

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: MATERIAL AMENDMENT

Application No.: A-5-MDR-19-0217-A1
Applicant: E & S Ring Management Corporation
Agent: E & S Ring Management Corporation
Project Location: 4500 Via Marina, Marina Del Rey, Los Angeles County, APN 06037-4224001904

Description of Original Project Approved Pursuant to Permit No. A-5-MDR-19-0217: For the mitigation for the unpermitted removal of 11 unoccupied nests from four trees within the Mariners Village apartment complex on Marina del Rey Lease parcel 113 and a habitat mitigation plan that includes: 1) the erection of two nesting poles, each accommodating three nesting platforms in locations, 2) the planting of five trees: three Tecate cypress at Oxford Basin and two Monterey cypress at Burton Chase Park; and 3) the removal of existing concrete debris from Ballona Lagoon Canal to improve foraging habitat for wading birds in the area.

Description of Proposed Project Amendment A-5-MDR-19-0217-A1: Request by E & S Management Corp. to amend previously approved plan to donate \$134,847 to the Los Angeles Audubon Society in-lieu of installing nesting poles and tree planting as part of mitigation and resolution of the Commission's claims for penalties associated with the unpermitted removal of 11 unoccupied nests from four trees in Mariners Village Parcel 113.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

On September 8, 2021, the Commission approved CDP No. A-5-MDR-19-0217, which approved a mitigation plan to address the unpermitted removal of 11 unoccupied nests from four trees within the Mariners Village apartment complex on Marina del Rey Lease Parcel 113. ([Exhibit 1](#)) The nest removal occurred during tree trimming and pruning and the trees were not removed. As mitigation for the impacts of the nest removal, the Commission required and approved a habitat mitigation plan that included the erection of two nesting poles (each accommodating three nesting platforms), the planting of five trees (three Tecate cypress at Oxford Basin and two Monterey cypress at Burton Chase Park), and the removal of existing concrete debris from Ballona Lagoon Canal to improve foraging habitat for wading birds in the area. Prior to the issuance of the permit, and pursuant to Special Condition 6 of CDP A-5-MDR-19-0217, the applicant was required to obtain resource agency approval for the mitigation plan, including approval from the California Department of Fish and Wildlife (CDFW), which ultimately did not support the installation of nesting platforms and planting of large trees because CDFW does not want to encourage potential Great Blue Heron (*Ardea herodias*) nesting in close proximity to the nearby Least Tern colony as herons tend to predate upon young California Least Terns (*Sternula antillarum browni*) that occupy Venice Beach. As such, CDFW declined to support the nesting mitigation options originally proposed. After coordinating with CDFW, the applicant now proposes to donate funds to the Los Angeles Audubon Society for a 3-year California Least Tern breeding colony monitoring project and ongoing public education and outreach in addition to the removal of approximately 10 cubic yards of concrete debris in the Ballona Lagoon approved by the Commission in the underlying permit, which has not yet been conducted, to improve wading and foraging habitat for wading birds in the area that was part of the original permit approval. ([Exhibit 2](#))

Approval of this amendment application pursuant to the staff recommendation will allow the applicant to pay a one-time donation to the Los Angeles Audubon Society in the amount of \$134,847 for mitigation and resolution of the Commission's claims for penalties associated for the unpermitted removal of nests in lieu of installing two nesting platforms and five trees, which would have provided nesting opportunities for colonial nesting water birds in the vicinity, but would potentially lead to losses to the nearby California Least Tern colony as outlined by above, and has been determined not to be the least environmentally damaging alternative. In order to fully resolve the violations, in addition to the donation the applicant will also, pursuant to the terms of the underlying permit, enhance wading bird habitat in the Ballona Lagoon, in close proximity to the site of the violations.

Therefore, staff recommends that the Commission **APPROVE** the CDP amendment for the modification of two special conditions (Revised Final Mitigation and Monitoring Plans, Annual Reports) and the addition of Special Condition 7 for Proof of Payment, to ensure consistency with the coastal resource protection policies of the Coastal Act. All other portions of the project and conditions of approval remain unchanged. The motion to carry out the staff recommendation is on **page 5** of this report.

