

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST AREA OFFICE  
 300 EAST OCEAN BLVD., SUITE 300  
 LONG BEACH, CA 90802  
 (562) 590-5071



# W15a

Appeal Filed:	1/07/2020
49th Day:	Waived
Staff:	M. Revell-LB
Staff Report:	8/26/2021
Hearing Date:	9/08/2021

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE & DE NOVO

**Appeal Number:** A-5-MDR-19-0217

**Applicant for the Appeal:** E&S Ring Management Corporation

**Applicants for the De Novo:** E&S Ring Management Corporation and Department of Beaches & Harbors, County of Los Angeles

**Local Government:** Los Angeles County Department of Regional Planning

**Local Decision:** Approval with Conditions

**Appellants:** Ballona Institute & Marcia Hanscom

**Project Location:** 4500 Via Marina, Marina Del Rey, Los Angeles County  
APN 06037-4224001904

**Project Description:** After-the fact authorization of the unpermitted removal of 11 unoccupied nests from four trees within the Mariners Village apartment complex on Marina del Rey Lease Parcel 113.

**Staff Recommendation:** Determine that a **Substantial Issue** exists and **approve** the permit as revised.

## SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed because the County's decision to authorize removal of eleven unoccupied nests after-the-fact is not

development that can be authorized without complying with procedures outlined in the Marina del Rey Local Coastal Program (LCP). In addition, the mitigation plan imposed by the County does not sufficiently address the unpermitted removal of the nests, which also raises a substantial issue. Furthermore, staff recommends that, after a public hearing, the Commission **approve the de novo permit** as revised with special conditions.

The primary issues raised by the proposed development are adverse impacts to protection and preservation of nesting waterbirds and their habitat in Marina del Rey. The County's after-the-fact approval of removal of unoccupied nests may adversely impact colonial nesting water bird species thereby failing to protect, preserve, and maintain the habitat as required by the County's LCP policies.

The substantial issue recommendation is based on insufficient findings in the County's Staff report to justify removal of the nests.<sup>1</sup> Suitable nesting sites for colonial nesting water birds, which play an important role in breeding, are scarce in southern California and at least 11 nests were removed by the applicant. The nests provided biologically significant habitat for the resident heron colony.

The appellants also contend that the County did not fully address the impacts associated with removal of the nests through the approved mitigation program. They argue that there is no information in the record to substantiate why Yvonne B. Burke Park, which is located approximately one mile north from where the nests were removed, was selected as a mitigation site for tree planting. If the Commission finds that substantial issues exist relating to the nest removal and habitat protection policies of the LCP, the Commission's de novo review of the proposed development should consider whether the proposed development, including the mitigation plan, is consistent with all the applicable standards set forth in the certified LCP.

Since the appeal was filed, the Department of Beaches & Harbors, County of Los Angeles (DBH) and the applicant, E & S Ring Management Corporation, worked with Commission staff to revise the project to request approval of restoration and mitigation measures to address the removal of nests, instead of to request after-the-fact approval of the removal of nests, including by providing the same number of nesting opportunities for colonial waterbirds as the number of nests removed, if not more, including through the installation of two nesting poles (each with three nesting platforms, for a total of six potential nesting sites) and the planting of five trees (three Tecate Cypress trees and two Monterey Cypress trees) in suitable locations. Finally, in order to fully resolve the unpermitted removal of nests at issue, which constitute violations of the Coastal Act and LCP, the applicant has agreed, pursuant to the terms of the permit, to restore an area of the Ballona Lagoon to enhance foraging habitat for wading birds.

---

<sup>1</sup> *Executive Summary of Parcel 113 Nesting Waterbird Activity for 2014 through 2018*, LSA, dated January 21, 2019.

Staff has also met with the appellants to discuss their concerns with the proposed project. Certain Special Conditions are intended, in part, to address resources impacts identified by the appellants.

Staff is recommending the Commission **approve** the de novo coastal development permit application with special conditions. **Special Condition 1** requires the applicant to submit a final Mitigation Plan. **Special Conditions 2 and 3** require biological monitoring. **Special Condition 4** requires project biologist to conduct an onsite meeting with the landscape contractor to inform landscaping crews of biological resources of concern at the site, avoidance measures, removal limits and methods, and any materials relevant to the Tree Trimming Plan to avoid future nest removal incidents. **Special Condition 5** requires the applicant to comply with all permit requirements of applicable resource agencies.

**IMPORTANT HEARING PROCEDURE NOTE:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. (14 CCR § 13115(c).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. (14 CCR § 13117.) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur directly following that finding, during which it will take public testimony.

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, N-33-20, and N-08-21, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904-5202.

## TABLE OF CONTENTS

<b>STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE &amp; DE NOVO .....</b>	<b>1</b>
<b>I. MOTION AND RESOLUTION - SUBSTANTIAL ISSUE .....</b>	<b>5</b>
<b>II. APPELLANTS’ CONTENTIONS .....</b>	<b>5</b>
<b>III. LOCAL GOVERNMENT ACTION .....</b>	<b>6</b>
<b>IV. APPEAL PROCEDURES.....</b>	<b>6</b>
<b>V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE.....</b>	<b>8</b>
A. PROJECT DESCRIPTION AND LOCATION.....	8
B. LOCAL COASTAL PROGRAM CERTIFICATION.....	9
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS .....	10
D. SUBSTANTIAL ISSUE ANALYSIS.....	11
E. SUBSTANTIAL ISSUE – FIVE FACTORS.....	23
<b>VI. MOTION AND RESOLUTION - DE NOVO PERMIT .....</b>	<b>25</b>
<b>VII. STANDARD CONDITIONS.....</b>	<b>25</b>
<b>VIII. SPECIAL CONDITIONS.....</b>	<b>26</b>
<b>IX. FINDINGS AND DECLARATIONS – DE NOVO PERMIT .....</b>	<b>29</b>
A. PROJECT DESCRIPTION AND LOCATION.....	29
B. STANDARD OF REVIEW .....	30
C. BIOLOGICAL RESOURCES .....	31
D. PUBLIC ACCESS AND RECREATION .....	35
E. WATER QUALITY .....	37
F. LOCAL COASTAL PROGRAM .....	38
G. UNPERMITTED DEVELOPMENT .....	38
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	39

### EXHIBITS

- Exhibit 1** – Vicinity Map
- Exhibit 2** – Site Plan with Tree Locations Where Nests Were Removed
- Exhibit 3** – CCC Enforcement Letter April 2020
- Exhibit 4** – County’s Notice of Final Action for Local CDP RCDP-20140000
- Exhibit 5** – County’s Resolution Approving Local CDP RCDP-20140000
- Exhibit 6** – Proposed Locations for Tree Planting and Nesting Platform Installation
- Exhibit 7** – Proposed Location for Concrete Debris Removal
- Exhibit 8** – Nesting Platform Schematic, Northern Prairie Research Center
- Exhibit 9** – Revised Location for Nesting Platform

## I. MOTION AND RESOLUTION - SUBSTANTIAL ISSUE

**Motion:** *I move that the Commission determine that Appeal No. A-5-MDR-19-0217 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

### Resolution to Find Substantial Issue:

*The Commission hereby finds that Appeal No. A-5-MDR-19-0217 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

## II. APPELLANTS' CONTENTIONS

On November 13, 2019, the Los Angeles County Department of Regional Planning approved Local Coastal Development Permit No. RCDP-201400001 to authorize the unpermitted removal of eleven nests from four trees within the Mariners Village apartment complex after-the-fact ([Exhibit 2](#)). On December 6, 2019 the Coastal Commission's South Coast District Office received the Notice of Final Action for Local Coastal Development Permit No. RCDP-201400001 ([Exhibit 7](#)). On December 20, 2019, the Commission received a valid appeal from the Ballona Institute and Marcia Hanscom ([Exhibit 6](#)). The appeal asserts that the City-approved development does not conform to the requirements of the certified Marina Del Rey LCP.

