

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802
(562) 590-5071



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STAFF REPORT: PERMIT AMENDMENTS

Application Nos.: 5-15-1064-A1, 5-15-1065-A1

Applicant: Los Angeles County Flood Control District (LACFCD), Attn: Steven Sheridan, Nandini Moran

Location: Ballona Creek Soft-bottom Channel (SBC) Reach 112, Marina Freeway (CA-90) to Pacific Avenue, City of Los Angeles, Los Angeles County (APNs: 4116035900, 4211007012, 4211007030, 4211007036, 4211007916, 4211007917, 4211007918, 4211007919, 4211015903, 4211015904, 4211016902, 4211016903, 4211017900, 4211017901).

Description of Amendments: Reauthorization of long-term routine maintenance of a flood control channel segment in the coastal zone.

Original Project Description: Long-term routine, minimal impact maintenance plan for an existing concrete-sided and soft-bottom flood control channel segment within the coastal Zone. The proposed project consists of trash, debris, non-native/invasive and sparse woody vegetation removal, and minor structural repairs throughout the riverside slopes of each channel reach.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The Los Angeles County Flood Control District (LACFCD) requests an amendment to reauthorize the long-term routine maintenance of the Ballona Creek Soft-Bottom Channel (SBC) Reach 112 ([Exhibit 1](#)). The northern banks of the channel are located within the Marina Del Rey area, County of Los Angeles; the southern banks of the

channel are within the City of Los Angeles. The lower channel section of Reach 112 is located within the coastal zone and extends seaward of the Marina Freeway (CA-90) to Pacific Avenue.

LACFCD holds an easement interest in and operates the subject portions of the flood channel, and a Commission coastal development permit (CDP) approval is required to carry out any structural or vegetation maintenance activities. The standard of review for these projects are the Chapter 3 policies of the Coastal Act. In accordance with the 2015 permit approvals, the applicant is proposing to remove trash, debris and non-native/invasive vegetation from within the flood control channel, and where applicable, the riverside slopes (levee slopes facing the river) and the landside slopes (slopes facing the public right-of-way). The proposed amendments would reauthorize the use of various methods for trash, debris, and non-native/invasive vegetation removal, such as hand-held mechanical tools and through mechanized land-clearing activities. The proposed amendments would also reauthorize structural repairs on an as-needed basis, including filling voids in the riverbanks, slope repairs for erosion control, and other in-kind repairs to restore the flood control channel and its appurtenant structures to the as-built condition. The stated purpose of the proposed project is to maintain the designed flood carrying capacity of the channel for flood prevention purposes.

The applicant is proposing to maintain the channel on a continuous, as-needed basis and as part of an overall, long-term soft-bottom channel maintenance program. The applicant has previously requested, and is still hopeful, that the coastal development permit (CDP), as would be amended, be granted by the Commission in perpetuity. However, for maintenance activities that are not exempt and have the potential to adversely impact coastal resources if not carried out with appropriate best management practices and monitoring, it is appropriate to limit the term of approval. Site conditions and practices must be periodically reviewed to ensure that maintenance activities are in compliance with the Chapter 3 policies of the Coastal Act. Substantive changes must come back to the Commission for review as another amendment or a subsequent permit. Therefore, staff recommends that the Commission retain **Special Condition 1** limiting the CDP to a five (5) year duration period from date the permit amendments are approved by the Commission. Any further deviations from the approved scope of the CDP amendments would require approval by the Executive Director or the Commission, as appropriate; for future terms of authorization, the applicant must also return to the Commission for review and approval.

Large populations of bulrush and cattails are located in the portions of the channel below Lincoln Boulevard (SR-1). Maintenance activities for this part of the channel include annual trimming of the bulrush and cattails down to six inches above the height of the grouted riprap. The bulrush and cattails would not be allowed to expand past their July 2015 boundaries as previously approved by the Commission. The roots that have expanded past the July 2015 boundaries would be removed annually. Trash, debris, and non-native vegetation would be cleared by hand within LACFCD's easement boundaries. Only hand and/or hand-held mechanical equipment would be used to maintain the portions of this Reach where marsh habitat occurs.

The applicant does not currently propose to apply herbicide within the subject Reach. In May 2019, the Los Angeles County Board of Supervisors restricted the use of glyphosate at all County facilities. Accordingly, LACFCD does not authorize the use of herbicides but states that future authorization may be sought if in accordance with regulatory permits. In recent actions, the Commission has made findings acknowledging the potential adverse impacts of herbicide use in riparian habitats, while still recognizing that chemical methods, including glyphosate-based herbicides, are still among the most effective, safest, and least expensive methods available for the control and management of non-native and invasive vegetation. In order to better reflect the best available science, staff is recommending the Commission amend requirements in **Special Condition 4** to further detail the applicability and appropriateness of herbicide use, with emphasis that herbicides shall be used as a last resort as part of an Integrated Pest Management Control Plan alongside feasible physical, mechanical, cultural, and biological control methods.