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) An 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 requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regs. Section 13166.

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects the conditions required for the purposes of protecting coastal resources or coastal access.

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EXHIBITS

- [Exhibit 1 - Vicinity Map and Project Site](#)
- [Exhibit 2 - Site Plan for Concrete Debris Removal](#)
- [Exhibit 3 - Map of Proposed Nesting Poles and Tree](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment No. A-5-MDR-19-0217-A1 pursuant to the staff recommendation.

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

Resolution to Approve the Permit:

The Commission hereby approves Coastal Development Permit Amendment A-5-MDR-19-0217-A1 for the proposed development and adopts the findings set forth below on the grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. CHANGES TO SPECIAL CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by this Amendment A-5-MDR-19-0217-A1. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this action 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 Amendment A-5-MDR-19-0217-A1 are shown in the following section. Language to be added is shown in underlined format. Language to be removed is shown in ~~strike through~~.

1. Modify Special Condition 1 (Revised Final Mitigation Plan) as follows:

1. **Revised Final Mitigation and Monitoring Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director two (2) sets of final mitigation plans that substantially conform with the plans received by the Commission ~~on June 23, 2021~~ March 14, 2025, 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. The submittal of an updated monitoring plan that includes specific monitoring protocols and metrics that shall include:
 - A. A description of how the monitoring effort contributes to population assessments for California Least Tern and Western Snowy Plover and the ongoing management of the Venice California Least Tern Colony;
 - B. A description and map of monitoring locations, timing, and frequency of monitoring activities; specific metrics, methods, and protocols that will be used;
 - C. An outline of how data will be managed and stored;
 - D. Details as to how data and observations will be shared with natural resource managers (including but not limited to the California Department of Fish and Wildlife and United States Fish and Wildlife Service); and,
 - E. A description of how monitoring activities will avoid/minimize disturbance to the target species.~~
- ~~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. Special Condition 2 (Tree Planting Plan and Monitoring Program) is removed in its entirety as follows:

~~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. Modify Special Condition 3 (Nesting Poles and Platforms Construction and Monitoring Plan) as follows:

3. **~~Nesting Poles and Platforms Construction and Annual Monitoring Plan Reports.~~** ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT the permittee agrees to 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 annual monitoring plan reports for three (3) years following providing payment to the Los Angeles Audubon Society. The annual monitoring reports that shall includes the following:~~

- ~~A. Breeding and nesting activity observations at the nesting poles once a month starting December 15st (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~~

- ~~A. Annual monitoring report submitted to the Executive Director by December 15th of each year that includes all of the California Least Tern and 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 breeding monitoring program.~~

~~Final monitoring report submitted to the Executive Director by December 15th 5th? of the 3rd year of monitoring. The final report shall evaluate the success of the nesting poles and platforms ongoing breeding monitoring efforts of colony management and~~

provide suggestions to either maintain or improve the success of the monitoring program into the future.

7. New Special Condition 7 (Proof of Payment) as follows:

6. **Proof of Payment.** BY ACCEPTANCE OF THIS PERMIT, the permittee agrees to, within 30 days of issuance, submit evidence that the \$134, 847 payment has been made to the Los Angeles Audubon Society. The check shall reference this CDP by number and shall include a cover letter that explains that the payment is consideration specifically for three years of the California Least Tern breeding monitoring of the nearby colony, in-lieu of the installation of two nesting poles and planting of five trees related to mitigation for the unpermitted removal of 11 unoccupied nests in Mariners Village in Marina del Rey.

III. FINDINGS AND DECLARATIONS

A. Project Description and Background

The matter currently before the Commission is a request to amend the permit approved by the Commission on September 8, 2021, which authorized a mitigation plan to resolve violations and the Commission's claims for penalties associated for the unpermitted removal of 11 unoccupied nests from four trees within the Mariners Village apartment complex approved via Coastal Development Permit No. A-5-MDR-19-0217 (E & S Ring Management Corporation and Department of Beaches and Harbors, County of Los Angeles).