The appellants have raised several contentions with regard to the local approval of the proposed development. First, the appellants contend that the CDP authorized removal of nests which is inconsistent with the resource protection policies of the LCP and is development that cannot be authorized. Second, the appellants contend that the locally approved project does not require monetary penalties which were contemplated in the County's Notice of Violation. Third, the appellants contend that the locally approved mitigation plan is insufficient because it requires the planting of four small trees in a location where great blue herons do not nest. The appellants fourth contention is that the County findings could not support the conclusion that since no trees were removed, no harm was done to the habitat. Finally, the appellants contend that the County and

E&S Ring Management Corporation continue to over-trim the trees suitable for nesting and roosting by colonial nesting birds, thereby reducing tree canopy coverage that is necessary for nesting.

### **III. LOCAL GOVERNMENT ACTION**

On November 13, 2019, the Los Angeles Department of Regional Planning held a public hearing on the proposed project. At the conclusion of that public hearing, the Regional Planning Commission approved with conditions Local Coastal Development Permit No. RCDP-201400001, which approved removal of 11 unoccupied nests and a mitigation plan consisting of the planting of four trees in Yvonne B. Burke Park and a monitoring program not to exceed \$56,000.00.

On December 6, 2019, the Coastal Commission's South Coast District Office received the County's Notice of Final Action for Local Coastal Development Permit No. RCDP-201400001, and the ten working-day appeal period commenced.

### **IV. APPEAL PROCEDURES**

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within one hundred feet of any wetland, estuary, or stream [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a "major public works project" or a "major energy facility" [Coastal Act Section 30603(a)(5)].

Section 30603 of the Coastal Act states, in part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
  - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
  - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public*

*trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

*(3) Developments approved by the local government not included within paragraph (1) or paragraph (2) that are located in a sensitive coastal resource area.*

Section 30603(a)(2) of the Coastal Act establishes the project site as being appealable by its location between the first public road and the sea.

The grounds for appeal of an approval, by a certified local government, of a local coastal development permit authorizing development in the appealable area are stated in Section 30603(b)(1), which states:

*(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in [the Coastal Act].*

The grounds listed for the current appeals include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding important biological resources.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review.

In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. The project site is located between the sea and the first public road paralleling the sea, therefore, public access considerations are required. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

### **Qualifications to Testify before the Commission**

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California

Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. At the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak.

## **V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. PROJECT DESCRIPTION AND LOCATION**

The project site is located between the first public road and the sea in the Mariners Village apartment complex, located along the west side of the entrance channel in the southwest corner of Marina del Rey near the harbor entrance from the Pacific Ocean ([Exhibit 1](#)). The project site is approximately 23.1 acres and is within County-lease Parcel 113.

On November 7, 2013, the applicant requested authorization for the trimming, pruning, and thinning of three trees on the Project Site and provided the Department of Beaches and Harbors (DBH) staff with the biological survey required by the Marina Del Rey LCP. On November 14, 2013, DBH authorized the pruning of three trees at the Project Site. The trimming was to take place during the non-breeding, non-nesting season and did not authorize the removal of nests located within the subject trees. Tree trimming took place between November and December of 2013.

On March 12, 2014, several members of the public testified at the California Coastal Commission hearing regarding tree pruning activities at the project site and indicated that several nests had been removed from the trees at the project site without authorization. As stated, the nests removed were presumed to be great blue heron nests.

The County Department of Regional Planning inspected the site and confirmed that a tree had been pruned without proper authorization from DBH, and that 11 nests were removed from four trees on the project site without authorization from DBH and in violation of the Los Angeles County Zoning Ordinance and the Marina del Rey Local Coastal Program. On March 25, 2014, the County issued a Notice of Violation to the applicant, which informed the applicant that a CDP would be required to rectify the unpermitted activity. In addition, DBH staff notified the U.S. and State Fish and Wildlife Departments of the unpermitted removal of nests.



On March 26, 2014, the subject application was submitted to Los Angeles Department of Regional Planning requesting after-the-fact authorization to remove 11 nests from four trees within the Mariners Village apartment complex on Marina Del Rey Parcel 113, and identified that the types of trees and numbers of nests removed was as follows: one nest was removed from a Lemon-Scented Gum Tree, one nest was removed from a Monterey Pine Tree, one nest was removed from an Aleppo Pine Tree, and eight nests were removed from a Red River Gum Tree. The locations of the trees are shown in [Exhibit 2](#).

On November 13, 2019, the Los Angeles County Department of Regional Planning approved local CDP No. RCDP-201400001 to authorize the unpermitted removal of 11 nests from four trees within the Mariners Village apartment complex ([Exhibit 4](#)). The local CDP also required Permit Specific Condition No. 18 mandating that the permittee participate in a mitigation program intended to mitigate the effects of unpermitted nest removal, which required the planting of four trees (one tree for each tree from which nests were removed for a total of four) to be planted within Yvonne B. Burke Park, and a five-year annual monitoring plan to ensure continued health of the mitigation trees. The cost of the mitigation program was not to exceed \$56,000.00. According to communication between Commission staff and DBH, the period of time that lapsed between the noticed violation and the issuance of the local CDP was in part due to the complexity of quantifying the resource impacts resulting from removal of the nests and adequately mitigating for the loss. This analysis was particularly complex because of the sensitivity of the affected resources. For instance, for several years after the removal of the nests, the applicant surveyed nesting at the site in order to help quantify the effect of removal of nests on colonial bird nesting. As reported in the County's local approval of the project, "Between 2014 and the present, the permittee retained the services of LSA, an environmental consulting firm, to conduct bird nesting surveys twice per month to gauge the effects of the nest removal and provide a baseline for nesting on the Project Site. In a letter, provided by LSA in January 2019, LSA determined that due to inadequate surveys before 2014, it is impossible to know definitively what effect the nest removal had on nesting water birds at the Project Site. Between 2014 and 2018 (starting the year following the unpermitted nest removal), the number of Double-Crested Cormorant nests increased, and the number of Great Blue Heron nests was stable, with a slight decrease over the same period. The surveys over the 2014-2018 timeframe indicate that the water bird nests were not decreased across the whole Project Site, though it is impossible to accurately know the effect of nest removal on the individual subject trees. Thus, the regional impact may be limited, but tree-specific impacts may exist."

## **B. LOCAL COASTAL PROGRAM CERTIFICATION**

In 1984, the Commission certified the Land Use Plan portion of the Marina del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of

undeveloped land, which was a portion of the County's LCP area located south of Ballona Creek and east of Lincoln Boulevard (known as Area B and C). Subsequent to the City's annexation, the City submitted the identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original County LCP area. The Commission certified the Land Use Plan Amendment for the annexed area with suggested modifications on December 9, 1986. The County also resubmitted those portions of their previously certified LUP that applied to areas still under County jurisdiction, including the area known as Area A and the existing marina. The Commission certified the County of Los Angeles' revised Marina del Rey Land Use Plan on December 9, 1986.

On September 12, 1990, the Commission certified an Implementation Program pertaining to the existing marina, with suggested modifications. The undeveloped area in the County, Playa Vista Area A, was segmented from the marina and no ordinances were certified for the area. After accepting the suggested modifications, the Commission effectively certified the Marina del Rey LCP.

### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Factors Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with the certified LCP and, if applicable, the access policies of Chapter 3 of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission has been guided by the following five factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the local coastal development permit may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625 of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or, if applicable, the access policies of the Coastal Act.

It is staff's assessment that the appellants raise several substantial issues with the County approval of a CDP for this project. This staff report addresses the most significant issues in detail and recommends a fuller review of all of the issues when the Commission reviews the project de novo. The appellants contentions center around the protection of coastal biological resources that are protected by the following LCP policies.