Finally, within this Reach, the City of Los Angeles is the primary permitting authority, and in recognition of its jurisdiction, staff is recommending the Commission imposes **Special Condition 9** to ensure that conditions imposed by the City of Los Angeles pursuant to an authority other than the Coastal Act remain in effect, and that in the event of conflict between the terms and conditions imposed by the City of Los Angeles and those of this coastal development permit (as amended), the terms and conditions of the coastal development permit (as amended) shall prevail.

Staff recommends that, as conditioned, the Commission find the proposed projects consistent with the resource protection policies of the Coastal Act. Therefore, staff recommends **APPROVAL** of the amendment requests, as conditioned, to ensure that the applicant continues the long-term maintenance of the flood control channel segments in the coastal zone in a diligent manner that complies with the previous permit approvals. The motion and resolution can be found on Page 5.

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

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

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166. The project is a substantial change from that previously approved. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

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EXHIBITS

[Exhibit 1 – Project Locations](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – List of Maintenance Activities](#)

[Exhibit 4 – Before and After Photos of Channels](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the proposed amendments to Coastal Development Permits to 5-15-1064 and 5-15-1065 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves coastal development permit amendments on grounds that the development, as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD AND SPECIAL CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to these permits, as approved by the Commission in its original actions and modified and/or supplemented by all subsequent amendments, including these Amendments 5-15-1064-A1 and 5-15-1065-A1. All of the Commission's adopted special conditions, and any changes in the project descriptions proposed by the permittee and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendments 5-15-1064-A1 and 5-15-1065-A1 are shown in the following section. Appendix B includes all adopted special conditions, as amended.

Unless specifically altered by these amendments, all regular and special conditions attached to Coastal Development Permits 5-15-1064 and 5-15-1065 remain in effect. Language to be deleted is shown in ~~**bold strikeout**~~ and new language is shown in **bold, underlined**. Typographical and formatting errors have been corrected for consistency, and references to specific amendments are noted in [brackets].

- 1.) [Special Condition 1 imposed under CDPs 5-15-1064 and 5-15-1065 remains unchanged.]
- 2.) [Special Condition 2 imposed under CDPs 5-15-1064 and 5-15-1065 remains unchanged.]
- 3.) [Special Condition 3 imposed under CDPs 5-15-1064 and 5-15-1065 remains unchanged.]
- 4.) [The special condition titled “Herbicide Use and Native Vegetation Delineation” imposed under CDP 5-15-1065 is renumbered as **Special Condition 4** and amended as follows:]

4. Herbicide Use and Native Vegetation Delineation. Herbicide use within the flood control channel shall be restricted to the use of AquaMaster™ Herbicide **(or other herbicides suitable for aquatic environments subject to the review and written approval of the Executive Director)** for the elimination of non-native and invasive vegetation for purposes of habitat restoration and flood control. The environmental resource specialist shall conduct a survey of the project site each day prior to commencement of vegetation removal and eradication activity involving the use of herbicide to determine whether any native vegetation is present. Native vegetation shall be clearly delineated on the project site with fencing or survey flags and protected.

In the event that non-native or invasive vegetation to be removed or eradicated is located in close proximity to native riparian vegetation or surface water, the applicant shall **either:** (a) **first**, remove non-native or invasive vegetation by hand, ~~or~~ (b) **where non-native or invasive vegetation remains, utilize low-impact mechanical removal methods, and (c) if herbicide is used,** utilize a plastic sheet/barrier to shield native vegetation or surface water from any potential overspray that may occur during use of herbicide. **Herbicide shall be used as a last resort and as part of an Integrated Pest Management Control Plan only. If herbicide is proposed to be used, the applicant shall demonstrate that the use of non-chemical (physical, mechanical, cultural, and biological) control methods for prevention and management of invasive species are infeasible or ineffective, shall be applied in complete conformance to the label instructions for the intended use, shall be carried out by a licensed professional only, and shall only be applied after notifying and receiving written approval from the Executive Director.** In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.

- 5.) [The special condition titled “Timing and Operational Constraints” imposed under CDPs 5-15-1064 and 5-15-1065 is renumbered as **Special Condition 5.**]

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- 6.) [The special condition titled “Biological Monitor” imposed under CDPs 5-15-1064 and 5-15-1065 is renumbered as **Special Condition 6.**]
- 7.) [The special condition titled “Operations and Maintenance Responsibilities” imposed under CDPs 5-15-1064 and 5-15-1065 is renumbered as **Special Condition 7.**]
- 8.) [The special condition titled “Conformance with the Requirements of the Resource Agencies” imposed under CDPs 5-15-1064 and 5-15-1065 is renumbered as **Special Condition 8.**]
9. **Local Government Approval. Coastal Development Permit No. [5-15-1064-A1/5-15-1065-A1] only authorizes development in the proposed project areas within the California Coastal Commission’s permit jurisdiction. Where the proposed development is subject to the review and approval of the City of Los Angeles, this action has no effect on conditions imposed by the City of Los Angeles pursuant to an authority other than the Coastal Act. In the event of conflict between the terms and conditions imposed by the City of Los Angeles and those of this coastal development permit as amended, the terms and conditions of the coastal development permit as amended shall prevail.**

