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Final Nesting Bird Management Plan
Oxford Retention Basin Multiuse Enhancement
Project

Prepared for:

Los Angeles County Department of Public
Works
900 South Fremont Avenue
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Project No. 1436-105104

June 19, 2015

The information contained in the document titled "Nesting Bird Management Plan" for site "Oxford Retention Basin", dated "June 19, 2015", has received appropriate technical review and approval. The conclusions and recommendations presented represent professional judgments and are based upon findings from the investigations and observations identified in the document and the interpretation of such data based on our experience and background. This acknowledgement is made in lieu of all warranties, either expressed or implied.

This document was submitted to the California Department of Fish and Wildlife (CDFW) on June 9, 2015, on behalf of the Los Angeles County Department of Public Works, for review and final approval was granted on June 19, 2015. The document serves as a record of the County's consultations with CDFW regarding nesting birds, will represent a consensus between the County and CDFW, and act as a guide during problem-solving discussion should any challenges arise during construction.

A temporary 300-foot buffer will remain in place around the killdeer nest in all directions until the document is approved, at which point the recommended nesting buffer shall be implemented until the young fledge are no longer exhibiting fidelity to the nest. This document can also be revised as needed to reflect improved strategies, new information, and additional agency requests. Per Betty Courtney (CDFW), "...the [bird nesting] buffer should be established based on observed behavior of the bird(s) during different stages of construction activities or noise to ensure the project meets the requirements of FG Code section 3503".

This document will apply to any additional active nests found on-site through the end of construction. Per Erinn Wilson (CDFW) on June 19, 2015, "The Final Bird Nesting Management Plan is a strategy document, not a log; therefore, it does not need to be updated with new information regarding any additional active nests found during construction. The site biologist will establish buffers around new nests based off of observations, life history characteristics of the nesting species, available literature, and CDFW-approved nesting buffers for other projects in the region. All buffers will comply with CDFW guidance and FG Code section 3503.

Reviewed and Approved by:

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Section 1

Introduction

CDM Smith prepared this Nesting Bird Management Plan (Plan) to provide a framework for management and monitoring of bird nesting activities during construction of the Oxford Retention Basin Multiuse Enhancement Project (Project), located between Washington Boulevard and Admiralty Way in the Marina del Rey Harbor (Harbor) watershed. The Project is designed to enhance flood protection, reduce runoff pollution and significantly improve the quality of plant and wildlife habitat, as well as improve its aesthetic appeal. The Project also provides new recreational and safety amenities, including a walking path, observation areas, wildlife-friendly lighting and more attractive tubular fencing.

The purpose of the Plan is to assist the Los Angeles County Department of Public Works (County) in complying with the California Department of Fish and Wildlife (CDFW) Code, Conservation and Management Plan for Marina del Rey, Streambed Alteration Agreement (SAA) between the CDFW and County, and the Project's mitigated negative declaration and initial study.

In order to effectively manage nesting birds on the Basin, this Plan outlines methods that will permit successful nesting, while also reducing constraints and delays on construction activities. Specifically, this Plan describes a disturbance-free buffer around the active¹ killdeer nest. This protective measure is designed to avoid any potential for unauthorized take² of active nests, eggs, nestlings (until such time the young are no longer dependent on the nest), or nesting birds as a result of construction activities.

This Plan also outlines the applicable state and federal regulations that protect birds and their nesting activities and describes the approach and methods to monitor and manage bird nesting activities during construction of the Project.

1.1 Project Overview

1.1.1 Purpose and Need

The purpose of the Project is to restore and enhance the Oxford Retention Basin (Basin), which will improve both wildlife habitat and water quality. The primary objective of the Project is to achieve regulatory compliance.

The Basin is a tributary to Back Basin E of the Harbor, which is listed on the State 303(d) list of impaired waters due to bacteria and toxics. Total Maximum Daily Loads (TMDLs) for bacteria and toxics in the Harbor have been adopted by the Los Angeles Regional Water Quality Control Board on August 7, 2003, and October 6, 2005, respectively. The U.S. Environmental Protection Agency (EPA) Region 9 approved the Harbor Mothers' Beach and

¹If an adult bird is showing site fidelity to a nest, brooding eggs, or displaying known nesting behaviors, then the nest is interpreted as "active."

²"Take" is defined as pursue, hunt, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of or any part, nest, or egg of any such bird.

Back Basins Bacteria TMDL and the Harbor Toxic Pollutants TMDL, which became effective on March 18, 2004 and March 22, 2006, respectively.

The Harbor watershed has “one of the most aggressive TMDL schedules for both Toxics and Bacteria and often leads the way in TMDL implementation for the rest of the County” (CIMP 2014). The TMDL Implementation Plans (TMDLIP) for the Bacteria and Toxic Pollutants TMDLs applies to the Los Angeles County National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit.

1.1.2 Project Location

The Basin is located in unincorporated Marina del Rey of Los Angeles. The Project is located south of the intersection of West Washington Boulevard and Oxford Avenue, north of Admiralty Way. The project site includes the Basin and surrounding banks.

1.1.3 Project Description

The Project will increase flood protection and reduce potential flooding along Washington Boulevard by constructing a parapet wall along the northern and western boundaries of the Basin along Washington Street. Four existing catch basins on Oxford Avenue and Olive Street will also be modified with more efficient flap gates to mitigate localized flooding.

Various improvements will be made to address water quality deficiencies, including construction of a vegetated circulation berm, construction of bioswales, and planting of native vegetation within the Basin. The Project also includes removal of contaminated soils along the perimeter of the Basin. In addition, removal of non-native plants will allow for replacement with drought-tolerant native plants to restore native vegetation communities and a tidal wetland ecosystem.

The Basin’s recreational and aesthetic appeal will be improved by constructing a decomposed granite walking trail around the entire Basin. Decomposed granite (crushed stone that is widely used for walking trails, and driveways) will be used to lower imperviousness and reduce storm water runoff and heat island effects in the surrounding areas. Along Admiralty Way, the existing sidewalk will be replaced with a landscaped parkway which will provide separation of the walking trail from traffic. Additionally, there will be improved fencing, informational signage, and six observation areas with park benches overlooking Oxford Basin as part of this enhancement.

1.1.4 Physical Habitat

Existing plant communities at the Basin include saltmarsh, annual grassland, ornamental planting, and ruderal (i.e. disturbed) areas.

Saltmarsh habitat is considered a sensitive natural community by the California Department of Fish and Wildlife (CDFW) and is found along the perimeter of the Basin. The saltmarsh habitat consists of approximately 0.34 acres of pickleweed (*Salicornia*) marsh and approximately 0.16 acres of sea lavender (*Limonium*) marsh. *Salicornia* marsh consists of saltmarsh-like vegetation along the upper tidal edge, and *Limonium* marsh is characterized by dense mounds of Perez’s sea lavender (*Limonium perezii*). *Limonium* marsh contains additional vegetation on the south side of the Basin, while existing at a higher elevation than *Salicornia* marsh.

Other types of habitats in the Basin include disturbed mudflats found areas along the north Basin, and upland areas, which are mostly annual grassland and highly-disturbed ruderal lands along the Basin perimeter. Upland habitats largely consist of early-successional (“weedy”), tolerant forb species, and ornamental trees, shrubs, and vines. Woodland areas largely consisted of ornamental plantings and dense strands of *Myoporum*; however, these were removed during Phase I of the project in late 2014 and early 2015.