##### **Important Biological Resources**

LUP Section B. Marine and Land Resources, Section 5. Important Biological Resources distinguishes between Environmentally Sensitive Habitat Areas (ESHA) as defined in the Coastal Act<sup>2</sup> and Important Biological Resources (IBR), as identified in the LUP. Prior to the 1990s, colonial waterbirds were relatively uncommon in the marina, however starting in the mid-1990s, colonial waterbirds began roosting and nesting in the mature ornamental and non-native landscape trees in Marina del Rey, and successfully adapted to the urban environment, and were not easily disturbed or degraded by human activities and developments. According to the LUP, their tolerance of human activities and developments failed to meet one critical element of the ESHA test – that they would be disturbed or degraded by human activities and developments. Additionally, neither the colonial waterbirds nor their nonnative habitat were considered rare or especially valuable because of their special nature or role in the ecosystem. Accordingly, the LUP

---

<sup>2</sup> Coastal Act Section 30240 defines Environmentally Sensitive Habitat Areas (ESHA) as areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities or developments. Thus, if an area is found to be ESHA, the area is governed by Section 30240 of the Coastal Act cannot be developed except in ways that area resource dependent.

does not recognize ESHA as it relates to colonial waterbirds in Marina del Rey, and rather designates colonial waterbirds and their heronries as Important Biological Resources (IBR) and require policy protection as coastal resources per Coastal Act sections 30230, 30231, 30233, and 30250.

As provided below, the Marina Del Rey certified LCP contains a number of coastal resource protection policies that are applicable to this proposed project, including, but not limited to, the management and protection of colonial nesting waterbirds and their habitat.

### **Tree Management Policies No. 23 and 34 – Marina Del Rey Leasehold Tree Pruning and Tree Removal Policy**

#### **POLICY NO. 34 – MARINA DEL REY LEASEHOLD TREE PRUNING AND TREE REMOVAL POLICY**

The purpose of this Policy is:

- 1.1 To establish guidelines within Marina del Rey for the pruning and removal of trees in accordance with the federal Migratory Bird Treaty Act and California Fish and Game Code, and to ensure the long-term protection of breeding, roosting and nesting habitats of federal and state-listed species, California Species of Special Concern, and colonial waterbirds.
- 1.2 To provide **Lessees** with guidelines and procedures for tree pruning and/or tree removal on leaseholds located in Marina del Rey in consideration of the colonial waterbird species, as the term is defined in Section 4.3 of this policy, and raptor species, as the term is defined in Section 4.12 of this policy, and the desire to reduce or eliminate impacts to their nesting habitats (emphasis added).

#### **2.0 POLICY**

This policy will be implemented by the County of Los Angeles Department of Beaches and Harbors (Department) for the purpose of overseeing the tree pruning and/or tree removal activities of Marina del Rey Lessees so as to minimize or avoid impacts to the nesting habitats established by colonial waterbird and raptor species on leasehold property.

The Department will enforce and implement this policy in compliance with the Migratory Bird Treaty Act which prohibits the taking, killing or possession of any migratory bird and, therefore, disturbance of any nesting bird is illegal. For clarification purposes, palms are included in any reference herein to trees. Lessees, in following the procedures set forth below, will carry out their tree

pruning and/or removal activities in cooperation with the Department and only with the explicit authorization of the Department prior to starting such work. Section 5.3 of this policy contains procedures for Lessees or their authorized representatives to follow when addressing immediate or imminent health and safety and emergency situations.

This policy is an outgrowth of Internal Policy No. 23 that has been carried out by the Department since 2003 to manage tree pruning and tree removal activities on County-operated Marina del Rey properties. The Department's Internal Policy No. 23, taken together with the annual surveys of breeding and nesting federal and state listed species, California Species of Special Concern and colonial waterbirds, as outlined in the 2010 Marina del Rey Conservation & Management Plan, will provide the basis for extending management and oversight to Lessee operated parcels. The surveys shall be conducted by a qualified biologist(s) in Marina del Rey in order to establish the long-term status and trends of these species, especially colonial waterbirds. The survey reports shall include photos of active and inactive nests.

Following completion of the Department's nesting colonial waterbird surveys each year, the Department will identify all leaseholds on which no nests of colonial waterbird or raptor species were found, and Lessees will be notified in writing that tree pruning activities may commence on the identified leaseholds during the non-breeding/non-nesting season.

Lessees are encouraged to utilize the Department's annual nesting colonial waterbird surveys as the basis for part or all of the surveys prepared by Lessee's qualified biologist (as the term is defined in Section 4.11 of this policy), where required by this policy, prior to the commencement of annual tree pruning on Marina del Rey leaseholds.

Lessee is required, under the "Rules and Regulations" provision of Marina del Rey leases, to ensure that all tree pruning and/or tree removal conducted on leaseholds located in Marina del Rey adheres to the guidelines and procedures outlined in this policy statement. Similarly, the policies and procedures contained herein apply to the ongoing maintenance of existing developments and may not be used to substitute for the project and landscaping approvals required by the County of Los Angeles for new development, re-development, or renovations.

Considering Marina del Rey's urban character, its abundance of trees, and the propensity of local herons and egrets to nest in a variety of arboreal settings, the potential will always exist for land-use conflicts to develop in the marina environment. Such conflicts could include health risks (such as co-location with restaurant uses or risks to humans from airborne pathogens), safety risks (such

as an unbalanced tree), and substantial interference with public amenities such as public parking or public walkways. In those limited circumstances, appropriate management responses could include pruning of trees during the nonbreeding/non-nesting season to make them unsuitable as nesting substrates. Any such "directed pruning" should be done during the non-breeding/nonnesting season which allows the affected birds an opportunity to select among ample nesting trees elsewhere in the nearby area. The annual nesting colonial waterbird surveys to be conducted by the Department or Department contractors are intended to include documentation of any apparent bird-human conflicts and make recommendations for how the conflicts might be resolved in ways that best respond to the Marina del Rey Conservation & Management Plan and normal public health, safety, and public-access consideration.

Department policy requires that all tree pruning and removal conducted in Marina del Rey adhere to the procedures outlined in this document (Policy 34). Tree pruning or removal is prohibited during the breeding/nesting season except to complete tree pruning activities started during the non-breeding/non-nesting season as prescribed in section 5.2 below on trees that annual surveys have shown are not active nesting trees and that have not been active nesting trees in the last five years **or** in the case of a health and safety emergency.

All tree pruning and removal shall be conducted in strict compliance with this policy. If a Lessee determines that pruning impacts a nest, or removal of a nesting tree is necessary for a reason other than a health and safety issue, a coastal development permit is required.

### 3.0 **APPLICABLE STATUTES**

#### 3.1 California Fish and Game Code § 3503

"It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto."

#### 3.2 California Fish and Game Code § 3513

"It is unlawful to take or possess any migratory non-game bird as designated in the Migratory Bird Treaty Act or any part of such migratory non-game bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act."

#### 3.3 Migratory Bird Treaty Act- U.S. Code, Title 16, § 703

"Unless and except as permitted by regulations made as hereinafter provided, it

shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess . . . any migratory bird, any part, nest, or egg of any such bird. . . included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972[,] and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976."

3.4 Special Purpose Permits- U.S Code of Federal Regulations, Title 50, § 21.27

"Special purpose permit is required before any person may lawfully take, salvage, otherwise acquire, transport, or possess migratory birds, their parts, **nests**, or eggs for any purpose not covered by the standard form permits of this part." Permit applications are submitted to the U.S. Fish and Wildlife Service's Regional Office.

4.0 **DEFINITIONS**

4.1 Active Nest – A nest that is under construction or that contains eggs or young.

4.2 Breeding/Nesting Season – January 1 through September 30.

4.3 Colonial Waterbirds - Great Blue Heron (*Ardea herodias*), Black-crowned Night-Heron (*Nycticorax nycticorax*), Double-crested Cormorant (*Phalacrocorax auritus*), Great Egret (*Ardea alba*), Snowy Egret (*Egretta thula*).

4.4 Department - Los Angeles County Department of Beaches & Harbors.

4.5 Health Issue/Safety Issue - A natural occurrence, disaster, or disease jeopardizing public health or safety and that causes immediate or imminent danger to any person or property. A health and safety danger exists if a tree or branch is dead, diseased, dying, or injured and said tree or branch is in immediate or imminent danger of collapse or breaking away. Health risks include proximity of airborne pathogens or animal waste to human habitation or dining facilities.

4.6 Nesting Tree - A Tree as defined in 4.13 below containing Occupied or Unoccupied nests that have been used in the past five years or supporting evidence of courtship or nest building.