III. FINDINGS AND DECLARATIONS

A. Project Location and Description

The Los Angeles County Flood Control District (LACFCD) requests amendments to reauthorize the long-term routine maintenance of the Ballona Creek Soft-Bottom Channel (SBC) Reach 112 ([Exhibit 1](#)). The northern banks of the channel are located within the Marina Del Rey area, County of Los Angeles; the southern banks of the channel are within the City of Los Angeles. The lower channel section of Reach 112 is located within the coastal zone and extends seaward of the Marina Freeway (CA-90) to Pacific Avenue.

LACFCD holds an easement in and operates the subject portions of the flood channel, and a Commission coastal development permit (CDP) approval is required to carry out any structural or vegetation maintenance activities.

In accordance with the 2015 permit approvals, the applicant is proposing to remove trash, debris and non-native/invasive vegetation from within the flood control channel, and where applicable, the riverside slopes (levee slopes facing the river) and the landside slopes (slopes facing the public right-of-way). The proposed amendments would reauthorize the use of various methods for trash, debris, and non-native/invasive vegetation removal outside of the Ordinary High Water Mark (OHWM), such as hand-held mechanical tools and through mechanized land-clearing activities. The proposed amendments would also reauthorize structural repairs on an as-needed basis, including filling voids in the riverbanks, slope repairs for erosion control, and other in-kind repairs

to restore the flood control channel and its appurtenant structures to their as-built condition. [Exhibit 3](#) provides the list of the proposed repair and maintenance activities.

The stated purpose of the proposed project is to maintain the designed flood carrying capacity in the Ballona Creek Soft-Bottom Channel for flood prevention purposes. Heavy equipment will not be taken into the proposed project site nor placed at the bottom of the channel invert. In addition, the project will not result in any fill or impacts to the soft bottom inverts of the channel. Vegetation clearance in the channel removes channel obstructions and ensures that water velocities and channel capacities are maintained. For avoidance of native species, a qualified biologist will flag the sensitive plant species identified by federal, state, or regional agencies (determined by the California Natural Diversity Database and/or California Native Plant Society) during pre-clearing and post-clearing biological monitoring. The standard of review for these projects is the Chapter 3 policies of the Coastal Act.

B. Environmentally Sensitive Habitat and Marine Resources

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233(a) of the Coastal Act states, in relevant part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging environmental effects, and shall be limited to the following:
[...]

(4)) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

[...]

(6) Restoration purposes.

Section 30236 of the Coastal Act states that:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Sections 30230 and 30231 of the Coastal Act mandate that marine resources and coastal water quality be maintained and where feasible restored, that protection be given to areas and species of special significance, and that uses of the marine environment be carried out in a manner that will sustain biological productivity of coastal waters. Section 30236 allows for alterations to streambeds when required for flood control projects where no other less damaging alternative is feasible and when necessary to protect public safety or existing development. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources.

Sensitive Species and Habitats

As the proposed project area is within a river channel, there is always the possibility for special status species and habitats of concern to be found in the project vicinity. For instance, three special status wildlife species are expected to use Reach 112: green sea turtle (*Chelonia mydasa*) and the California least tern (*Sternula antillarum browni*). The project site lies within the Ballona Wetlands Ecological Reserve and provides a

native salt marsh habitat that is used as a breeding ground by many marine and terrestrial organisms. The saltwater marsh vegetation occurs along the banks, which are composed of riprap with small stones ([Exhibit 2](#)), and are located mainly in the lower portions of the channel below Lincoln Boulevard (SR-1).

Large populations of bulrush and cattails are found in the saltwater marsh habitat. Maintenance activities for this part of the channel includes annual trimming of the bulrush and cattails down to six inches above the height of the grouted riprap. The bulrush and cattails would not be allowed to expand past their July 2015 boundaries as previously approved by the Commission. The roots that have expanded past the July 2015 boundaries would be removed annually. Trash, debris, and non-native vegetation would be cleared by hand within LACFCD's easement boundaries. Only hand and/or hand-held mechanical equipment would be used to maintain the portions of this Reach where marsh habitat occurs.

The types of routine maintenance activities proposed are not expected to cause substantial impacts to special status species or sensitive habitat areas, as shown in the applicant's submitted photographs taken before and after routine maintenance under the original permits ([Exhibit 4](#)). BonTerra Psomas (2013, 2014, 2021), biological consultants, identified portions of the salt marsh habitat within the channel as disturbed because the salt marsh vegetation is intermixed with non-native ruderal and invasive ornamental species. While the disturbed habitat areas are still sensitive and of special concern, less than significant impacts to protected biological and marine resources are expected due to the brief maintenance period proposed within the channel. The Commission retains requirements in **Special Condition 7** to ensure several operation staging and maintenance responsibilities are undertaken to reduce uncontrolled runoff and turbidity at each project site.