On November 13, 2019, the Los Angeles County Department of Beaches and Harbors approved a local CDP to E&S Ring Management Corporation to authorize the unpermitted removal of 11 unoccupied nests from four trees within the Mariners Village apartment complex and a mitigation plan that would require the planting of one off-site tree for each tree from which nests were removed in Yvonne B. Burke Park. On December 20, 2019 the local CDP was appealed, which the Commission found raised a substantial issue on the grounds that the County's decision to remove the nests would result in a significant impact to avian species that have adapted to nesting in the area and that removal would set an adverse precedent regarding approving nest removal without a permit and destroying habitat for colonial waterbirds.

In order to provide nesting opportunities for colonial waterbirds as mitigation for the impacts associated with the removal of the nests, the Commission imposed six special conditions via the de novo permit requiring: 1) submittal of revised project plans to include the location of one nesting platform to be relocated from Oxford Basin to within the rip-rap of the UCLA Marina Aquatic Center property and the location and types of trees to be revised to include three Tecate cypress trees to be planted in Oxford Basin and two Monterey Cypress trees to be planted at Burton Chase Park; 2) submittal of a

Tree Planting Plan and Monitoring Program; 3) submittal of a Nesting Poles and Platforms Construction and Monitoring Plan; 4) implementation of a Contractor Education Program prior to the commencement of trimming activities; 5) adherence to construction best management practices; and 6) Conformance with the Requirements of the Resource Agencies and Local Agencies.

Prior to the issuance of the permit, and pursuant to Special Condition 6 of CDP A-5-MDR-19-0217, CDFW communicated to the applicant that they could not support the plan to install nesting platforms and planting of large trees to enhance nesting opportunities for Great Blue Herons because the herons have a high potential to predate upon Least Tern chicks located in the nearby Least Tern colony located at Venice Beach ([Exhibit 3](#)). Thus, based on this information, the installation of the platforms and trees cannot be considered the least environmentally damaging alternative. Therefore, the CDP was not issued.

The applicant and Commission staff continued to engage with CDFW staff to explore potential project options the applicant could undertake that would improve habitat for colonial waterbirds including Great Blue Herons that would not endanger the local Least Tern colony. Ultimately, the applicant proposed to modify the project to pay a one-time donation in the amount of \$134,847 to the Los Angeles Audubon Society to support a three-year Least Tern breeding monitoring plan and education and outreach for local residents in lieu of installing the nesting platforms and trees as mitigation associated with the impacts from the unauthorized removal of the nests in Mariners Village. The Los Angeles Audubon Society has provided information for the funding to be used for a 3-year breeding monitoring plan for the Least Tern colony that makes use of habitat on Venice Beach and would otherwise be impacted by Great Blue Herons. In addition, the applicant continues to propose concrete debris removal from Ballona Lagoon to make more of the muddy bank available for foraging for wading birds.

In-Lieu Fee to Los Angeles Audubon Society

The three-year breeding monitoring plan is designed to document the breeding, habitat, and survival of the colony via weekly monitoring between April 15th and August 31st. The plan will be implemented and managed through the combined efforts of State Parks, CDFW, and the United States Fish and Wildlife Service. Volunteer coordination will be managed by a qualified biologist. Additionally, a portion of the funds will be allocated for an education and outreach component for local residents, State Parks, Los Angeles County of Beaches and Harbors, etc. to support and promote Least Tern conservation efforts. The Los Angeles Audubon Society would also collaborate with Nature Nexus Institute to continue integrating Least Tern education themes into existing field trips and virtual learning programs, including but not limited to, offering students and alumnae from the Nature Nexus Institute's high school internship and community college certificate program the opportunity to assist qualified biologists with habitat restoration effects.

B. Standard of Review

Venice, City of Los Angeles

While CDP No. A-5-MDR-19-0217 included development within Marina del Rey, the proposed amendment would modify the project scope to only include development within Venice. Specifically, the proposed concrete removal is located within the Commission's retained jurisdiction within the Venice segment of the City of Los Angeles. The standard of review is Chapter Three of the Coastal Act. While not the standard of review, the certified Venice LUP includes policies related to the Venice Least Tern colony.

C. Biological 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 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.