- 4.7 Non-breeding/Non-nesting Season - October 1 through December 31.
- 4.8 Non-nesting Tree - A Tree, as defined in 4.13 below, containing no nests or containing Unoccupied nests that have not been used in five or more years.
- 4.9 Occupied Nest - A nest that contains eggs or young.
- 4.10 Pruning - The horticultural practice of cutting away an unwanted, unnecessary, or unhealthy plant part, used most often on trees, shrubs, hedges, and woody vines. Pruning includes, but is not limited to, 1) eliminating branches that rub each other, 2) removing limbs that interfere with wires, building facades, gutters, roofs, chimneys, or windows, or that obstruct streets or sidewalks, 3) removing dead or weak limbs that pose a hazard or may lead to decay, 4) removing diseased or insect-infested limbs, 5) creating better structure to lessen wind resistance and reduce the potential for storm damage, 6) training young trees, 7) removing limbs damaged by adverse weather conditions, 8) removing branches, or thinning, to increase light penetration, and/or 9) improving the shape or silhouette of the tree.
- 4.11 Qualified Biologist - Graduation from an accredited college with a bachelor or higher degree in biological science or ornithology and at least two (2) years experience conducting nesting bird surveys or an arborist with a bachelor or higher degree in arboriculture and having at least two (2) years experience conducting nesting bird surveys.

## 5.0 **PROCEDURE**

*Non-nesting trees on Leasehold parcels that are identified in the Department's annual nesting colonial waterbird survey as having no active Nests nor a history of nesting within five years will be exempt from sections 5.1.1 through 5.1.11 of this policy. Lessees will be notified in writing that tree pruning activities shall be carried out during the non-breeding/non-nesting season.*

*Leasehold parcels that are identified in the Department's annual nesting colonial waterbird survey as having active Nests will be required to follow the procedures contained in sections 5.1.1 through 5.1.11 of this Policy.*

*Regardless of the results of the Department's annual nesting colonial waterbird survey, all leasehold parcels proposing to conduct tree pruning or tree removal activities at any time must follow the procedures prescribed by this policy. Written authorization from the Department must be obtained before any action is undertaken that might disturb an active nest.*



5.1 Tree Pruning and Removal Restrictions During Non-Breeding/Non-Nesting Season

5.1.1 Tree pruning and removal on all leaseholds in Marina del Rey shall be performed during the non-breeding/non-nesting season on all nesting trees and to the greatest extent possible on non-nesting trees.

5.1.2 During the non-breeding season, at least fourteen (14) days prior to tree pruning, the Lessee's qualified biologist shall coordinate with the Lessee's landscape contractor and survey the trees to be pruned or removed to detect nests by conducting a ground level visual inspection of the trees scheduled for pruning. The tree survey report shall include a map showing all the trees scheduled for pruning or removal and trees suspected to have active or unoccupied nests. Copies of the survey and map shall be submitted to and filed by the Department for public agency review.

5.1.3 Seven (7) days prior to the commencement of tree pruning activities, the Lessee's qualified biologist shall walk the entire area proposed for pruning with a pair of binoculars and/or spotting scope to determine whether the juveniles have fledged the nests and to evaluate whether the adults appear to be starting a new clutch (preparing to mate and lay eggs).

5.1.4 Upon complying with procedures described in subsections 5.1.1 through 5.1.3, no less than seven (7) days prior to the planned commencement of tree pruning or removal activities, the Lessee will notify the Department in writing with a copy of the survey report, plot plan and a tree pruning or removal plan prepared by the arborist or landscape contractor which addresses the following:

a. A description of how work will occur (e.g. mechanized equipment, hand tools, phasing, etc.).

b. Use of non-mechanized hand tools to the maximum extent feasible.

c. Tree pruning and/or removal limits established in the field with flagging and stakes or construction fencing.

d. Assurance that tree pruning will be the minimum necessary to accomplish the respective objectives.

Notification must include the name and credentials of Lessee's qualified biologist. Once the Department receives the tree survey report, plot plan and tree pruning or removal plan, the Department will notify the United States Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG) and the California Coastal Commission (CCC) by submitting by e-mail, within (2) two

business days of receipt of Lessee's notice.

- 5.1.5 Nesting or non-nesting tree(s) that show current evidence of courtship may not be pruned in such a way that compromises the support structure of existing occupied or unoccupied nests. The amount of pruning at any one time shall be limited to preserve the suitability of the nesting tree for breeding and nesting habitat. Under limited circumstances, where a tree(s) is determined to be a health or safety issue, the Lessee, in consultation with a qualified biologist and with the prior approval of the Department, may conduct pruning so as to remove the empty nest and to discourage future nesting, or tree removal as appropriate.
- 5.1.6 Tree pruning or removal may not proceed if an active nest is found and/or evidence of courtship or nesting behavior is observed, even if it is occurring during the non-breeding/non-nesting season. Tree pruning or removal shall not occur any closer than 300 feet from these trees (500 feet in the case of an active raptor nest). In the event that any birds exhibiting breeding and nesting behavior continue to occupy the trees during the non-breeding/non-nesting season, Lessee shall immediately notify the Department and pruning or removal shall not take place until a qualified biologist has re-assessed the site, determined that breeding and nesting has ceased and given approval to proceed within 300 feet of any occupied tree (500 feet for raptor species). Following compliance with procedures described in subsections 5.1.1 through 5.1.3, the Department will notify the USFWS, CDFG, and the Executive Director of the CCC by e-mail within two (2) business days of receiving qualified biologist's determination.
- 5.1.7 Unoccupied nests that have not been used in five or more years may be removed (including those attached to dead palm fronds) only after the Lessee's qualified biologist documents and photographs the occurrence. Copies of the qualified biologist's report and photographs shall be forwarded to the Department within three (3) business days of the removal.
- 5.1.8 In the event that colonial waterbirds are observed to return during the nonbreeding/non-nesting season to a nest previously thought to be unoccupied while pruning operations are occurring, activities shall stop until the qualified biologist re-assesses the site. The qualified biologist may recommend proceeding conditionally, consistent with Section 5.2 of this Policy.
- 5.1.9 Special emphasis shall be placed on public safety during pruning operations, particularly when the operation is adjacent to bike paths, parking stalls, sidewalks, driveways or the promenade. Lessee must obtain advance written approval from the Department for the closure of any public promenade or sidewalk necessitated by the tree pruning work.

### 5.3 Health and Safety Issues & Emergencies

- 5.3.1 The Department shall determine if an immediate or imminent health and safety issue exists as described above. Lessees, with supporting documentation from a certified arborist, qualified biologist or public health official, shall notify the Department as soon as a health and safety issue is known. The Lessee shall be proactive in identifying and addressing injured, dying, or diseased trees and alerting the Department as early as possible during the Non-Breeding Season in order to avoid habitat disturbances during the nesting season.
- 5.3.2 Nesting or non-nesting trees posing an immediate or imminent health or safety issue should be pruned/removed immediately regardless of the presence of nest(s).
- 5.3.3 If the location or change in the condition of a tree located on any leasehold presents an immediate or imminent health and safety issue as described in the definitions above, Lessee shall submit a special permit application, as soon as possible, to the USFWS (see 3.4 above, Special Purpose Permits – U.S. Code of Federal Regulations, Title 50, § 21.27) and notify DCFG, and the Executive Director of the CCC, as soon as possible, while proceeding, as necessary, with tree removal or other remedies. When possible, the Lessee shall submit a special permit application and notify the Department and above agencies prior to tree removal or other remedies.
- 5.3.4 Lessee shall photograph and document the emergency occurrence, site conditions before and after the occurrence, and any observation of biological resources, and submit to Department a brief written report within fourteen (14) business days. The Department shall create an incident file that shall be available for public agency inspection.
- 5.3.5 Steps shall be taken to ensure that tree pruning or removal will be the minimum necessary, as determined by an arborist or Lessee's qualified biologist, to address the health and safety issue while avoiding or minimizing impacts to nesting birds and their habitat. Steps taken shall include the use of nonmechanized, hand tools whenever the emergency occurs within 300 feet of a nesting tree.
- 5.3.6 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.3.7 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. Lessee is required to develop a tree replacement planting plan for all trees to be removed, which plan should include the location, tree type, tree size, and planting

specifications and a monitoring program with specific performance standards. A tree replacement monitoring report shall be prepared and then updated annually for five years. The Lessee's annual monitoring report must be submitted to the Department prior to the start of each successive breeding/nesting season.