The proposed project, nonetheless, has the potential for adverse impacts without the proper minimization and protective measures. As proposed by the applicant and conditioned by the amended permits, avoidance and minimization measures will be implemented at the project site prior to and during maintenance activities associated with the project. These measures include pre-clearing and post-clearing biological monitoring by a biological monitor to flag, identify, and avoid impacts to Special Status Listed Plant Species. While disturbed communities tend to have a high percentage of non-native species, some sensitive plant species are expected to occur in these habitats, and thus the applicant is proposing mitigation for the loss of jurisdictional resources should they occur. If there are any adverse impacts to protected biological and marine resources going forward, the mitigation shall consist of enhancement and restoration of degraded jurisdictional resources at an appropriate mitigation site to replace impacted jurisdictional resources at a ratio of no less than 1:1 in biological

value, which will be determined in consultation with the Commission's biologist and other resource agencies.¹

In addition, all work is proposed to be scheduled to occur outside of bird nesting season. If it is absolutely necessary to conduct work activities during bird nesting season, a qualified biologist will conduct a nesting bird survey within 72 hours of the anticipated start date. If an active nest is found or nesting activities are observed, activities will be halted or conducted as recommended by the biological monitor to avoid any nests or minimize impact to the nesting activities.

Pursuant to **Special Condition 5**, the biological monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur or if any unforeseen sensitive habitat issues arise. If significant impacts or damage occur to sensitive species or habitat areas, the applicant shall be required to submit a revised or supplemental restoration program to adequately mitigate such impacts. The revised, or supplemental, program is required to be processed as a subsequent amendment to the coastal development permits, as amended.

Herbicide Use

The applicant does not currently propose to apply herbicide within the subject Reach. In the previous permit approvals, the Commission allowed the application of Aquamaster™ herbicide to obstructive patches of non-native and/or invasive vegetation in the creek channel during as-needed vegetation maintenance activities. The active ingredient in Aquamaster™ is glyphosate, which inhibits the synthesis of amino acids in plants and inhibits cell growth and reproduction. **Special Condition 4**, as applied to the original permits and subject to these amendments, allows the applicant to apply the glyphosate herbicide only if controlled for overspray (using shield barriers) and if paused during periods of high wind and rain. In the applicant's response dated April 8, 2022, LACFCD clarifies that authorization may be sought in the future, but only in accordance with regulatory permits and agency-approved methods of the Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife (CDFW). In such cases, the implementation of a Water Diversion Plan and other appropriate best management practices (BMPs) would be required to avoid the creation of adverse impacts to human health and marine life.

Glyphosate herbicide is currently registered by the United States Environmental Protection Agency (EPA) as a non-selective herbicide of relatively low toxicity suitable for use in wetland and riparian areas. The Glyphosate Environmental Assessment Report by the EPA dated September 1993 states:

Glyphosate is of relatively low oral and dermal acute toxicity. It has been placed in Toxicity Category III for these effects (Toxicity Category I indicates the highest degree of acute toxicity, and Category IV the lowest)...Based on current data, EPA,

¹ See Condition H for onsite mitigation of RWQCB's Certification File No. 20-100.

has determined that the effects of glyphosate on birds, mammals, fish, and invertebrates are minimal... Glyphosate adsorbs strongly to soil and is not expected to move vertically below the six inch soil layer...Glyphosate is readily degraded by soil microbes... However, glyphosate does have the potential to contaminate surface waters due to its aquatic use patterns... If glyphosate reached surface water, it would not be broken down readily by water or sunlight.

LACFCD adopted a Mitigated Negative Declaration (MND) on April 30, 2021 for the Soft-Bottom Channel Maintenance Plan for Select Reaches. The MND (Page 3-71) reports the following regarding herbicide use:

As stated in Section 3.9, Hazards/Hazardous Materials, in accordance with regulatory permits and per the Maintenance Plan, only herbicides approved for aquatic use can be used at the reaches. Condition 3 of Table 2-2 provides information regarding the agency-approved methods of herbicide application, which is pursuant to the Aquatic Pesticide Application Plan—Weed Control, an attachment to the Maintenance Plan.

The Aquatic Pesticide Application Plan—Weed Control (APAP) prepared by CDFW on March 10, 2020 further states that upon application of glyphosate herbicides:

Collect samples from a minimum of six application events for each active ingredient in each environmental setting (flowing and non-flowing water) per year, except for glyphosate. If there are less than six application events in a year, collect samples during each application event for each active ingredient in each environmental setting (flowing and non-flowing water). If the results from six consecutive sampling events show concentrations that are less than the receiving water limitations/trigger for an active ingredient in an environmental setting, sampling shall be reduced to one application event per year for that active ingredient in that environmental setting. If the yearly sampling event shows exceedance of the receiving water limitation/trigger for an active ingredient in an environmental setting, then sampling shall return to six application events for that active ingredient in each environmental setting. For glyphosate, collect samples from one application event from each environmental setting (flowing and non-flowing water) per year.