Non-native and invasive plant species include *Arundo*, tamarisk, eucalyptus, pepper tree, castor bean, African umbrella sedge, mustards, tree tobacco, periwinkle, and pampas grass.

1.2 Identification of Active Killdeer Nest

The killdeer (*Charadrius vociferus*) is a shorebird species that is not listed under the federal Endangered Species Act (ESA) or the California ESA. The killdeer is a year-round resident of Southern California, with the breeding season usually beginning in early March and continuing through late June. Males typically arrive first in a region and work vigorously to claim a breeding territory. When the female arrives, the mated pair carry out elaborate, soil scraping behaviors accompanied by loud duets. Of several scrape sites within the breeding territory, one becomes the chosen nest site. Two broods per year have been documented, particularly in the southern portions of its range.

Killdeer nest in a shallow depression or scrape on the ground in open places, usually in areas with short grass, sand or gravel. It may be completely unadorned and unmodified, or it may have a few added rocks, shells, sticks, or trash around its edges to aid in camouflaging the nest. Killdeer lay, on average, four eggs (range: 2-6). The eggs are a neutral buff color with scattered black blotches, making the eggs extremely hard to distinguish from surrounding substrate. Both male and female birds incubate the eggs.

Killdeer eggs generally hatch 22-28 days after they are laid. Young killdeer hatch with their eyes open, and as soon as their downy feathers dry (generally two to four days), they leave the nest area and follow their parents to search for food. While the young feed themselves, parental care continues for roughly 25 days after the nest is abandoned.

Unlike many bird species, killdeer are tolerant of human disturbance, often nesting in residential backyards, cattle pastures, golf courses, and gravel roofs, and it is extremely rare for a killdeer pair to abandon a nest. Killdeer tend to not be disturbed by traffic or light construction activity at fairly close range. The killdeer usually become agitated by approaching humans in cars or on foot when about 100 feet out from their ground nest. When the nest is threatened, adults use a “broken-wing” display to lure predators away from the nest. To guard against trampling by large animals, the killdeer will puff out its feathers, display its tail over its head, and mock charge at the intruder. When either of these behaviors are observed, one should assume that a nest is in the immediate vicinity, leave the area, and observe from a distance to identify the location of the eggs.



Photograph 1
Adult killdeer at the Nest – Oxford Retention Basin site

As described below, based on observations by the Project Biologist during biological monitoring, it was determined that a killdeer nest is active within the Project area.

1.2.1 Observations on May 31, 2015

During a pre-construction bird nesting survey conducted on May 31, 2015, a Biologist noted the presence of two killdeer showing strong site fidelity to the mudflats along the north shore of the Basin. No “broken-wing” or “cattle” displays were observed and no nest was found. Since breeding pairs often stay together long after young have fledged, their presence was not atypical. However, the Biologist reported that the adults would continue to be monitored for breeding behaviors and the mudflats investigated for an active nest.

1.2.2 Observations on June 1, 2015

On June 1, the two killdeer adults were again observed showing site fidelity along mudflats on the north shore of the Basin. After thorough observation and investigation, no breeding behavior or active nests were found at the north mudflats and adjacent areas.

1.2.3 Observations on June 2, 2015

For the first time, the adult killdeer perform the “cattle” display when the Biologist approaches, signaling that an active nest was likely nearby. The Biologist retreated and observed the killdeer from a distance through binoculars. Shortly thereafter, an active killdeer nest was found at the toe of slope where the northwest peninsula meets the northern

Basin shoreline (see Figure 1-2). The nest is a small scrape in the surrounding gravel and pebbles, with four eggs well camouflaged (see Photograph 1). One of the eggs sits six inches apart from the other three, and is not actively being incubated by the adults. It is unknown why the adults abandoned the fourth egg. The Biologist initially flagged a temporary 300-foot buffer around the nest with orange tape and restricted activities within this nest buffer. The Construction Contractor was informed that no work should be conducted on the north shore until CDFW provides additional guidance regarding work activities in the vicinity of the nest.

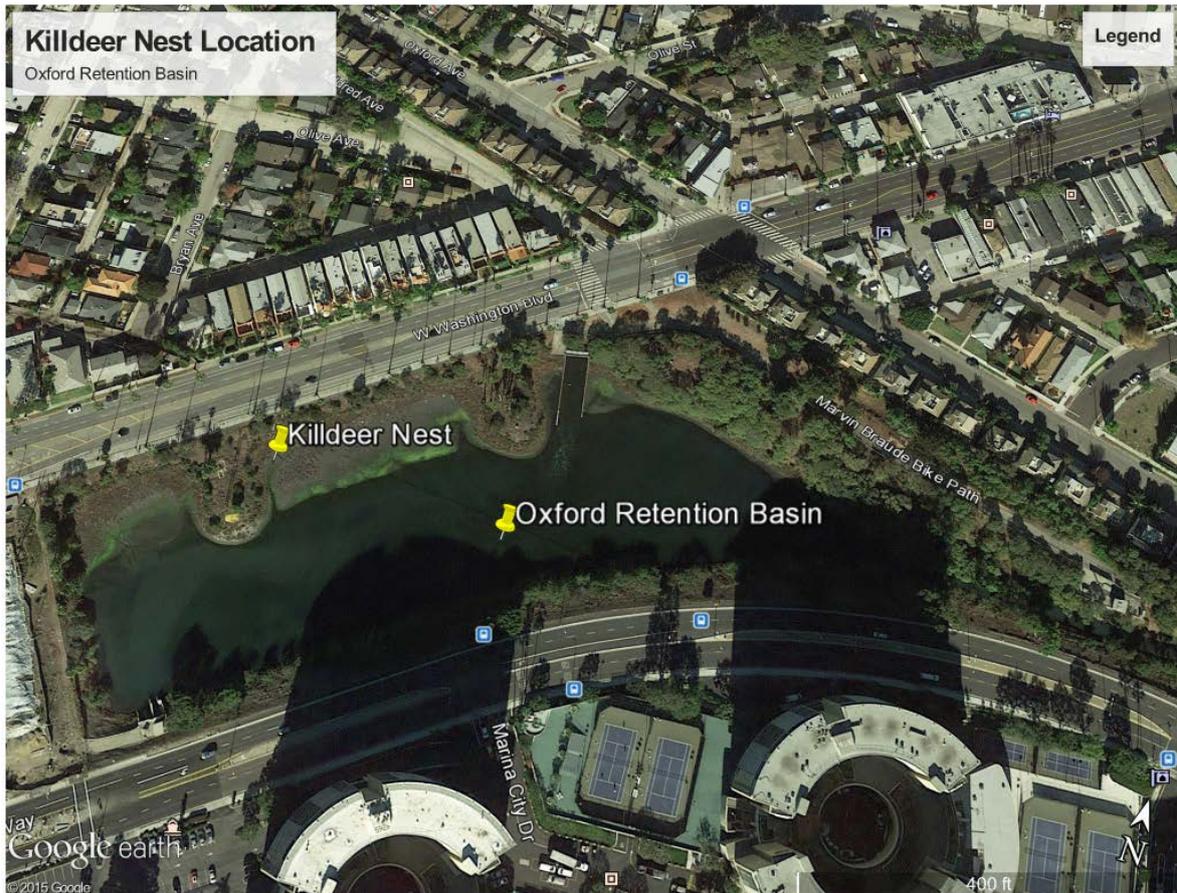


Figure 1-1
Killdeer Nest Location

Based on initial observations of when the adult killdeer fled the nest, the Biologist initially flagged a temporary 50-foot buffer around the nest with orange tape; however no work activities occurred within 300 feet of the nest. After reviewing the SAA, the buffer was extended to 300-feet. Initial email correspondence with CDFW (dated June 2, 2015) discussed possibly reducing the size of the buffer if sufficient natural vegetation or natural topographic features are present to obstruct the view from the nest and protect the nest from noise and vibrations. The goal of the buffers is to avoid take, particularly to avoid flushing the adults from the nest. The Construction Contractor was informed that construction activities should not be conducted within the 300-foot buffer on the north shore until CDFW provides additional guidance regarding work activities in the vicinity of the nest.