### **Waterbird Management Policies**

The County will conduct waterbird population surveys on an annual basis, in order to track the status of colonies and to provide current information on the locations of active nests to the public, the County, resource agencies, and other regulators.

The County will also conduct periodic nesting colonial waterbird surveys (e.g., every 3–5 years) throughout the coastal slope of Los Angeles County to establish a regional context for the Marina del Rey colonies as funding permits. For example, the Snowy Egret is known to breed in fewer than five locations on the coastal slope of Los Angeles County, with Marina del Rey supporting one of the larger colonies. Should this continue to be the case, special care should be taken around the marina's Snowy Egret colonies, to help preclude a regional population decline.

### **Appellants Contention No. 1: The CDP authorized removal of nests which is inconsistent with the resource protection policies of the LCP and is development that cannot be authorized.**

The Marina del Rey LCP identifies colonial waterbirds and their heronries as Important Biological Resources that require protection and contains robust policies that prioritize the protection of their habitat. Tree Trimming Policy No. 34 provides guidance for tree trimming and removal activities on Marina del Rey leasehold parcels consistent with the California Coastal Act, the Migratory Bird Treaty Act, and California Fish and Game Code requirements. The policies of the LUP and applicable statutes provide a framework to prohibit the taking, killing, or possession of any migratory bird, including their nests. Empty nests may be removed only when there are applicable health and safety issues or where it can be demonstrated that an unoccupied nest has not been used in the previous five or more years – however, in any case, a CDP is required for such a removal.

On November 7, 2013, the applicant requested authorization for the trimming, pruning and thinning of three trees on the project site, and on November 14, 2013, DBH authorized the pruning of three trees at the project site during non-breeding, non-nesting season, and did not authorize the removal of nests located within the subject trees. Between November and December of 2013, 11 nests were removed from four trees at the Project Site without prior authorization and therefore in violation of the policy. On November 13, 2019, Los Angeles County Department of Regional Planning authorized after-the-fact removal of 11 nests. These nests did not qualify for a health and safety exemption or other qualifying circumstances, and their removal is

inconsistent with the applicable LCP policies. Therefore, this contention raises a substantial issue.

**Appellants Contention No. 2: The locally approved mitigation plan is insufficient because it requires planting of four small trees in a location where great blue herons do not nest, and it does not require monetary penalties which were contemplated in the County’s Notice of Violation, which was issued more than six years ago.**

Permit-Specific Condition No. 18 of the local CDP No. RCDP-201400001 required the applicant to participate in a mitigation program intended to mitigate the effects of unpermitted nest removal from within the Mariner’s Village apartment complex grounds. The program required the planting of one 48-inch box tree for each tree from which nests were removed, for a total of four trees, to be planted within Yvonne B. Burke Park, which is a linear park located approximately one mile northeast of the area where the nests were removed. The mitigation program required a five-year monitoring program, and the applicant was responsible for the full cost of the mitigation program up to an amount not to exceed \$56,000.00.

According to the County’s staff report, as a means of mitigating the removal of 11 nests (presumed to have been great blue heron nests), the County required the planting of one tree off-site for each tree from which nests were removed to ensure adequate nesting habitat would continue to exist. The County’s rationale, as articulated in its staff report for requiring the trees to be planted in Yvonne B. Burke Park, was that “the placement of the new trees will complement the character of the existing Park” and “will not disrupt any of the recreational activities that occur within the Park.” This characterization is contrary to the LUP which establishes the primacy of habitat values over recreational uses. Furthermore, the County’s findings state “the provision of additional nesting habitat is a key component to maintaining healthy populations of marine organisms.” However, the staff report lacked sufficient findings to support the proposed mitigation location as being a potentially successful location for colonial waterbirds. Thus, this contention raises a substantial issue.

**Appellants Contention No. 3: The findings in the staff report do not support the County’s conclusion that since no trees were removed, no harm was done to the habitat.**

The appellants contend that the County erred in concluding that no impacts to habitat occurred from the nest removal based on nesting surveys conducted from the following year and that since the trees remain intact, they still provide suitable nesting habitat. However, great blue herons will reuse existing nests (which can weight up to 50

pounds) because they require so much time and energy to build.<sup>3</sup> If the birds are required to build nests from scratch each season, they do not likely have the energy to produce as many offspring during the mating season. Therefore, removing their nests destroyed a very important component of their habitat.

Furthermore, the County adopted Tree Trimming Policy No. 34 in 2012, which mandated that the County conduct nesting surveys to inform their tree trimming and pruning permit process. However, no nesting survey was conducted for 2013, so there was no nesting data to rely on to determine what the impacts were from the nest removal. Therefore, this contention raises a substantial issue.

**Appellants Contention No. 4: The County and E&S Ring Management Corporation continue to over-trim the trees suitable for nesting and roosting by colonial nesting birds, thereby reducing tree canopy coverage that is necessary for nesting.**

The appellants contend that the landowner and lessee continue to approve excessive pruning and thinning of nesting trees that negatively impacts colonial water birds, specifically the great blue heron, that needs sufficient cover in the canopy of the trees in order for the nesting site to retain its suitability. The local CDP is limited to authorizing the specific project that was approved and does not approve other pruning and thinning or set general policies that apply to such work in Marina Del Rey. Thus, this contention does not raise a substantial issue with regard to the locally-approved project. However, Commission staff is reviewing how the County is implementing and enforcing its tree trimming policies.

**Additional Issues Raised by Appellants:**

The appellants also raise additional concerns, not as grounds for an appeal but as issues that should be considered during the de novo review of this application if the Commission finds substantial issues exist for the foregoing reasons detailed above.

The appellants request that fines be leveled against E & S Ring Management Corporation for the ecological damage caused by the violations, the cessation of trimming of all trees suitable for great blue heron nesting, tall mature trees be planted along Northwest Passage where 8 nests were removed, require tall mature eucalyptus and coral trees to be planted at Yvonne B. Burke Park for great egrets and snowy egrets to potentially return and colonize, and adopt a policy for no trimming of trees where nests exist, and require no removal of nests year round for all philopatric birds (those that return to the same nest again).

---

<sup>3</sup> The Cornell Lab of Ornithology, Birds of the World <https://birdsoftheworld.org>

## **E. SUBSTANTIAL ISSUE – FIVE FACTORS**

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue or not confirms that the appeal does raise a “substantial issue” per Section 30625(b)(2).

### **The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the certified LCP.**

The County determined that no habitat impacts resulted from the nest removal as no birds were harmed because the nests were unoccupied and removed outside of the typical nesting season, and the trees themselves were not removed and remain in place today. However, pursuant to LCP Policy No. 34, nests may only be removed for specific reasons, including health and safety, if they have not been used in five years, or some type of emergency situation. Neither the County nor the applicant provided evidence that the nests met any of the criteria which would allow them to be removed. Thus, there is a lack of factual and legal support for the County’s decision to permit removal of the nests, and this factor supports a finding of substantial issue.

### **The extent and scope of the development as approved or denied by the local government.**

The County’s decision resulted in the after-the fact approval of removal of 11 nests, which cannot be authorized pursuant to the policies of the County’s LCP. The CDP required a mitigation plan, but this plan does not adequately address the impacts for the removal of the nests. The applicant’s action and the County’s approval of those actions may adversely impact bird species that the tree trimming policies were designed to protect. The development approved by the County is nevertheless relatively minor in scope, so this factor weighs against a finding of substantial issue.