In previous actions, the Commission has allowed for the use of glyphosate herbicide (Aquamaster™) within sensitive wetland and riparian habitats when it was found that use of an herbicide was necessary for habitat restoration and that there were no feasible alternatives that would result in fewer adverse effects to the habitat value of the site.² However, the Commission notes that glyphosate herbicide, although determined by the EPA to be low in toxicity, is still toxic, as demonstrated in CDFW's APAP, and

² E.g., [CDP 4-12-064](#) (Santa Barbara County Flood Control District), [LCP-4-MAL-19-0164-3](#) (City of Malibu).

may still result in some adverse effects to wildlife when used in sensitive habitat areas such as the subject site.

In May 2019, the Los Angeles County Board of Supervisors restricted the use of glyphosate at all County facilities.³ The County's Public Works staff was instructed to convene an expert panel to explore alternatives for vegetation control. The independent Technical Committee, comprised of leading experts in the fields of integrated pest management, weed science, and (eco)toxicology, evaluated 12 alternative methods to glyphosate herbicides for eight different criteria provided by the County. The Technical Committee found that chemical methods (including glyphosate-based herbicides) are still among the most effective, safest, and least expensive methods available for the control and management of non-native and invasive vegetation. However, there are clearly times and places where herbicide use is not the most effective method, and there are various factors that all play an important role.⁴ Per the report, herbicides should be used as part of an Integrated Pest Management Control Plan alongside feasible physical, mechanical, cultural, and biological control methods. Updates to the County's Vegetation Management Plan and Integrated Pest Management Plan are likely outcomes of this study, and it may indeed be the case that LACFCD further contemplates the use of herbicides as a viable method in the near future.

Should LACFCD determine it necessary in order to accomplish the project goals and propose to use herbicide in a regulated manner in the future, the Commission recognizes that it could fall under flood control maintenance measures consistent with Coastal Act Section 30236. This section allows for the alteration of streambeds when required for flood control projects and when necessary to protect public safety or existing development. However, the Commission further notes that Section 30236 also requires that such projects shall incorporate the best mitigation measures feasible. In addition, Section 30240 of the Coastal Act requires that all development within environmentally sensitive habitat areas must be carried out in a manner designed to minimize or prevent potential adverse effects to those resources. As such, the Commission requires that flood control activities on the subject site, including herbicide application, should be carried out in the least environmentally damaging manner. In this case, alternatives exist to herbicide use during the proposed annual maintenance activities, which would reduce adverse effects to wetland and riparian habitat at the subject site, such as mechanical and hand removal of vegetation (or mowing and cutting of vegetation) within the stream channel.

In order to better reflect the best available science, the Commission amends the requirements in **Special Condition 4** to further detail the applicability and

³ [Alternatives to Glyphosate for Vegetation Management in Los Angeles County: Technical Committee Report](#) (Southern California Coastal Water Research Project, January 2020).

⁴ The report cites the type of plant, time of year, application geography and landscape, presence of non-target organisms, application method, public notification system, and climate as crucial factors in the selection of herbicides for use, especially in riparian settings.

appropriateness of herbicide use, with emphasis that herbicides shall be used as a last resort as part of an Integrated Pest Management Control Plan approach. In a previous Commission approval,⁵ Commission staff researched the suitability of various herbicides in riparian and marsh habitats in California, consulted with the California Department of Pesticide Regulation (CDPR), reviewed the label instructions, and has determined that Clearcast™ (imazamox) or Habitat™ (imazapyr) are some of the least toxic herbicides certified and registered for use in aquatic habitats in California and are also appropriate for use at the subject channel Reach. The special condition language has therefore been amended to reflect the appropriateness of use of other herbicides in aquatic environments. The selected herbicide shall be applied by a licensed professional following all necessary protocols and label instructions to avoid overspray and adverse impacts to native riparian habitat within the channel.

Authorization

In this case, the applicant is requesting re-authorization of structural and vegetation maintenance activities for a 5-year period, or longer if possible. The applicant has previously requested, and is still hopeful, that the coastal development permits, as would be amended, be granted by the Commission in perpetuity. However, the Commission does not grant such an open-ended approval for maintenance activities that are not exempt and have the potential to adversely impact coastal resources if not carried out with appropriate best management practices and monitoring. Riparian and wetland habitats on site are subject to potential changes over time as new species migrate into the area or as potential unidentified impacts may be discovered over time. For this reason, the Commission retains the requirements in **Special Condition 6** for a biological monitor onsite, who shall have the authority to require the applicant to cease work should any breach in permit compliance occur or if any unforeseen sensitive habitat issues arise.