Figure 1-2
Temporary Initial Nesting Buffer

1.2.4 Observations on June 3-5, 2015

The two killdeer were still observed at the nest with all four eggs untouched and unmoved. However, the fourth egg, sitting six inches from the other three, is still not being incubated. The adult killdeer have abandoned this egg for an unknown reason.

On one occasion, two American crows were observed approximately five feet from the killdeer nest. The adults performed “broken-wing” displays and successfully led the crows away from the nest. However, the crows were picking up pebbles, as if searching for similar-looking killdeer eggs. Additionally, raccoon tracks have been seen near the killdeer nest, and raccoons are suspected in the killing of an adult Gadwall on its nest and consuming the duck eggs. Therefore, the likelihood of natural predation of the killdeer nest remains high.



Photograph 2
Killdeer Nest – Oxford Retention Basin site

1.3 Regulatory Setting

As discussed previously, the killdeer is not an endangered species, and is not included on the March 2015 CDFW California Natural Diversity Database (CNDDDB) Special Animals List. No regulatory mechanism currently exists to authorize incidental take of a common bird species the way an Incidental Take Permit allows for a listed species under the federal ESA and CESA. Take permits often include a list of avoidance and mitigation measures set by the signatory agency in which a project must implement during construction.

Although such a permit is not required, there are a number of federal and state regulations applicable to the Project that afford varying degrees of protection for killdeer and their nesting activities, as summarized below.

1.3.1 Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) is a law implemented as a result of treaties with Britain (on behalf of Canada), Mexico, the U.S.S.R. (now Russia), and Japan that makes it unlawful, except as formally permitted, to take (pursue, hunt, take, capture, or kill) migratory birds except under permits for special situations such as imminent threat to human safety or scientific research. The law currently applies to more than 1,000 species, including most native birds, and covers the destruction or removal of active nests of those species. These protections apply whether or not there was intent and regardless of whether other entitlements are in place, such as approvals under the California Environmental Quality Act

(CEQA). Domestic waterfowl (including domesticated mallards), feral (rock) pigeon, chukar, Eurasian collared-dove, spotted dove, parrots, parakeets, red-whiskered bulbul, European starling, house sparrow, weavers, bishops, and mannikins are not covered by the MBTA.

1.3.2 Fish and Wildlife Conservation Act

The 1988 amendment (Public Law 100-653, Title VIII) to the Fish and Wildlife Conservation Act (FWCA) requires the Secretary of the Interior, through the U.S. Fish and Wildlife Service (USFWS) to “identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act (ESA) of 1973.” BCC 2008 is the most recent effort to carry out this proactive conservation mandate and update Birds of Conservation Concern 2002 (USFWS 2002). The overall goal of the BCC 2008 list is to accurately identify the migratory and non-migratory bird species (beyond those already designated as federally threatened or endangered) that represent our highest conservation priorities. BCC 2008 encompasses three distinct geographic scales - North American Bird Conservation Initiative (NABCI) Bird Conservation Regions (BCRs), USFWS Regions, and National—and is primarily derived from assessment scores from three major bird conservation plans: the Partners in Flight North American Landbird Conservation Plan, the United States Shorebird Conservation Plan, and the North American Waterbird Conservation Plan. The primary statutory authority for Birds of Conservation Concern 2008 (BCC 2008) is the Fish and Wildlife Conservation Act of 1980 (FWCA), as amended; other authorities include the Endangered Species Act (ESA) of 1973, the Fish and Wildlife Act of 1956, and 16 U.S.C. § 701.

1.3.3 California Endangered Species Act

The California Endangered Species Act (CESA) establishes the policy of the state to conserve, protect, restore, and enhance threatened or endangered species and their habitats. It prohibits the take of any species that the California Fish and Game Commission determines to be a threatened or endangered species and is administered by the CDFW. The CESA also mandates that state agencies should not approve projects that would jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy. There are no state agency consultation procedures under the CESA. For projects that affect both a federally and state listed species, compliance with the FESA will satisfy the CESA if the CDFW determines that the federal incidental take authorization is “consistent” with CESA under California Fish and Game Code Section 2080.1.

1.3.5 Sections 3511 – Fully Protected Species

The legislature of the State of California designated species as “fully protected” prior to the creation of CESA. Lists of fully protected species were initially developed to provide protection to those animals that were rare or faced possible extinction and included fish, mammals, amphibians, reptiles, and birds. Most fully protected species have since been listed as threatened or endangered under CESA and/or FESA. These species may not be taken or possessed at any time, with the only exception being permits for limited scientific study.

1.3.6 Sections 3503, 3503.5, 3505, 3513, 3800, 3801.6 – Native Birds

These California Fish and Game Code sections protect all birds, birds of prey, and all nongame birds, as well as their eggs and nests, for species that are not already listed as fully protected and that occur naturally within the state. Section 3503.5 specifically states that it is unlawful to take any raptors (e.g., hawks, owls, eagles, and falcons), or their nests and eggs.

In most cases, issues that will arise during construction of the Project will be associated with species protection under the MBTA and the California Fish and Game Code sections pertaining to native birds. It should be noted that while the management strategies presented in this Plan focus on those species protected under these regulations, this Plan was created to manage all species protected under all federal and state laws and regulations.

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Section 2

Management for Nesting Birds

This section describes the definition of an active nest, determination of the recommended nest buffer, implementation of the nest buffer, nesting bird deterrent methodologies, and the removal of inactive nests.

2.1 Definition of an Active Nest

Active nests of native bird species are protected in the State of California by both State and federal law. At the federal level, the MBTA states

“it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof”.

At the State level, California Fish and Game Code Section 3503 states

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

California Fish and Game Code Section 3503.5 states

“It is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.”

While the U.S. Fish and Wildlife Service (2000) has since clarified that the federal regulations do not pertain to inactive³ nests, the regulations at both the State and federal levels never clearly define what an active (or inactive) nest is. Indeed, many publications in the ornithological literature use the term “active nest”, but never precisely define the term. It is likely, therefore, that most authors assume that the term “active nest” is implicit and needs no further explanation. One notable exception regarding raptors, however, is Postupalsky (1974) who defined an active nest “as a nest in which eggs had been laid”. This definition was subsequently followed by Baral and Gautam (2007) in a study of vultures in India. From regulatory bodies, the Virginia Department of Game and Inland Fisheries (2010) defined an active Osprey (*Pandion haliaetus*) nest as a nest containing eggs or occupied by dependent (flightless) young.