### **The significance of the coastal resources affected by the decision.**

In southern California, there has been a significant decline in wetland and coastal habitat and many such areas have been replaced by marinas or otherwise reduced due to urban development and encroachment. As a result, many bird species have adapted to use urban landscaping, including stands of ornamental trees, in areas near wetlands, coastal waters, and other open spaces. Bird species that frequent Marina del Rey and may use urban trees and other vegetation for foraging, roosting, or nesting activities include colonial waterbirds. In particular, herons and egrets have adapted by relocating their roosting and nesting sites to stands of tall non-native pines, palms, Ficus, and coral trees within highly developed areas. These species play a key role in maintaining an ecological balance that serves to sustain the biological productivity of coastal environments and maintain healthy populations of marine and coastal species. Thus, the coastal resource affected by the County’s decision are significant, and this factor weighs strongly in favor of finding substantial issue.

**The precedential value of the local government’s decision for future interpretations of its LCP.**

Prevention and/or minimization of adverse impacts to significant coastal resources is an important issue not only to the County, but throughout the State. As expressed in the LCP, colonial-nesting water birds are important biological resources. The local approval contradicts the entire purpose of the tree trimming policies, which is to protect nesting birds and nesting trees from degradation. To allow this local permit to stand would set a negative precedent for the interpretation of the Marina del Rey LCP and Commission interpretations of the Coastal Act. Thus, substantial issue is supported by this factor as well.

**Whether the appeal raises local issues, or those of regional or statewide significance.**

For the reasons stated above, protection of coastal bird species and their habitat are primarily issues of local significance, however allowing the unpermitted destruction of bird nests that would potentially have been used again is ultimately destruction of habitat, which is an issue of statewide significance. This final factor also weighs in favor of finding substantial issue.

**Conclusion**

In conclusion, the appeal contentions raise substantial issues as to whether the County-approved project is consistent with the certified LCP. Factual and legal support for the County’s decision to approve a coastal development permit for the proposed development is lacking, the coastal resources affected by the decision are significant, there is the potential for setting an adverse precedent regarding approving nest removal without a permit and destroying habitat for colonial waterbirds is a statewide issue. Given that all of these factors support a finding of substantial issue, the Commission finds that a substantial issue exists with regard to the contentions raised in the appeal.



## VI. MOTION AND RESOLUTION - DE NOVO PERMIT

### Motion:

*I move that the Commission approve Coastal Development Permit Application No. A-5-MDR-19-0217 pursuant to the staff recommendation.*

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

### Resolution:

*The Commission hereby approves Coastal Development Permit Application No. A-5-MDR-19-0217 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.*

## VII. STANDARD CONDITIONS

This permit is granted subject to the following 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions

of the permit.

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

## VIII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Mitigation Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director two (2) sets of final site plans that substantially conform with the plans received by the Commission on June 23, 2021, but shall be revised to include the following:
  - A. The location of one nesting platform to be re-located from Oxford Basin to within the rip-rap of the UCLA property as depicted in **Exhibit 9**.
  - B. The location and types of trees shall be revised to include three Tecate cypress trees to be planted in Oxford Basin and two Monterey Cypress trees to be planted at Burton Chace Park.

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

2. **Tree Planting Plan and Monitoring Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, a tree planting plan and monitoring program prepared by a qualified arborist, which specifies the required tree species, tree locations, tree planting specifications, and a ten-year monitoring program with specific performance standards to ensure that the tree planting is successful. Five 24-inch box trees (three Tecate cypress trees and two Monterey cypress) shall be planted in the locations consistent with the site plan received by our office on June 23, 2021 (i.e. three Tecate cypress at Oxford Basin and two Monterey cypress at Burton Chase Park). An annual monitoring report on the trees shall be submitted for the review and approval of the Executive Director for 10 years. If monitoring indicates one or more of the trees have died or have failed to meet the performance standards specified in the monitoring program approved pursuant to this permit, the applicant shall submit a revised or supplemental plan to replace

any dead trees or treat any dying or diseased trees for the review and approval of the Executive Director.

**3. Nesting Poles and Platforms Construction and Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, the proposed nesting pole locations, construction plans for the nesting poles and platforms, including plans for seeding the nest platforms with appropriate nesting material, and a monitoring plan that includes the following:

- A. Breeding and nesting activity observations at the nesting poles once a month starting December 15<sup>st</sup> (wading birds begin courtship and nest building activities in December and their breeding and nesting season ends August 31). If no breeding or nesting activity is observed by May the monthly observations can end for that respective year. However, if a pair of birds has established a nest, monthly observations shall continue. Breeding and nesting activity observations recorded shall include but not be limited to:
  - i. Species of birds showing interest in nesting
  - ii. Evidence of nest building
  - iii. Presence of active nesting pair
  - iv. Indication of predator activity or nest pole tampering by human
  - v. Presence of hatchlings
  - vi. Number of chicks successfully fledged
- B. Annual monitoring report submitted to the Executive Director by December 15<sup>th</sup> of each year that includes all of the breeding and nesting activity observations collected that year and any adaptive management suggestions to improve the nesting pole and platform success such as pole maintenance needs, additional nest material seeding, etc.
- C. Final monitoring report submitted to the Executive Director by December 15<sup>th</sup> of the 5<sup>th</sup>? year of monitoring. The final reports shall evaluate the success of the nesting poles and platforms and provide suggestions to either maintain or improve the success into the future.

**4. Contractor Education Program.** Prior to commencement of trimming activities, the project biologist shall conduct an onsite meeting with the landscape contractor to inform landscaping crews of biological resources of concern at the site, avoidance measures, removal limits and methods, and any materials relevant to the Tree Trimming Plan. The permittee shall ensure that the landscape contractor understands and agrees to observe the standards for work outlined in these Special Conditions and any deliverables.

**5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- B. The permittee shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the stream is protected from sedimentation.
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with

demolition or construction activity, shall be implemented prior to the on-set of such activity

- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**6. Conformance with the Requirements of the Resource Agencies and Local Agencies.** Prior to construction, the permittee shall obtain all required permits and/or approvals of the California Department of Fish and Wildlife, California State Water Quality Control Board, Regional Water Quality Control Boards, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of sensitive species, as well as the County of Los Angeles. The permittee shall comply with all permit conditions and mitigation measures imposed by state and local agencies with respect to the proposed development. Any change to the approved project that is required by any of 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.

## **IX. FINDINGS AND DECLARATIONS – DE NOVO PERMIT**

Note: The Findings and Declarations in the Substantial Issue section of this staff report are hereby adopted by reference into the Findings and Declarations for the De Novo Permit.

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

In order to mitigate and address violations of the Coastal Act and Marina del Rey LCP related to the removal of 11 unoccupied nests, Commission staff recommended that the applicant submit a coastal development permit application to create and enhance nesting opportunities and habitat for colonial waterbirds (as addressed more fully in the Unpermitted Development section below). The proposal before the Commission is 1) the erection of two nesting poles in the northeast bank of Oxford Basin, each accommodating three nesting platforms<sup>4</sup> for a total of six; 2) the planting of five Tecate Cypress (*Hesperocyparis forbesii*) trees; three in Oxford Basin and two on the western end of Burton Chace Park; and 3) the removal of existing concrete debris from Ballona Lagoon Canal to improve foraging habitat for wading birds in the area (**Exhibits 6 & 7**). The installation of nesting platforms and planting of trees are proposed in Marina del Rey, while the proposed concrete debris removal is proposed to occur in Ballona Lagoon, which is outside of the jurisdiction of the Marina del Rey LCP and is within Venice in the City of Los Angeles.

---

<sup>4</sup> A nesting platform is an artificial nesting structure utilized by various types of birds, including double-crested cormorants, egrets, great blue herons, black-crowned night herons.

Marina del Rey is located in the southwestern portion of Los Angeles County, southeast of Venice and north of Playa del Rey. The community is surrounded by development to the north and west, and the Ballona Wetlands Ecological Reserve to the east and south. The 804-acre community includes 401 acres of developed land and 403 acres of water. Ballona Lagoon is located in the Venice Peninsula area of the City of Los Angeles, adjacent to the Marina del Rey entrance channel.