Moreover, the Commission notes that the applicant did not submit the required Annual Routine Maintenance Activities Reports pursuant to **Special Condition 2** of the underlying CDPs, although the applicant has explained that an Annual Work Plan has been submitted to USACE, CDFW, and RWQCB each August 1 prior to maintenance activities, as well as an Annual Maintenance and Monitoring Report post-maintenance by May 1 for each Reach. The applicant has also submitted photographs taken before and after routine maintenance, which show that the impacts resulting from the maintenance activities depended on site conditions ([Exhibit 4](#)). Thus, it is crucial that the Commission continue to periodically review site conditions and practices to ensure that proposed maintenance activities are in compliance with the Chapter 3 policies of the Coastal Act. Substantive changes must come back to the Commission for review as another amendment or a subsequent permit. Therefore, the Commission retains **Special Condition 1** limiting the CDP to a five (5) year duration period from the date the permit amendments are approved by the Commission, after which time they shall

⁵ [CDP 5-20-0017](#) (City of Long Beach, Department of Public Works).

expire. Any further deviations from the approved scope of the CDP amendments would require approval by the Executive Director or the Commission, as appropriate; for future terms of authorization, the applicant must also return to the Commission for review and approval. Any flood control activities in the subject Reach after the expiration of the permits, as amended, will require the issuance of a new coastal development permit.

Further, the proposed project will involve work within streams and wetland areas and will also require approval from other agencies such as the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, U.S. Department of Fish and Wildlife, and the Regional Water Quality Control Board. Therefore, the Commission maintains requirements in **Special Condition 8** for the applicant obtain all other necessary State or Federal approvals and permits that may be necessary for all aspects of the proposed project. Additionally, **Special Condition 9** is imposed to require the applicant to comply with local government requirements (including those of the City of Los Angeles), and clarifies that in the event of conflict between the terms and conditions imposed by the City and those of the coastal development permits, as amended, the terms and conditions of the CDPs shall prevail.

Conclusion

The special conditions imposed are designed to protect the existing and potential habitat value of the subject flood control channel Reach. Therefore, the Commission finds that the development, as conditioned, does not pose significant adverse impacts which would significantly degrade habitat, is compatible with the continuance of those habitat areas and with the protection of riparian water quality and flood control, and, thus, is consistent with Sections 30230, 30231, 30233, 30236, and 30240 of the Coastal Act.

C. Coastal Hazards and Shoreline Processes

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

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

Section 30253 of the Coastal Act mandates that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard. The purpose of the proposed structural and vegetation maintenance program is to maintain the flood water

carrying capacity in Reach 112 (Ballona Creek) to reduce the likelihood of flood damage to adjacent and upstream residential areas ([Exhibit 1](#)).

The Commission notes that evidence exists that the project site is subject to potential risks due to storm waves and surges, high surf conditions, erosion, and flooding. The Commission further notes that although the proposed project is intended as flood control and will serve to reduce the potential for flooding of the developed areas immediately upland of the project site, there remains some inherent risk to any flood control project.

The Coastal Act recognizes that certain types of development, such as the proposed project, may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property. As such, the Commission finds that due to the possibility of storm waves, surges, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Therefore, **Special Condition 3** requires the applicant to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with the permitted development.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed development is consistent with Section 30253 of the Coastal Act regarding the siting of development in a hazardous location.

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

- (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[...]

Section 30214 of the Coastal Act states, in relevant part:

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
 - (1) Topographic and geologic site characteristics.
 - (2) The capacity of the site to sustain use and at what level of intensity.
 - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

Reach 112 is accessible through gates located at the intersections of the Reach 112 and the following streets: Centinela Avenue, Lincoln Boulevard, and Pacific Avenue. Access roads on both sides of Reach 112 are adjacent and parallel to the Reach. The right bank access road is also used as bicycle and pedestrian paths throughout the length of the Reach. There are no access ramps within Reach 112, and the proposed work for this Reach will be done from the access road.

The proposed project is not anticipated to result in any adverse impacts to public access or recreation. Although there may be closures of bicycle trails as part of the construction staging for this Reach, the applicant has confirmed that these closures would be only temporary in nature. Overall, the project activities would occur for several hours per day, for no more than a couple of weeks, and progress linearly along the Reach. In addition, **Special Condition 2** requires the applicant to submit an Annual Routine Maintenance Activities Report that includes discussion of the proposed maintenance, schedule of work, maintenance access, and staging plans and equipment, and any maintenance activity that has the potential for adverse environmental and public access impacts will require a separate coastal development permit. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30210, 30212, and 30214 of the Coastal Act.

