodic site inspections, eradication of

non-native and invasive plant species, weed control, implementation and maintenance of erosion control measures, trash and debris removal, and/or replacement plantings as necessary.

- d) Initial planting on the restoration site shall be completed no later than 180 days since commencement of use of the park facilities by the public.
- e) Within 60 days of completion of initial planting of the restoration site, the City shall submit for the review and approval of the Executive Director a report assessing the initial biological and ecological status of the “as built” restoration site prepared by a qualified biologist. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation. The report shall include a summary of dates when work was performed and photographs that show full implementation of the restoration and monitoring program.
- f) The restoration will be considered successful if the overall species composition and vegetative cover of CSS species are similar to a relatively undisturbed nearby CSS reference area (s) occupied by gnatcatchers. Species composition shall be considered similar if all the major native shrub species (e.g., California sagebrush and California encelia) and a similar number of native herbaceous species at the reference site (s) are present at the restored site. The vegetative cover of shrub species and herbaceous species at the restoration and reference sites will be compared with an appropriate statistical test. Spatially stratified, random sampling of the restoration and reference sites will be done with sufficient replication to detect a 10% absolute difference in cover with 90% power with $\alpha=0.10$. The cover of shrub species and herbaceous species will be considered similar if there is no statistical difference ($P>0.10$) in the average cover of each dominant species between the two sites; or, if there is a statistically significant difference, it is no greater than 10% absolute cover. In addition, in order to be considered successful, the restored CSS site must meet the success criteria without having received any supplemental irrigation for a minimum of two years.
- g) The City shall submit annual reports prepared by a qualified biologist for the review and approval of the Executive Director for the five year monitoring period, beginning the first year after submission of the “as-built” assessment. Project monitoring shall occur between February 15 and May 15 of each year and reports shall be submitted within 60 days of monitoring program completion. The reports shall include: 1. summary of previous reports, 2. description of restoration program’s progress toward meeting success criteria based on monitoring results, and 3. photographs

documenting the condition of the restoration taken from the same fixed points in the same directions.

- h) At the end of the five year monitoring period, the City shall submit a final report prepared by a qualified biologist for the review and approval of the Executive Director. The report must evaluate whether the restoration site conforms to the goals, objectives, and success criteria set forth in the approved final restoration program. The report must address all of the monitoring data collected over the five-year period.

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

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

18. Coastal Sage Scrub Restoration and Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of a Coastal Sage Scrub Restoration and Monitoring Plan to offset proposed Coastal Sage Scrub impacts. The program shall quantify the area of impact and the required restoration shall be at a minimum ratio of 2:1 (restoration to impact). A qualified biologist for restoration and monitoring of the coastal sage scrub restoration site shall design the restoration and monitoring program. The coastal sage scrub restoration and monitoring program shall at a minimum include the following:

- A. 4,650 sq. ft. of impacted Coastal Sage Scrub mitigated on site at a ratio of 2:1 shall be included as part of the plan and carried out physically;**
- B. Plans for site preparation and preservation of native seed bank;**

- C. Restoration plan including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;**
- D. Description of the monitoring program (quantitative sampling methods such as quadrats, transects etc. and statistical analysis) that will be employed to determine the progress and ultimate success of the mitigation/restoration;**
- E. Final Success Criteria. The restoration will be considered successful if the overall species composition and vegetative cover of the dominant coastal sage scrub species are similar (no more than 15% difference) to relatively undisturbed coastal sage scrub habitat in a nearby reference area (s) or as defined in the literature. Species composition shall be considered similar if all the dominant species and at least 70% of the non-dominant species at the reference site (or as defined in the literature) are present at the restored site;**
- F. Monitoring and remediation in accordance with the approved final restoration program for a period of five-years or until it has been determined that success criteria have been met, whichever comes first;**
- G. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year. Each report shall be a cumulative report that summarizes all previous reports. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards; and**
- H. Provisions for submission of a final monitoring report to the Executive Director at the end of the reporting period. The final report must be prepared by a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report must include and analyze all of the monitoring data collected over the five-year period.**

If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the permittee shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program that were

necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.