As written definitions of the term “active nest” are not included in the MBTA or California Fish and Game Code, this Plan will define the term “active nest” as established with CDFG: A nest is

³ A nest without birds or eggs would be considered “inactive.”

an active nest as soon as construction of a new nest or use of an existing nest commences. In most cases, a previously active nest becomes inactive when it no longer contains viable eggs and/or living young and is not being used by a bird as part of the reproductive cycle (eggs, young, fledging young still dependent upon nest). In some cases, a nest can be abandoned by the bird constructing it and become inactive prior to egg laying. In such cases, determination that the nest is inactive is to be made on a case-by-case basis based on consistent observations and the determination of the Avian Biologist. Using this approach, a buffer is established around the nest upon nest discovery and/or prior to commencement of construction activities and is to remain established until the nest is determined to be inactive by the Avian Biologist or construction activities are complete in the area.

2.2 Construction Activities

As part of the Project, tree removal has already been conducted. Approximately 400 non-native trees and 300 non-native shrubs were removed. The remaining activities associated with the construction phase of the Project include:

- Excavation of approximately 3,000 cubic yards (CY) of accumulated sediment along the bottom of the Basin to restore basin capacity.
- Construction of a parapet wall along the northwestern and southern boundaries of the Basin. The reinforced concrete wall will be approximately 1,050 linear feet long and a maximum of 2 feet in height. The wall will provide enhanced flood protection along Washington Avenue.
- Replacement of the two existing tide gates used to regulate water entering and exiting the basin.
- Construction of a berm between the tide gates and reprogramming the opening cycle of the new tide gates to improve water circulation in the Basin.
- Mitigation of localized flooding by modifying the existing seven-foot-wide catch basin on the south side of Oxford Avenue at the intersection of Oxford Avenue and Olive Street by modifying the catch basin and providing a Tideflex "Check-mate" flap-gate connection to Storm Drain Project 5243. Local drainage will be further improved by the removal and replacement of existing Tideflex G-37 valves in four catch basins on Oxford Avenue and Olive Street with more efficient Tideflex "Check-mate" flap-gates.
- Construction of an 8-foot-wide walking trail with wildlife-friendly lighting around the perimeter of the Basin. The sidewalk along Admiralty Way will be replaced with landscaped parkway, bioswales and integrated with the new walking trail.
- Reconstruction of approximately 400 linear feet of slope along Admiralty Way near Storm Drain Project No. 3872 with geogrid or other approved material to stabilize the underlying soils.
- Removal of and approximately 6,700 CY of contaminated soils along the perimeter of the ORB (3,700 CY and 3,000 CY to be disposed at Class I and Class III landfills, respectively) and replacement with clean imported fill and attractive native plants to provide aesthetic enhancement, which will also serve to enhance habitat surrounding the Basin.

- Installation of approximately 3,550 linear feet of four to eight-foot-high ornamental steel fence around the perimeter of the Basin.
- Installation of an irrigation system to establish the new native plants.
- Construction of a maintenance vehicle access ramp from Admiralty Way adjacent to the tide gate control house.
- Installation of a steel-grated landing above the two tide gate inlet structures in the basin to provide safer access for trash rack maintenance.
- Construction of a permanent boat ramp near the outlet of Storm Drain Project No. 3872 to allow Flood Maintenance Division and the Department of Beaches and Harbors access to the ORB for routine maintenance, trash removal, and water quality monitoring.
- Construction of four observation decks along Admiralty Way and two observation areas with park benches along Washington Boulevard, overlooking the Basin.
- Installation of interpretative signage at the observation decks and along the walking trail to educate users about storm water pollution prevention measures, native plants, and area wildlife.

2.3 Responsibilities of the Project Biologist

As further described below, the Project Biologist is responsible for recommending and delineating a nesting buffer from the active nest; monitoring and restricting construction activities per the established buffer; and making a recommendation of reducing the buffer distance, if/when appropriate.

2.3.1 Determination of a Nesting Buffer

Due to the presence of an active ground nest, the Project Biologist initially established a temporary buffer of 300 feet around the killdeer nest. The buffer should be a sufficient distance from the nest as to ensure that the adults are not flushed from the nest. Review of previously approved Nesting Bird Management Plans for similar projects in the region, identify the minimum buffer for killdeer is approximately 125- to 150-feet. However, coordination with CDFW (June 2, 2015 email correspondence) suggested that site conditions, including sufficient natural vegetation or natural topographic features, could obstruct activities from view of the nest and protect the nest from noise and vibration.

The buffer around the active killdeer nest shall be determined based on observed behavior of the adult birds during different stages of construction activities to ensure the project meets the requirements of FG Code section 3503. At this point, in the early stages of construction, no construction activity has occurred close enough to the nest to induce flushing. Therefore, in order to establish an adequate nest buffer and exclusion zone, the Project Biologist carefully approached the killdeer nest from both directions to determine when the adult killdeer flushed from the nest. The Project Biologist observed that when approaching the nest from the east along the mudflats, the killdeer are flushed at approximately 100 feet from the nest. The killdeer have a good line of sight from the nest to the east, due to the flat, sparsely vegetated mudflats, and are more easily flushed. Due to the elevated northwest peninsula, the Project Biologist can easily come to within 60 feet of the nest from the west before flushing

the adult killdeer. The killdeer only flush once the Biologist reaches the crest of the peninsula, which is roughly 10-feet higher in elevation than the surrounding mudflats. Once the Project Biologist disappears from view back over the northwest peninsula, the adult killdeer immediately returns to the nest.

Therefore, due to the distance tolerance of human activities, a 150-foot buffer to the east of the nest and a 75-foot buffer to the west of the nest is recommended to prevent the adult killdeer from flushing due to nearby construction activities (see Figure 2-1). These distances are farther than observed flushing distances because it is assumed that construction activity is more likely to cause disturbance than the Biologist approaching on foot. No planned construction activities are scheduled to be performed on the water of the central Basin (to the south of the nest) before the young have fledged; therefore, no buffer has been established to the south. Additionally, the north perimeter fence is approximately 60 feet north of the nest. On the other side of the fence is the heavily-trafficked Washington Boulevard and adjacent sidewalk. Observed human activities along the fence, including vehicle traffic, do not disturb the nesting killdeer; therefore, the north buffer will be the northern perimeter fence (60 feet from the nest). The Biologist will continue to observe the killdeer throughout all stages of construction and will adjust the nest buffers as needed to ensure the project meets the requirements of FG Code section 3503.