E. Local Coastal Program

Reach 112 (Ballona Creek) is partially located within the City of Los Angeles. The City of Los Angeles has neither a certified LCP nor a certified Land Use Plan for the Westchester-Playa Del Rey planning subarea where the development subject to the permit amendments is proposed. Coastal Act Section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local

government to prepare an LCP that is in conformity with Chapter 3. Approval of the proposed development, as conditioned to ensure that the flood control channel is continually maintained, will not prejudice the City's ability to prepare a certifiable Local Coastal Program. In recognition of the City's permitting jurisdiction, the Commission imposes **Special Condition 9** to ensure that conditions imposed by the City of Los Angeles pursuant to an authority other than the Coastal Act remain in effect, and that in the event of conflict between the terms and conditions imposed by the City of Los Angeles and those of the coastal development permits as amended, the terms and conditions of the coastal development permits as amended shall prevail. Thus, as conditioned, the proposed development will be consistent with Chapter 3 of the Coastal Act, and the Commission finds that the proposed projects within these Reaches will not prejudice the ability of the City of Los Angeles to prepare an LCP that is in conformity with Chapter 3, consistent with the provisions of Section 30604(a) of the Coastal Act.

F. California Environmental Quality Act

Section 13096(a) of the California Code of Regulations requires Commission approval of coastal development permit application 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. In this case, the Los Angeles County Flood Control District is the lead agency, and the Commission is the responsible agency for the purposes of CEQA. LACFCD adopted Mitigated Negative Declaration (MND) No. 2021040017 for the Soft-Bottom Channel Maintenance Plan for Select Reaches on April 30, 2021.

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a certified regulatory program, Section 21080.5(d)(2)(A) of CEQA still applies to the Commission's CDP regulatory process and prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- 1) CDP Applications No. 5-15-1064 and 5-15-1065
- 2) USACE Application for Department of the Army Permit
- 3) Los Angeles RWQCB Water Quality Certification
- 4) Amendment of Lake or Streambed Alteration Agreement
- 5) CDFW Aquatic Pesticide Application Plan

APPENDIX B – ALL STANDARD AND SPECIAL CONDITIONS THAT APPLY TO THESE CDPS

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permits 5-15-1064 and 5-15-1065, as approved by the Commission in its original action and modified and/or supplemented by all subsequent CDP amendments through Amendments 5-15-1064-A1 and 5-15-1065-A1. Typographical and formatting errors have been corrected for consistency, and references to specific amendments are noted in [brackets]. The special conditions imposed under the permit amendments renumber some of the special conditions imposed under the original permits; both amendments now follow the same condition numbering scheme. Thus, this Appendix B provides an aggregate list of all currently applicable adopted conditions.

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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application (April 15, 1993). Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Duration of Permit.

- A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of five (5) years, commencing upon the date of issuance of Coastal Development Permit No. [5-15-1064/5-15-1065], after which time the authorization for continuation and/or retention of any development is approved as part of this permit shall cease. After the authorization for the development expires, any maintenance/vegetation removal within the project area will require either the issuance of a new coastal development permit or an amendment to this coastal development permit.
- B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue the creek channel maintenance program prior to the date of expiration of the authorization for the development, the applicant shall cease all vegetation removal activities.
- C. All development must occur in strict compliance with the proposal as set forth in the application for the permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

2. Annual Routine Maintenance Activities Report.

- A. PRIOR TO COMMENCEMENT of any maintenance activity, the applicant shall submit to the Executive Director a detailed Annual Routine Maintenance Activities Report listing the proposed maintenance activities at facilities within the coastal zone for that year for concurrence that the proposed maintenance work meets the requirements of this coastal development permit (i.e., would result in no or less than minimal environmental impact). At minimum, the Annual Routine Maintenance Activities report shall include:
 - i. Type of proposed maintenance, schedule of work, maintenance access and staging plans and equipment;
 - ii. Site specific reconnaissance within each of the facilities proposed for maintenance and acreage of jurisdictional impacts, if any;
 - iii. Habitat surveys if any habitat/vegetation has developed at the site over time if there is a risk of adverse impact by the specific type of maintenance proposed at that particular site;
 - iv. The Annual Routine Maintenance Activities Report and reconnaissance surveys shall be public documents available for review by the public or any interested parties;

- v. The proposed maintenance activities will be deemed approved if staff does not respond within 60 days of submittal of the Annual Maintenance Activities Report; and
 - vi. If the proposed routine maintenance activity is deemed to have a potential risk of adverse environmental impacts, then the applicant shall apply for that maintenance activity under a separate coastal development permit.
- B. The applicant shall submit an annual post-maintenance assessment summarizing the maintenance practices, timing of implementation, and whether any sensitive species were observed, and any measures taken to avoid or mitigate disturbance.
- C. Proposed changes to the project may require a permit amendment or new permit. Any proposed changes to the approved program shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.
- 3. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant(s) acknowledges and agrees (i) that the site may be subject to hazards from waves, storm conditions, flooding, and sea level rise; (ii) to assume the risks to the applicant(s) and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 4. Herbicide Use and Native Vegetation Delineation.** Herbicide use within the flood control channel shall be restricted to the use of AquaMaster™ Herbicide (or other herbicides suitable for aquatic environments subject to the review and written approval of the Executive Director) for the elimination of non-native and invasive vegetation for purposes of habitat restoration and flood control. The environmental resource specialist shall conduct a survey of the project site each day prior to commencement of vegetation removal and eradication activity involving the use of herbicide to determine whether any native vegetation is present. Native vegetation shall be clearly delineated on the project site with fencing or survey flags and protected.