Policy III.C.2. of the Venice Land Use Plan states:

Least Tern Nesting Area. No development permits shall be granted for development which would have a potential significant impact on the Least Tern nesting ground in the vicinity of the jetty at the Marina Channel.

Policy IV. D. 3. of the Venice Land Use plan states:

Venice Beach. The Least Tern nesting habitat on Venice Beach shall be preserved and shall not be disturbed by encroachments of public improvements and activities.

California Least Tern Colony Breeding Monitoring Plan

The applicant proposes a modification that would allow for the one-time donation of \$134,847 to the Los Angeles Audubon Society in lieu of installing the originally proposed nesting platforms and trees because of CDFW raising concerns about the potential for Great Blue Herons to use the nesting opportunities and predate upon the nearby Venice Beach Least Tern colony that is located on Venice Beach. The California Least Tern (CLT) is an endangered migratory bird. In Los Angeles County, it returns to only a few breeding colonies, one of which is the Venice Beach nesting area. This protected area, managed by the Los Angeles Audubon Society and the California Department of Fish and Wildlife (CDFW), is crucial for the conservation of this endangered species.

While the general purpose of the mitigation plan approved by the Commission in the underlying permit was intended to enhance nesting opportunities for wading birds such as Great Blue Herons, consultation with CDFW required changes to the mitigation plan that would not have the potential result in negative impacts to the federally protected CLT colony on the nearby Venice Beach. Moreover, the Venice LUP does not allow development permits which would have a potential significant impact on the Venice CLT colony. Given the concerns raised by CDFW and the potential impacts to the Least Tern colony on Venice Beach, it is reasonable to conclude that the nesting platforms and trees would be development that has the potential to adversely affect the Venice CLT colony. It is worth noting that while this aspect of the project is proposed to be changed, concrete debris will still be removed from Ballona Lagoon to improve wading bird foraging habitat, thus resulting in overall habitat improvements for wading birds such as the Great Blue Heron as further addressed in the staff report for the underlying CDP. Additionally, the underlying permit requires that the permittee ensure that any landscaping work at the Mariner Village apartment complex be conducted only after contractors and crews are informed of biological resources of concern at the site and follow avoidance measures, removal limits and methods.

While the proposed efforts by the Los Angeles Audubon Society have the potential to positively impact the Venice Beach Least Tern colony, it is important for the applicant to actively participate in the efforts as the underlying unpermitted nest removal, mitigation, and the present amendment lies with the applicant, not the Los Angeles Audubon Society. Additionally, if the payment is not made in a timely manner, the Los Angeles Audubon Society would be unable to allocate the funds for the proposed mitigation. As such, staff recommends the Commission approve the updated **Special Condition 1** which would require the applicant to coordinate with the Los Angeles Audubon Society to submit final revised mitigation and monitoring plans to provide details describing how the proposed monitoring will support management and monitoring of the Least Tern population in California, a detailed description and specific metrics for the proposed monitoring activities, details for data storage and management, and details for how data will be shared with other management agencies that specifically monitor the California Least Tern population. Additionally, the updated **Special Condition 3** would require the applicant to collaborate with the Los Angeles Audubon Society to provide annual monitoring reports for the three monitoring years and a final monitoring report to summarize the program outcomes and provide insight for potential improvement. Finally, **Special Condition 7** requires the applicant to provide proof of payment to the

Los Angeles Audubon Society within 30 days from the issuance of the amended Coastal Development Permit so that monitoring efforts can commence soon afterwards.

As conditioned, the Commission finds that the proposed development complies with the habitat protection, preservation, and restoration policies in the Venice LUP and the Coastal Act.

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 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 volunteer coordination and public engagement will result in increased access to Venice Beach, however, it is not anticipated that the activities associated with the breeding monitoring plan will negatively impact the Venice Beach Least Tern colony. The Los Angeles Audubon Society's monitoring plan includes a 2-hour online training session led by the project biologist that includes monitoring protocol, reporting procedures, bird species identification, and safety. Additionally, volunteers will conduct their monitoring activities outside of the fence barrier on Venice Beach that protects the Venice Beach Least Tern colony. The program will not block or reduce access to the surrounding Venice Beach area that can currently be accessed by members of the public.