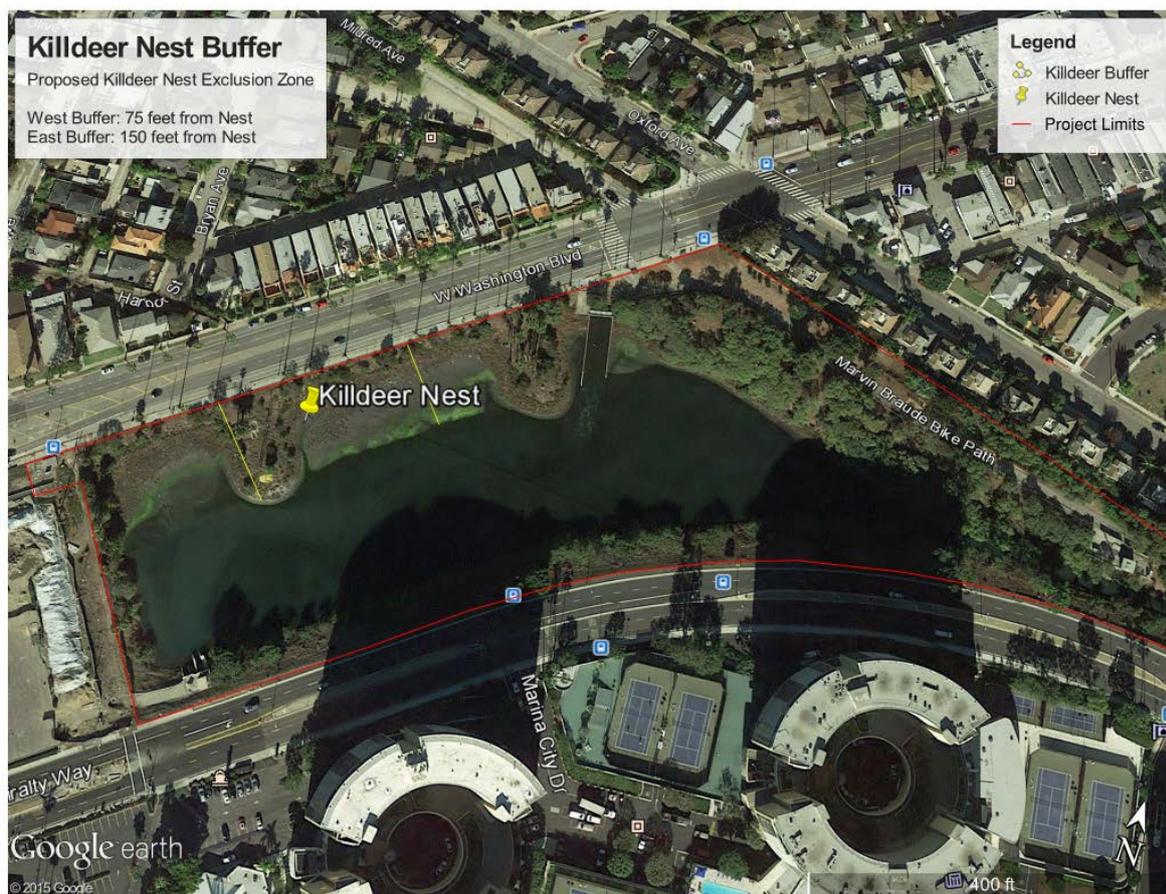


Figure 2-1
Proposed Killdeer Nesting Buffer

2.3.2 Implementation of a Nesting Buffer

No activities will be allowed within the recommended buffer until the nestlings have fledged from the nest or the nest fails. The Project Biologist will ensure that the Construction Contractor is made aware of the nesting buffers through the use of construction maps outlining environmental and biological constraint areas, flagging, staking and signage, and in-the-field communication. In addition, nesting buffer implementation requires the Project Biologist to:

- Document site conditions and construction activities (i.e., type and duration of);
- Install any staking and fencing around the active nest;
- Monitor the nest and its status to determine success/failure;
- Maintain a field log on the nesting bird behaviors observed;
- Recommend indirect impact reductions (e.g., no parking/stopping/loitering zones);
- Determine when a nest is no longer active based on personal observations;
- Conduct regular sweeps to search for and identify additional nests; and
- Communicate regularly with the County and CDFW.

2.3.3 Buffer Distance Reduction

If the Project Biologist determines that the killdeer has been exposed to routine public interaction and demonstrates desensitization to disturbance, the nesting buffer may be reduced with CDFW concurrence. If a reduced buffer can be implemented, the County and CDFW will be consulted prior to the reduction of the nesting buffer. Buffer reductions will take place only after consideration of site conditions such as:

- Distance to construction;
- Type and anticipated duration of construction;
- Microhabitat at the location of the nest that may provide visual and acoustic barriers (i.e., terrain);
- Behavior of the bird; and
- Reproductive cycle stage.

2.5 Inactive Nest Removal

The killdeer nest will be eligible for removal when it becomes inactive. The purpose of inactive nest removal is to prevent or reduce the potential reuse of a currently inactive nest (e.g., return of a pair to the nest) in active construction areas. In most cases, a previously active nest becomes inactive when it no longer contains viable eggs and/or living young and is not being used by a bird as part of the reproductive cycle (eggs, young, fledged young still dependent upon nest). To determine if the killdeer nest is inactive, a minimum of one uninterrupted, consecutive hour of monitoring in suitable conditions is required prior to removal. This time may be reduced if visual evidence definitively determines the status of the nest (active or inactive).

After the Project Biologist confirms that the killdeer nest is inactive, the nest will be removed within the immediate area per the three scenarios below.

- If the nest is determined to be inactive within the work area, the nest can be immediately removed, dismantled, and scattered onsite.
- If the nest is determined to be inactive because it has been abandoned, the nest is to be removed and placed outside the construction zone.
- If the nest failed (apparent non-viable, unhatched eggs or dead young) is determined to be inactive within a work area, the nest with eggs/young is to be removed and placed outside the construction zone.

The CDFW do not need to be notified prior to removal of the inactive nest when they are removed in compliance with Federal and State regulations. The killdeer nest will not be taken off site or collected because this would be in violation of the MBTA and the California Fish and Game Code. The nest location will be subsequently monitored to detect any re-nesting attempts.

Section 3

Glossary

Active nest = A nest is an active nest as soon as construction of a new nest or use of an existing nest commences. In most cases, a previously active nest becomes inactive when it no longer contains viable eggs and/or living young and is not being used by a bird as part of the reproductive cycle (eggs, young, fledging young still dependent upon nest). In some cases, a nest can be abandoned by the bird constructing it and become inactive prior to egg laying. In such cases, determination that the nest is inactive is to be made on a case-by-case basis based on consistent observations and the determination of the Avian Biologist.

Clutch = A set of eggs. A clutch is complete when the birds will lay no more eggs for that set of young. In some species, loss of eggs at a certain stage will stimulate production of more eggs while in other species it will not. Clutch size varies both among species and within species.

Confirmed nesting = A nest is confirmed to be active and has eggs or young. This will also include nests that are inferred based on the direct observation of adult behavior (i.e., bringing food items to nestlings). It will also include cavity-nesting species that may be entering or leaving a hole during the nesting season, unless it can be confirmed that an active nest is not present through direct observation of the cavity or behaviors of the adults (and fledglings).

Distraction display = Behaviors adult birds use to attract a potential predator away from a nest. Most species with such displays will only use them when they have an active nest; thus, the behavior can be indicative and confirm if a nest is active.

Fledge = To leave the nest. Both altricial and precocial young normally remain at least partly dependent on adults for survival for some time after fledging.

Fledgling = A young bird that has just fledged.

Incubate = To sit upon eggs for the purpose of hatching. Incubation maintains the proper temperature for growth of embryos and provides some protection. Some species incubate starting with the first egg (e.g., raptors) while others provide only limited incubation until the clutch is complete (most birds), ensuring all young hatch around the same time.

Nest (noun) = In this Plan, a structure formed by birds, most typically as a place in which to lay and incubate eggs and rear young. In some bird species the nest may be nearly absent (e.g., eggs laid directly on rock on a ledge), while in others the nest is quite elaborate. Many bird species also build nests in which no eggs are laid. These may be in addition to the nest with young (e.g., “dummy nests” constructed by wrens) or for roosting by adults (e.g., alternate nests of some raptors and woodpeckers, and nests build year-round by verdins).