In the event that non-native or invasive vegetation to be removed or eradicated is located in close proximity to native riparian vegetation or surface water, the applicant shall: (a) first, remove non-native or invasive vegetation by hand, (b)

where non-native or invasive vegetation remains, utilize low-impact mechanical removal methods, and (c) if herbicide is used, utilize a plastic sheet/barrier to shield native vegetation or surface water from any potential overspray that may occur during use of herbicide. Herbicide shall be used as a last resort and as part of an Integrated Pest Management Control Plan only. If herbicide is proposed to be used, the applicant shall demonstrate that the use of non-chemical (physical, mechanical, cultural, and biological) control methods for prevention and management of invasive species are infeasible or ineffective, shall be applied in complete conformance to the label instructions for the intended use, shall be carried out by a licensed professional only, and shall only be applied after notifying and receiving written approval from the Executive Director. In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.

5. Timing and Operational Constraints.

- A. To avoid adverse impacts on sensitive bird species, maintenance activities shall not occur during the bird nesting season between March 1 and August 31 of any year. A qualified biologist or environmental resources specialist shall conduct a survey of the project site, to determine presence and behavior of sensitive species, prior to commencement of any development, the applicant shall submit the contact information of all monitors with a description of their duties and their on-site schedule. Project activities, including vegetation removal, shall not occur until any sensitive species (e.g., species listed on state or federal endangered/threatened species lists) including but not limited to California least tern, western snowy plover, and Belding's savannah sparrow have left the project area or its vicinity. In the event that any sensitive wildlife species exhibit reproductive or nesting behavior, the environmental specialist shall require the applicant to cease work, and shall immediately notify the Executive Director and local resource agencies. Project activities shall resume only upon written approval of the Executive Director. The monitor(s) shall require the applicant to cease work should any breach in permit compliance occur or if any unforeseen sensitive habitat issues arise. The monitor(s) shall immediately notify the Executive Director if activities outside of the scope of this coastal development permit occur. If significant impacts or damage occur to sensitive wildlife species, the applicant shall be required to submit a revised, or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit.
- B. The permittee may undertake maintenance between March 1 and August 31 of any year upon obtaining a written statement of the Executive Director authorizing maintenance on specified dates. To obtain such a determination, the permittee must submit a declaration from the Department of Fish and Game stating that maintenance on the specific dates proposed will not cause adverse impacts to any sensitive or endangered species. The declaration must contain an

assessment of the foraging, breeding, nesting activities of sensitive bird species found in the area and a statement that the maintenance activity on the specific dates proposed will not interfere with the foraging, breeding, nesting activities of the sensitive bird species.

- 6. Biological Monitor.** An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during any week in which maintenance occurs. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The applicant shall not undertake any activity, which would disturb sensitive species or habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.
- 7. Operations and Maintenance Responsibilities.** The permittee shall comply with the following maintenance-related requirements:
 - A. No maintenance materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - B. Habitat areas shall not be used as staging or storage areas.
 - C. Any and all debris resulting from maintenance activities shall be removed from the site within 24 hours of completion of maintenance.
 - D. Debris shall be disposed at a debris disposal site outside the coastal zone.
 - E. Machinery or maintenance materials not essential for project improvements shall not be allowed at any time in the intertidal zone or within the river or creek channel.
 - F. Sand from the beach, cobbles, or shoreline rocks shall not be used for maintenance material.
 - G. If turbid conditions are generated during maintenance; a silt curtain shall be utilized to control turbidity.
 - H. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
 - I. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of maintenance related materials, and

to contain sediment or contaminants associated with maintenance activity, shall be implemented prior to the on-set of such activity.

J. All BMPs shall be maintained in a functional condition throughout the duration of the maintenance activity.

8. Conformance with the Requirements of the Resource Agencies. The permittee shall comply with all permit requirements and mitigation measures of the California Department of Fish and Wildlife, California State Water Quality Control Board, Regional Water Quality Control Boards (Los Angeles), U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality, the marine environment, and sensitive species. Any change in the approved project, which is required by the above-stated agencies, shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

9. Local Government Approval. Coastal Development Permit No. [5-15-1064-A1/5-15-1065-A1] only authorizes development in the proposed project areas within the California Coastal Commission's permit jurisdiction. Where the proposed development is subject to the review and approval of the City of Los Angeles, this action has no effect on conditions imposed by the City of Los Angeles pursuant to an authority other than the Coastal Act. In the event of conflict between the terms and conditions imposed by the City of Los Angeles and those of this coastal development permit as amended, the terms and conditions of the coastal development permit as amended shall prevail.