The nesting platforms are proposed to be installed within existing planted vegetation in the northeast bank of Oxford Basin, which is a tidally-influenced basin owned and operated by the Los Angeles County Flood Control District approximately 1 mile northwest of the Mariner's Village apartments where the nests were removed ([Exhibit 6](#)). The poles will be approximately 30-feet high above grade, with approximately 10-feet buried beneath the soil surface with a 10-inch base diameter. Each pole will support three nest platforms, which will be installed at approximately 4-foot intervals and staggered at 180 degrees, similar to the plans outlined by the Northern Prairie Research Center shown in [Exhibit 8](#). Three Tecate Cypress (*Hesperocyparis forbesii*) trees will be planted within an existing stand of trees composed of a mix of Ficus, pepper, eucalyptus, pine, corral, and palm trees.

Additionally, two Tecate Cypress (*Hesperocyparis forbesii*) trees are proposed to be planted in Burton Chace Park, at the end of Mindanao Way, which is located approximately half a mile to the northeast of the Mariner's Village complex, across the main channel of the marina. The area selected is on the west side of the park, adjacent to the open water of the marina and a fish cleaning station.

Finally, the applicant proposes to remove approximately 10 cubic yards of concrete debris along the western bank of the Ballona Lagoon, which is located approximately a quarter of a mile to the southwest of the Mariner's Village complex at Yawl Street utilizing a long-reach excavator from the top of the slope. Concrete debris will be picked up by the excavator and deposited into a "low-boy" trash bin also located on Yawl Street. The applicant estimates that equipment staging, debris removal, and equipment retrieval will take an estimated three to five days.

## **B. Standard of Review**

### **Marina del Rey**

In 1984, the Commission certified the County's Land Use Plan portion of the Marina Del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of undeveloped land, which was a portion of the County's LCP area located south of Ballona Creek and east of Lincoln Boulevard (known as Area B and C). Subsequent to the City's annexation, the City submitted the identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original

County LCP area. The Commission certified the LUP for the annexed area with suggested modifications on December 9, 1986.

On September 12, 1990, the Commission certified an Implementation Program pertaining to the existing marina, with suggested modifications. The undeveloped area in the County, Playa Vista Area A was segmented from the marina and no ordinances were certified for the area. After accepting the suggested modifications, the Commission effectively certified the Marina del Rey LCP.

### **Venice, City of Los Angeles**

The proposed concrete removal is located within the Commission's retained jurisdiction within the Venice segment of the City of Los Angeles. While there is a certified LUP for Venice, the portion of the project proposed within Ballona Lagoon is governed by Chapter Three of the Coastal Act, and the Venice Land Use Plan may be used as guidance.

## **C. Biological Resources**

Subsection 4.a. of the Marine and Land Resources Section of the Marina del Rey LUP incorporates by reference the following relevant Coastal Act Sections:

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

### **Nesting Platforms and Trees in Oxford Basin**

As discussed, in order to provide nesting opportunities for colonial waterbirds as mitigation for the subject nest removal, the applicant is proposing to erect two nesting poles within existing vegetation on the northeast bank of the flood control basin (each with three nesting platforms), and plant three Tecate Cypress trees within an existing stand of trees between a housing community and bicycle path in a green space area in Oxford Basin ([Exhibit 6](#)). The poles are proposed to be erected in the northeast bank and incorporates a design that has been successful in recruiting breeding for great blue herons and other colonial nesting birds for at least forty years.

According to the County LCP, Oxford Basin is a tidally-influenced basin owned and operated by the Flood Control District that has been dedicated as a Bird Conservation Area. It was selected by the applicant because there is an existing stand of trees in this area composed of a mix of Ficus, pepper, eucalyptus, pine, corral and palm trees. Gaps in the canopy provide adequate space for three Tecate Cypress to be planted and grow to full maturity unimpeded, which will serve to elevate the canopy, providing a better vantage point for roosting and nesting herons. This stand is at the edge of an established nesting area which historically saw higher use (prior to reconstruction in 2015). Some nesting does continue in this area, but more distant from the basin since the basin is now more exposed from some vegetation removal. However, the basin is one of three areas known to provide some of the most important foraging for herons and egrets<sup>5</sup> and provides prime foraging opportunities for wading birds and a variety are found foraging and roosting there on any given day. Therefore, providing suitable trees and platforms in this area is expected to enhance the habitat value for nesting in a location where these birds are already spending much of their time. Furthermore, the areas at Oxford Basin proposed for tree planting and platform installation are also more protected than other sites since the platforms would be inside a fenced area away from public use and the trees would be located away from roads/vehicle traffic and in a lower use portion of the park.

The Commission recently approved bird nesting platforms in Long Beach to mitigate for impacts to great blue heron nesting habitat in March 2021 (CDP No. 5-21-0060-W). A report prepared by Hamilton Biological, Inc., *Preliminary Report on City of Long Beach Nesting Structures for Herons, March 9, 2020* in that case utilized the following criteria based on observations of numerous great blue heron nesting colonies along the coast of southern California to select potential sites for the nesting structures:

- Site must be over, or close to, open water
- Site must not place the nesting herons in substantial conflict with existing or potential future human uses in the area where the structures would be established.
- Site must be accessible to vehicles for purposes of installation and maintenance.

---

<sup>5</sup> Hamilton, F.A., and D.S. Cooper. 2010. *Conservation and Management Plan for Marina del Rey, Los Angeles County, California*. September 16.



- Site should be in or near an existing Marine Biological Reserve or mitigation area with pre-existing commitments from the [landowner] to preserve and maintain the site for biological resources.

To analyze the potential suitability for the proposed platform locations, Commission staff has applied these same criteria in this case since Long Beach and Marina del Rey both contain large recreational harbors that support colonial waterbirds. In this case, the proposed nesting platform locations are close to open water adjacent to Oxford Basin and are also more protected than other sites because the platforms would be inside a fenced area away from public use and the trees would be located away from roads/vehicle traffic and in a lower use portion of the park. Furthermore, the site can be accessed by vehicles for purposes of installation and maintenance via the Marvin Braude Bike Trail. Finally, the site is adjacent to Oxford Basin which, according to the Marina del Rey LUP, is “an area currently favored by many species that does not have significant human/bird conflicts. The basin must be managed carefully for its wildlife habitat values, along with providing for flood protection and water quality improvement. Levels of passive recreation and other non-essential human uses should not conflict with these main purposes.” In addition, Oxford Basin is approximately one mile northwest of the Ballona Ecological Reserve owned by the State of California. Both of these sites maintain commitments from their landowner to preserve and maintain the site for biological resources.

When the applicant was deciding what types of trees to propose to plant as mitigation for the nest removal, several options were discussed with Commission staff. Initially, one of the types of trees proposed was the Monterey pine (*Pinus radiata*) because it is native to California and is utilized by colonial nesting waterbirds. However, the County’s tree expert at that time had concerns about the existing Monterey pines in the marina, as they were succumbing to beetle infestations and were therefore in decline. Since the pine beetles are opportunistic and often infest trees that are vulnerable due to disease or stress such as from drought, his opinion was that Monterey pines being native to the central coast were not well adapted to hot summer climates of Southern California or drought conditions. Instead, the applicants proposed to plant Tecate Cypress (*Hesperocyparis forbesii*) because they determined it was better suited to our Mediterranean climate, would be more resistant to potential future droughts, and is included in the Southern California coastal section of the UC Climate Ready Trees Study.<sup>6</sup> In addition, the County had evidence of such trees thriving in the Marina. Given this supporting information, Commission staff agreed Tecate cypress trees would be an adequate alternative.

### **Trees in Burton Chace Park**

Burton Chace Park is a 10-acre park located on the east side of the main channel of the Marina. The applicant proposes to plant two Tecate Cypress trees at the far end of the

---

<sup>6</sup> <https://climatereadytrees.ucdavis.edu/>

park at the end of Mindanao Way. Although there are higher-use areas of the park, the proposed location at the end of the park and immediately adjacent to the water is likely to result in fewer user conflicts and provides a prime vantage point of the harbor for roosting and nesting birds and will expand the waterside tree canopy on the west side of the marina. In 2020, at the east end of the park adjacent to the boathouse, a eucalyptus tree contained a double-crested cormorant nesting colony.