Thus, the proposed project amendment will not change any aspects of public access adjacent to the proposed project locations, therefore, the project is consistent with Sections 30210, 30211, and 30212 of the Coastal Act.

E. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The certified Venice LUP is advisory in nature and may provide guidance. As conditioned,

the proposed amendment and development are consistent with Chapter 3 of the Coastal Act and the certified LCP for the area. As a result of the proposed project's consistency with the Coastal Act and the certified LUP for Venice, approval of this project, as conditioned, will not prejudice the City of Los Angeles' ability to prepare an LCP that is consistent with Chapter 3 of the Coastal Act.

F. 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 amendment application pursuant to the staff recommendation will allow the applicant to pay a one-time donation to the Los Angeles Audubon Society in the amount of \$134,847 for mitigation and penalties related to the nest removal, in lieu of installing two nesting platforms and five trees, which would have provided nesting opportunities for colonial nesting water birds in the vicinity, but would potentially lead to losses to the nearby Least Tern colony as highlighted by CDFW ([Exhibit 3](#)). In order to fully resolve the violations, in addition to the donation, the applicant will also, pursuant to the terms of the underlying permit, enhance wading bird habitat in the Ballona Lagoon, in close proximity to the site of the violations. Approval of this amendment pursuant to the staff recommendation, issuance of the amendment permit, and the applicant's subsequent compliance with all terms and conditions of the amended 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 LUP. Commission review and action on this amendment 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 as expressed herein, undertaken on the subject site without a coastal permit.

G. California Environmental Quality Act

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).

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 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.

APPENDIX A – Substantive File Documents

1. Correspondence from California Department of Fish and Wildlife
2. Coastal Development Permit A-5-MDR-19-0217
3. Materials associated with Material Amendment Application No. A-5-MDR-19-0217-A1

Appendix B – List of All Conditions that Apply to CDP A-5-MDR-19-0217-A1, as Amended

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit A-5-MDR-19-0217, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. A-5-MDR-19-0217-A1. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

A. 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 applicants 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 amendment will expire two years from the date on which the Commission voted on the amendment application. Development authorized by the permit amendment shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit amendment 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 applicants to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions:

- 1. Revised Final Mitigation and Monitoring Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director two (2) sets of final mitigation 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 submittal of an updated monitoring plan that includes specific monitoring protocol and metrics that shall include:

- i. A description of how the monitoring effort contributes to population assessments for California Least Tern and Western Snowy Plover and the ongoing management of the Venice Least Tern Colony;
- ii. A description and map of monitoring locations, timing, and frequency of monitoring activities; specific metrics, methods, and protocols that will be used;
- iii. An outline of how data will be managed and stored;
- iv. Details as to how data and observations will be shared with natural resource managers (including but not limited to the California Department of Fish and Wildlife and United States Fish and Wildlife Service); and,
- v. A description of how monitoring activities will avoid/minimize disturbance to the target species.

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. [Deleted]

3. **Annual Monitoring Plan.** BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, annual monitoring reports for three (3) years following providing payment to the Los Angeles Audubon Society. The annual monitoring reports shall include the following:

- A. Annual monitoring reports submitted to the Executive Director by December 15th of each year that includes all of the breeding and nesting activity observations collected that year and any adaptive management suggestions to improve the breeding monitoring program.
- B. Final monitoring report submitted to the Executive Director by December 15th of the 3rd year of monitoring. The final reports shall evaluate the success of the ongoing breeding efforts 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
7. **Proof of Payment. BY ACCEPTANCE OF THIS PERMIT**, the applicant agrees to, within 30 days of issuance, submit evidence that the \$134,847 payment has been made to the Los Angeles Audubon Society. The check shall reference this CDP by number and shall include a cover letter that explains that the payment is consideration specifically for three years of the Least Tern breeding monitoring of the nearby colony, in-lieu of the installation of two nesting poles and planting of 5 trees related to mitigation for the unpermitted removal of 11 unoccupied nests in Mariners Village in Marina del Rey.