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

19. Avoidance of Sensitive Species.

- A. Nesting Birds. PRIOR TO COMMENCEMENT** of any construction activities between February 15 and August 31, a qualified biologist shall conduct a breeding behavior and nesting survey for birds protected by the United States Fish and Wildlife Service, California Department of Fish and Wildlife, the Migratory Bird Treaty Act, and California species of special concern within 300 ft. of the project site (500 ft. for raptors and owls). If any occupied nests of any sensitive species are discovered, construction activities within 300 ft. of the nest (500 ft. for raptors and owls) shall be monitored to ensure that construction noise levels do not exceed 65 dB peak within 100 ft. of the nest until the nest is vacated and juveniles have fledged and there is no longer evidence of a second attempt at nesting. The permittee shall implement a larger buffer if the biologist recommends a larger buffer from the nest area.
- B. Sensitive Species Monitoring.** Prior to undertaking any development including, but not limited to, construction, grading, or excavation, a qualified biologist shall survey the project site to determine whether sensitive bird species, including but not limited to coastal California gnatcatcher, and/or burrowing owl, are present within 100ft. of the project site.
- C. An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during the breeding season, and once every two weeks during the non-breeding season, during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as construction that could result in disturbances to sensitive species. Based on field observations, the biologist shall advise**

the permittee regarding methods to avoid significant impacts which could occur to sensitive species or habitat areas.

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

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

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

- 21. Construction Staging Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of Construction Staging Plans, which indicate that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the coast.**

- 1. The plan shall demonstrate that:**
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;**
 - (b) Construction equipment, materials, or activity shall not be placed within any habitat area or within 100 ft. of any drainages or wetlands; and**
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary.**
- 2 The plan shall include, at a minimum, the following components:**
 - (a) A site plan that depicts:**

- (1) limits of the staging area(s);
- (2) construction corridor(s);
- (3) construction site; and
- (4) location of construction fencing and temporary job trailer(s); and

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

22. Access Detour Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit, for the review and approval of the Executive Director, two (2) full size sets of Access Detour Plans that demonstrate the following:

1. Every effort shall be made to minimize the duration of sidewalk, bike and road lane closures so that impacts upon public access are minimized;
2. The sidewalk, bicycle and road lanes should be opened; and available for use to the maximum extent feasible during construction;
3. A detour plan to re-route pedestrian and bicycle traffic shall be identified for those periods when the sidewalk and/or bicycle lane is closed for public safety purposes within the project area; and
- 4) The existing stairway adjacent to the proposed western bridge abutment will be open to the public during construction.

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

23. Cultural Resource Treatment and Monitoring Plan. By acceptance of this permit the permittee agrees to comply with the following:

- A. Incorporate the following into the archeological monitoring plan:

- (i) Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of one Native American monitor from each tribal entity with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, excavation work, site preparation or landscaping activities associated with the approved development. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archaeological monitoring or research plans, past archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;**
- (ii) The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;**
- (iii) The Native American Monitor(s) shall be required on site until sterile soils have been reached.**

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

- (i) All construction and subsurface activities that have the potential to uncover or otherwise disturb tribal cultural deposits in the area of the discovery shall cease within 50 ft. of the deposit immediately;**
- (ii) The permittee shall report all discovered resources as soon as possible, by phone for by email to the Executive Director;**
- (iii) The professional archeological monitor on site must contact all affected groups of the Native American Tribe that are not present for on site monitoring and notify them of the discovery in order to determine the results of (iv) and (v) below;**
- (iv) Significance testing may be carried out only if acceptable to the affected Native American Tribe, in accordance with the attached "Cultural Resources Significance Testing Plan Procedures"**

(Appendix B) and in consultation with the Tribe. The Executive Director shall, in writing, determine the adequacy of the Significance Testing Plan and if it can be implemented without further Commission action, provide written authorization to proceed. The Significance Testing Plan results, if applicable, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination. If the Executive Director determines that the discovery is significant, development shall not recommence and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan consistent with Appendix B.

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

C. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 50 ft. of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.