Nest (verb) = To attempt to complete a nesting cycle, starting with an active nest through successful independence of young from the nest site. Once the attempt has failed or young are not at substantially increased risk by depredation or removal of a nest, nesting is complete.

Nest abandonment = Abandonment of a nesting effort by birds, resulting in a nest that is no longer active. Typically, that nest site will no longer be visited by those individual birds that

season, though those same individuals, other individuals, or even other species may quickly establish a new active nest there, and this can make occupancy difficult to determine.

Nest exchange = When one adult of a pair leaves the nest immediately prior to the other adult taking over nest attendance. Note that this occurs only in some species. In some species males do not attend the nest, but in some of these the male will bring food to the female on the nest.

Nesting season = The portion of the year during which behaviors directly related to nest construction and use occur. This period varies among species as well as within species by major regions and by elevation. This period is often shorter than the nesting season for a given species.

Nestling = A bird that has hatched but is not yet old enough to leave the nest. In precocial species, this period can be very brief.

Pair = One male mated to one female. Note that this only applies to monogamous pairs, which is the most common type of bonding in birds; however, many species have other types of bonding. In addition, in some species the female alone will raise the young (e.g., hummingbirds).

Precocial species = Species in which young are active and able to see and move freely almost immediately after hatching and require moderate to little parental care.

Predation = Capturing and consuming prey. Thus, for example, a ground nest trampled by large mammals has been depredated, not predated, but a snake consuming the eggs could also be described as nest depredation. See also, “depredation.”

Re-nesting = Attempting to nest again in the same year or season after either a successful or unsuccessful attempt to nest. Some bird species routinely make several attempts, even after successful efforts; some species will only attempt to re-nest after a failed effort, and some will abandon nesting for the season/year if nesting fails. Re-nesting efforts can occur at the same or a new nest site, and occur after a period of no nesting or even begin immediately following the first fledging of young in the prior nest (often with one adult feeding the fledglings and the other primarily attending the new nest).

Take = To pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner any migratory bird. This is extended to any part, nest, or egg of any bird covered by MBTA.

Appendix A

Daily Biological Monitoring Reports

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Memorandum

To: Rick Sun, Los Angeles County Department of Public Works

From: Matt Petty, CDM Smith

Date: June 1, 2015

Subject: Final Daily Biological Monitoring for the Oxford Retention Basin Multiuse Enhancement Project

Introduction

This memorandum summarizes the findings of biological monitoring on June 1, 2015. Monitoring is being conducted on a daily basis through completion of construction activities for the Oxford Retention Basin Multiuse Enhancement project. This monitoring is being conducted in compliance with the Streambed Alteration Agreement and Amendment issued by the California Department of Fish and Wildlife for the project.

Methods

Biological monitoring was conducted by Matt Petty, CDM Smith biologist on June 1, 2015, beginning at 7:15 am and ending at 4:00 p.m. During the monitoring, the biologist observed herbaceous vegetation removal (i.e. “weed-whacking”) activities as they were conducted in the project area. The biologist also observed installation of chain-link fence in the west parking lot (Parking Lot No. 8). Daily activities consisted of cutting herbaceous vegetation flush with the ground using gas-powered weed-whackers along Admiralty Way on the southern side of the Basin. However, not all vegetation was removed, as plants taller than 24” in height and plants along the shoreline at the toe of slope were left standing. Installation of the fence in Parking Lot No. 8 included the staging and erecting of chain-link fence and privacy screen. The fenced-off area will house the construction trailer and will serve as a parking and staging area.

The following sections provide the biologist’s field log notes, with observations of the day’s activities and wildlife presence and behavior.

Biologist’s Field Log

7:00 am. Biologist arrived at Oxford Basin (site) and prepared and organized field equipment for initial biological survey.

7:15 am. The Biologist begins the initial biological survey of the site. Three American crows, one black-crowned night heron, and one black phoebe are observed along the southeast channel near the pump house. The water in the Basin appears low. Algal growth is observed throughout the

Basin. Two European starlings, one Anna's hummingbird, and two mourning doves are observed along the north fence. At the stormwater inlet, one great blue heron, one black phoebe, and two house finches are observed, as a western gull flies over. Small flocks of European starlings and house finches are active in the palms that line Washington Boulevard to the north of the project site. Along the north shore and the mudflats, one song sparrow, two gadwall, and two killdeer are observed, as one rock pigeon flies over. The Biologist removes the orange tape installed during the May 31, 2015, pre-construction survey cordoning off the failed gadwall nest. The pair of killdeer exhibit some site fidelity on the north mudflats, but an investigation does not turn up a nest or eggs.

In the western portion of the Basin, a California least tern is observed repeatedly hovering and diving for fish. The California least tern is federally-listed as Endangered. The tern would repeatedly circle the central and western Basin, hover, and then dive into the water to forage for fish. Tern visits generally last for no more than 10 minutes, with the tern exiting the site to the west. When on site, the tern never came to within 1,000 feet of work activities and never appeared disturbed by activities within the Basin. If the tern had approached work activities, all work would be stopped.

In the southwest corner of the Basin near the tide gates, three black-crowned night herons are observed perching on the tide gate structure. Two mallards fly in and land in the west basin. Two Anna's hummingbirds are observed in the large pine next to the tide gate. This tree has repeatedly been investigated for hummingbird nests, and the results of today's investigation are like the others – no nests are observed. Two barn swallows fly over the western Basin, and a California ground squirrel (*Spermophilus beecheyi*) is observed actively excavating a burrow entrance in the southwest corner of the site. Burrows are observed along the north, south, and west shores of the site, with the highest densities in the southwest corner. Along the south shore of the Basin, a small flock of six house finches, one bushtit, one immature black-crowned night heron, two mourning doves, and one black phoebe are observed.

The initial wildlife survey is completed at 8:05 a.m.

8:15 am. Significant insect activity is observed both in and above the water. Dragonflies are particularly active. A lesser goldfinch is observed in the northeast corner of the site. Two more mallards land in the western Basin. The American Fence Company arrives with fencing material at Parking Lot No. 8.

8:30 am. Two snowy egrets fly in – one lands in the southeast channel and the other lands on the north shore. A great blue heron catches multiple fish near the stormwater inlet.

8:40 am. Contractor personnel arrive and Bio-awareness Training is given to the five staff that will be working on-site today. Contractor translates into Spanish. All five participants sign the sign-in sheet acknowledging they understand the Training. Contractor goes over the work plan for the day and indicates that work will include vegetation removal with handheld weed-whackers. A chain-

link fence will also be installed around Parking Lot No. 8, but this work will occur outside project boundaries. Because of the nature of the work, the Biologist emphasizes that crews should be on the lookout for brush-loving birds that had been observed that morning (e.g. black phoebe, house finch) and ground squirrels. Crews are told to stop work immediately if any wildlife come within the work area.

9:00 am. Training is completed. American Fence Company begin unloading fencing materials in Parking Lot No. 8. No wildlife is impacted. American crow, rock pigeon, European starling, and mourning dove fly over without hesitation.

9:15 am. Biologist meets with Construction Monitors. Biomonitoring and the Bio-awareness Training are explained to them.

9:30 am. Weed-whacking begins along on the south bank along the Admiralty Way fence. Crews begin on the bank directly opposite the stormwater inlet. A group of four house finches foraging in the vegetation approximately 20 feet away from the work are undisturbed and slowly move away. Two Anna's hummingbirds in the large pine tree near the tide gate harass an immature black-crowned night heron that is perching in the tree. Two mourning doves and two northern rough-winged swallows fly over the work and are unaffected. The weed-whacking is kicking up quite a few insects.