The week prior to publication of this staff report, Commission staff met with members of the public, including the appellants of the underlying local CDP, who were concerned that the proposed platform locations and types of trees proposed as mitigation for nest removal would not adequately provide nesting opportunities for great blue herons. Specifically, they objected to the nesting platforms and trees being installed in Oxford Basin since great blue herons are not currently nesting there and typically nest where other herons are nesting. Similarly, they objected to trees being planted in Burton Chace Park because great blue herons are not currently nesting in the vicinity. In addition, they were concerned that Tecate cypress trees would not grow tall enough at maturity (approximately 33-feet high) or be strong enough to support great blue herons, because great blue herons prefer taller trees that grow to be approximately 60-90 feet tall at maturity.

In order to specifically provide nesting opportunities for great blue herons, they suggested that the nesting platforms be located closer to trees where great blue herons are actively nesting such as within Mariner's Village, across the main channel at the U.S Coast Guard Station, or the UCLA Marina Aquatic Center. In addition, they requested that the taller Monterey Pine trees (approximately 160-feet tall at maturity) be utilized as an alternative to the Tecate cypress trees proposed because great blue herons prefer taller trees for nesting.

While Commission staff is confident that the proposed locations for nesting platforms and proposed types of trees are appropriate, in an effort to provide a mitigation plan that provides a more diverse mix of habitat that would be more attractive to various types of colonial waterbirds, Commission staff is recommending that one of the nesting platforms be relocated to the north side of Ballona Creek near the UCLA Marina Aquatic Center as shown in [Exhibit 9](#), and the two trees proposed for Burton Chace Park be Monterey cypress (*Cupressus macrocarpa*) to provide a mix of nesting opportunities and habitat for several types of colonial waterbirds. Since the mitigation plan will need to be updated to reflect this change, Commission staff is recommending **Special Condition 1**.

### **Concrete Removal from Ballona Lagoon**

Ballona Lagoon is located in the Venice Peninsula area of the City of Los Angeles, adjacent to the Marina del Rey entrance channel. The lagoon is an artificially confined tidal slough connecting the Venice Canals to the Pacific Ocean via the Marina del Rey harbor entrance channel. In order to restore foraging habitat for colonial nesting waterbirds in the area, the applicant is also proposing to remove approximately 10 cubic

yards of concrete debris from the west bank of Ballona Lagoon near the end of Yawl Street to make more of the muddy bank available for wading bird foraging ([Exhibit 7](#)). As stated above, Ballona Lagoon is located outside of Marina del Rey in Venice, within the City of Los Angeles. In the portion of the lagoon at the end Yawl Street, there is an existing permanent open space and conservation easement recorded over the property and held by the City of Los Angeles as required in Coastal Development Permit Nos. A-5-VEN-01-279 & 5-01-257. These permits allow for “subtidal and intertidal habitat maintenance and the preservation of the natural and scenic character of the easement” which Commission staff believes allows for ongoing maintenance of the subtidal and intertidal habitat to include removal of the concrete debris. Thus, because the concrete removal is within the Commission’s retained jurisdiction and the Commission has already permitted ongoing maintenance of this part of the lagoon, a CDP from the City of Los Angeles to authorize this work is not necessary.

The applicant’s proposed Mitigation Plan has been reviewed and preliminarily approved by Commission staff, and is recommending the two trees proposed to be planted in Burton Chace Park are changed to Monterey cypress, and one of the nesting poles is relocated from Oxford Basin to the north side of Ballona Creek near the UCLA Marina Aquatic Center consistent with [Exhibit 9](#), and final approval of all aspects of the Habitat Restoration Plan must still be made, therefore, **Special Condition 1** requires the applicant to submit a revised Mitigation Plan for review and approval by the Executive Director, prior to issuance of the coastal development permit. **Special Conditions 2 and 3** require biological monitoring of the project. **Special Condition 4** requires project biologist to conduct an onsite meeting with the landscape contractor to inform landscaping crews of biological resources of concern at the site, avoidance measures, removal limits and methods, and any materials relevant to the Tree Trimming Plan to avoid future nest removal incidents. **Special Condition 5** requires the applicant to comply with all permit requirements of applicable resource agencies. As conditioned, the Commission finds that the proposed development complies with the habitat protection, preservation, and restoration policies in the County’s LCP and the Coastal Act.

#### **D. Public Access and Recreation**

Subsection A.1.a. of the Shoreline Access Section of the Marina del Rey LUP incorporates by reference the following relevant Coastal Act Sections:

##### **Section 30210 of the Coastal Act states:**

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

##### **Section 30211 of the Coastal Act states:**

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

**Section 30212 of the Coastal Act states:**

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
  - (2) adequate access exists nearby, or
  - (3) agriculture would be adversely affected. Dedicated access way shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way.
- (b) For purposes of this section, "new development" does not include:
- (1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.
  - (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.
  - (3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.
  - (4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.
  - (5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

- (c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are

required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

The proposed project will not change any aspects of public access adjacent to the proposed project locations, therefore, the project is consistent with Marina del Rey LCP and Sections 30210, 30211, and 30212 of the Coastal Act.

## **E. Water Quality**

Subsection 4.b. of the Marine and Land Resources Section of the Marina del Rey LUP states the following:

Policy 4.5. All new development or redevelopment shall be designed to minimize erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Development or redevelopment shall minimize land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

Subsection 4.a. of the Marine and Land Resources Section of the Marina del Rey LUP incorporates by reference the following relevant Coastal Act Sections:

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The proposed installation of nesting platforms and tree planting include measures to minimize the effect that these activities will have upon the marine environment. **Special Condition 5** requires the applicant to adhere to Best Management Practices related to erection of the nesting poles. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act and the relevant policies of the Marina del Rey LCP.

## **F. Local Coastal Program**

### **Marina del Rey**

In 1984, the Commission certified the Land Use Plan portion of the Marina del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of undeveloped land, which was a portion of the County's LCP area located south of Ballona Creek and east of Lincoln Boulevard (known as Area B and C). Subsequent to the City's annexation, the City submitted the identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original County LCP area. The Commission certified the Land Use Plan Amendment for the annexed area with suggested modifications on December 9, 1986. The County also resubmitted those portions of their previously certified LUP that applied to areas still under County jurisdiction, including the area known as Area A and the existing marina. The Commission certified the County of Los Angeles' revised Marina del Rey Land Use Plan on December 9, 1986.

On September 12, 1990, the Commission certified an Implementation Program pertaining to the existing marina, with suggested modifications. The undeveloped area in the County, Playa Vista Area A was segmented from the marina and no ordinances were certified for the area. After accepting the suggested modifications, the Commission effectively certified the Marina del Rey LCP.

## **G. Unpermitted Development**

Violations of the Coastal Act and LCP have occurred on the subject properties including, but not necessarily limited to, removal of 11 nests for colonial nesting water birds. In 2014, the County notified the lessee of the subject properties that the removal of nests constituted violations of the LCP and directed the lessee to work with the County to resolve the violations. In 2014, the lessee submitted an application to the County for a CDP to authorize the nest removal after the fact. For several years after submittal of the application, the applicant surveyed bird nesting at the site in order to help quantify the impacts of the violations on coastal resources. In 2019, the County approved a local CDP to authorize the nest removal after the fact. Commission staff

notified the County of its concerns that it appeared that the approval was not consistent with the LCP and that the proposal did not adequately mitigate the resource impacts of the violations or resolve the violations. Commission staff have worked with the County to revise the project to include additional mitigation measures, as well as revised mitigation measures, to best address the resource impacts that have resulted from the violations.

Approval of this application pursuant to the staff recommendation will require the applicant to install 2 nesting platforms and 5 trees, which will, collectively, provide more nesting opportunities for colonial nesting water birds than the 11 nests that were removed. In order to fully resolve the violations, the applicant will also, pursuant to the terms of this permit, enhance wading bird habitat in the Ballona Lagoon, in close proximity to the site of the violations. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described herein.

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

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

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

The Los Angeles County Department of Regional Planning is the lead agency for the purposes of CEQA review. On October 31, 2014, the County found the project to be exempt pursuant to CEQA Guidelines section 15301 (Class 1 Existing Facilities Categorical Exemption).

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the

proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.