9:50 am. One killdeer flies over to investigate the work and immediately flies back to the north mudflats. A great blue heron retreats up the north bank, where it will remain resting in the vegetation for the remainder of the day. A red-tailed hawk is seen soaring high far off to the east of the site. The installation of the chain-link fence in Parking Lot No. 8 begins. Three mallard land in the west Basin and an American crow flies over. No wildlife is disturbed.

10:15 am. Vegetation clearing continues as the crews move toward the east. Cutting occurs from the fence (top of bank) down to the fiber coils (E&S control). The crews are clearing approximately 3,000 ft² per hour. Two immature western gulls fly high over the Basin. Wildlife is largely staying approximately 500 feet from the work area, but exhibit no signs of stress or altered behavior. Winds begin to pick up and coincides with a noticeable drop in observed wildlife activity.

10:40 am. Two American crows land on a portion of the newly installed chain-link fence at Parking Lot No. 8, approximately 200 feet from the active installation. The crows preen and call, and appear undisturbed. The only wildlife in the vicinity of the weed-whacking crew are rock pigeons squabbling around high rises across Admiralty Way. The weed-whacking stops for ten minutes to refuel, and a house sparrow and Anna's hummingbird fly in to investigate; they quickly fly off. A second great blue heron flies over the eastern Basin and up over the high rises. Heavy jackhammering begins on the other side of Washington Boulevard. Four European starlings and two American crows from nearby palm trees fly over the Basin.

11:00 am. Brush clearing continues along the southeast channel and is leaving plants >24" tall. Remodeling of several high rise apartments off-site, not a part of this project, particularly the loud jigsaw, causes three rock pigeons to take flight. A black phoebe perches in the southeast channel near the work area. Two northern rough-winged swallows fly along the Bike Path, and a flock of six American crows circle the eastern Basin. One yellow-breasted chat flies in and forages roughly 100 feet from the work area. It is quickly joined by two house finches, two bushtits, and one orange-crowned warbler. They forage until the crews get to within 20 feet before flying 50 feet ahead, and resume foraging.

11:15 am. Three crewmen at the pump house look at the electrical box and options for secondary power to the pumps. They all leave at 11:30 am. A snowy egret flies overhead and lands near the tide gates. A western tiger swallowtail (*Papilio rutulus*) butterfly flies along the opposite shoreline. Butterflies are extremely active today, with the most common being the cabbage white butterfly (*Pieris rapae*).

11:30 am. The vegetation removal stops. One monarch butterfly is seen flying along the southeast channel before leaving the site to the south at 11:50 am. A second monarch is encountered near the southeast gate, and leaves the site towards Yvonne Burke Park at 11:55 am. These are two of the three monarchs seen today. None go close to the eucalyptus trees where roosting was documented in January 2015.

12:00 pm. Work stops as the crews and the Biologist take lunch. The fence in Parking Lot No. 8 is completely installed. The California least tern returns and forages for fish intermittently over a 30-minute period before leaving the site to the southwest.

1:00 pm. Vegetation removal via weed-whacker resumes at the tide gates. Two mallards on-shore under the nearby pine trees are unaffected even though the work area comes within 20 feet of their location. Two house finches perch in the large pine tree next to the tide gates. A snowy egret preens on the west bank, approximately 200 feet from the work area. A stingray, crab, and hundreds of small fish are seen congregating at the tide gates.

1:15 pm. An Anna's hummingbird in the large pine tree next to the tide gates exhibits a stress response (i.e. fleeing and alarm call) as workers approach. Work is temporarily halted. The hummingbird returns and perches in a nearby pine – eventually returning to the original pine once workers have moved on. Two house finches are also in the pine trees overlooking the work area, but exhibit no stress response. Fence installation crews arrive with green privacy screening and begin installing it on the recently installed fence. Two mourning doves perch on the fence approximately 30 feet from the active work area, but are unaffected.

1:30 pm. A snowy egret perches on the tide gates, approximately 75 feet from active vegetation removal, but continues to forage. A second snowy egret and a black-crowned night heron fly over the western Basin – the egret lands on the north mudflats and the heron leaves the site. Three

house finches are squabbling in the grape vines on the west perimeter fence, and two American crows fly over the Basin.

2:00 pm. A monarch is observed flying over the western Basin. Crews begin to remove vegetation below the fiber coils (E&S control), but leave vegetation along the water's edge.

2:10 pm. A drone (quadcopter) hovers approximately 100-feet above the vegetation removal. It remains in the project area for five minutes before flying away to the north. The Biologist looks for the operator but one is not identified. Mourning dove, western gull, and American crow flyovers are frequently observed.

3:00 pm. Relatively little wildlife activity is observed around the vegetation removal work area. The breeze has picked up significantly. Vegetation removal continues along the south bank towards the east. Two swallows fly over; none of the swallows observed appear to show affinity to any of the concrete structures on-site. The western Basin is relatively algae free, but the eastern two-thirds of the Basin both attached/filamentous and floating algae is observed. Three stingrays and hundreds of small fish congregate at the leak in the tide gates. The fence installation crew have finished and are leaving the site.

3:30 pm. The vegetation removal crew stops work for the day.

4:00 pm. All personnel leave the project site.

Weather conditions throughout the day were sunny and breezy with temperatures in the low 70s (°F).

Additional Observations

Throughout the day, the biologist observed several birds, as listed in Table 1. As described previously, three monarch butterflies were also observed. Additional butterflies and dragonflies were observed, as described above. A California ground squirrel was observed during the initial morning survey, and burrows are common throughout the western two-thirds of the site. Three stingrays, measuring about 12" in diameter were observed congregating at the closed tide gates, along with hundreds of small fish and a crab. SWCA, fisheries biologists for the future fish relocation will be notified of the presence of stingrays.

A single California least tern was observed on-site, on two separate occasions. The tern would repeatedly circle the western Basin, hover, and then dive into the water to forage for fish. All tern activity occurred during periods when work was not occurring on site. If the tern had approached work activities, all work would be stopped. The tern spent did not appear disturbed by people walking the periphery of the Basin. CDM Smith is contacting CDFW, on behalf of LACDPW, for additional guidance on how to avoid disturbing the tern if and when it returns to the project site.

No active bird nests were observed inside the project boundary.

Table 1 provides a list of bird species observed during biological monitoring on June 1, 2015.

| Table 1. Bird Species Observed during Biological Monitoring on June 1, 2015 | | |
|--|-----------------------------------|--|
| Common Name | Scientific Name | Comments |
| Gadwall | <i>Anas strepera</i> | 2 individuals foraging in Basin |
| Mallard | <i>Anas platyrhynchos</i> | 5-6 individuals foraging along northern shore |
| Snowy Egret | <i>Egretta thula</i> | 2-3 individuals resting/foraging in Basin |
| Great Blue Heron | <i>Ardea herodias</i> | 2 individuals resting/foraging of the Basin |
| Black-crowned Night Heron | <i>Nycticorax nycticorax</i> | 5-6, including adults and juveniles, foraging and resting in Basin |
| Killdeer | <i>Charadrius vociferous</i> | 2 individuals observed along mudflats on north shore of Basin |
| Western Gull | <i>Larus occidentalis</i> | Very common; several flyovers of the Basin |
| California Least Tern | <i>Sternula antillarum browni</i> | 1 individual foraging in the west Basin |
| Red-tailed Hawk | <i>Buteo jamaicensis</i> | 1 individual flying far to the east of the Basin |
| Anna's Hummingbird | <i>Calypte anna</i> | 5-6 individuals observed around Basin |
| Black Phoebe | <i>Sayornis nigricans</i> | 4-5 individuals foraging around Basin |
| American Crow | <i>Corvus brachyrhynchos</i> | Several observed in vegetation, on utility poles, and flying over Basin. |
| Lesser Goldfinch | <i>Carduelis psaltria</i> | 2 individuals observed along southeast and northeast shores of the Basin |
| Orange-crowned warbler | <i>Vermivora celata</i> | 1 observed in eastern portion of Basin |
| Yellow-breasted Chat | <i>Icteria verins</i> | 1 observed in southeast portion of Basin |
| Bushtit | <i>Psaltriparius minimus</i> | 2 individuals seen along the southeast shore of Basin |
| House Finch | <i>Haemorhous mexicanus</i> | Very common; several observed in vegetation in throughout the Basin |
| House Sparrow | <i>Passer domesticus</i> | 1 individual observed along south shore of Basin |
| Rock Pigeon | <i>Columba livia</i> | Several observed flying over Basin, particularly in western portion and around high-rises south of Admiralty Way |
| Mourning Dove | <i>Zenaida macroura</i> | Several observed, particularly on power lines in the northern and western portions of the basin |
| Northern Rough-winged Swallow | <i>Stelgidopteryx serripennis</i> | Several observed flying over Basin; most common in residential area to east of Basin |
| Barn Swallow | <i>Hirundo rustica</i> | 2 observed flying over the western Basin |
| European Starling | <i>Sturnus vulgaris</i> | Several observed in the tall palms north of the site along Washington Blvd |

Conclusions

Biological monitoring was conducted on June 1, 2015, during vegetation removal and fence installation activities at the site. Based on observations made during monitoring, the following conclusions were made:

1. Several bird species are present, foraging around the Basin. No active nests were observed. As the Basin transitions from a closed canopy to an open system, a larger number species that favor open, scrub habitats are being observed. The greatest songbird density is located near the bike path along the eastern fence of the site.
2. A pair of killdeer are showing site fidelity to the north mudflats. Several extensive searches of the mudflats and adjacent areas have been conducted and no nests or eggs have been found. During the searches, the characteristic "broken-wing" display that nesting killdeer employ around potential dangers is not observed. Breeding pairs of killdeer are known to stay together long after young have fledged, and in some cases, year-round, so the observed behavior is not atypical. However, killdeer in southern states have been known to raise two broods, so the Biologist will continue to monitor the adults and look for nests, eggs, and breeding behaviors.
3. Three monarchs were observed at the site. The number of monarchs, as compared to surveys earlier in the year, are much lower. There was no "take" of monarchs during vegetation removal activities conducted at the site.
4. Wildlife tend to slowly move away from an area when crews approach to conduct vegetation removal and fence installation activities. They return to the area once the crews move on.
5. Significant algal blooms were observed at the site.
6. Large numbers of fish and three stingrays are observed congregating at the tide gates. They appear to congregate most around the leak in the easternmost gate.
7. The presence of stingrays needs to be relayed to future fish relocation crews.
8. The presence of an endangered species – the California least tern – on-site requires that California Department of Fish and Wildlife and U.S. Fish and Wildlife Service be consulted. CDM Smith is contacting the agencies, on behalf of LACDPW, as appropriate, for guidance. At this time, work will be stopped if the tern comes within 500 feet of active work areas.



Memorandum

To: Rick Sun, Los Angeles County Department of Public Works

From: Matt Petty, CDM Smith

Date: June 2, 2015

Subject: Final Daily Biological Monitoring for the Oxford Retention Basin Multiuse Enhancement Project

Introduction

This memorandum summarizes the findings of biological monitoring on June 2, 2015. Monitoring is being conducted on a daily basis through completion of construction activities for the Oxford Retention Basin Multiuse Enhancement project. This monitoring is being conducted in compliance with the Streambed Alteration Agreement and Amendment issued by the California Department of Fish and Wildlife for the project.

Methods

Biological monitoring was conducted by Matt Petty, CDM Smith biologist on June 2, 2015, beginning at 7:15 am and ending at 3:00 p.m. During the monitoring, the biologist observed herbaceous vegetation removal (i.e. "weed-whacking") activities as they were conducted in the project area. The biologist also observed installation of the temporary construction trailer in the west parking lot (Parking Lot No. 8). Daily activities consisted of cutting herbaceous vegetation flush with the ground using gas-powered weed-whackers along Admiralty Way on the southern side of the Basin and parallel to the bike path on the eastern side of the Basin. However, not all vegetation was removed, as plants taller than 24" in height and plants along the shoreline at the toe of slope were left standing. Installation of the construction trailer involved unloading from the transport truck and positioning the trailer within the fenced-off portion of Parking Lot No. 8.

The following sections provide the biologist's field log notes, with observations of the day's activities and wildlife presence and behavior.

Biologist's Field Log

7:15 am. Biologist arrived at Oxford Basin (site) and prepared and organized field equipment for initial biological survey. Contractor arrives at the same time and the construction trailer, hauled by installer who arrives minutes later. The truck hauling the construction trailer enters the newly fenced-off portion of Parking Lot No. 8, which will serve as the construction office and lot.

7:20 am. The Biologist gets assurances that work will not begin until 8:00 am and meets with the diver conducting the tide gate inspection. The Biologist goes over the Bio-awareness Training and tailors it towards the protection of aquatic species and their habitats. The Biologist also informs the diver that stingrays have been observed at the tide gates, and the two go over Health and Safety protocols.

7:30 am. The Biologist begins the initial biological survey of the site. The California least tern is observed fishing within the western Basin. It flies off to the west with a mouth full of fish at 7:35 am, and returns at 7:50 am to fish once more before leaving the site at 7:50 am. One black-crowned night heron is perched on the tide gate and several birds are observed flying over the western basin including three barn swallows, one European starling, and one western gull. A flock of four American crows are perched in the palm trees along Washington Boulevard, and two house finches are in the grape vines along the western project fence. Along the north shore, two northern rough-winged swallows fly along the fence; two killdeer are present on the mudflats; one Anna's hummingbird is perched on the north fence; two mourning doves are perched on the power lines; and two European starlings are perched on a power pole.

The killdeer do not display the characteristic "broken-wing" act to lead the Biologist away from a potential nest; however, they do the "cattle display", which is often used to keep cattle from stepping on eggs. The killdeer puff themselves up, display their tails over their heads, and occasionally mock charge. This convinces the Biologist that a nest is nearby, and after two days of searching, a nest is found at the toe of slope where the northwest peninsula meets the Basin shoreline. The nest is but a small scrape in the surrounding gravel, with the four eggs perfectly camouflaged with the surrounding pebbles. One of the eggs sits 6" apart from the other three, which rest against one another. The Biologist immediately cordons off a 50-foot buffer on either side of the nest with orange tape, as this distance is that at which the adults begin displaying.

Continuing on the initial survey, the Biologist observes one black phoebe in the northeast corner of the site, and one northern mockingbird, eight house finches, and one yellow warbler are observed along the bike path. Several birds, including nine house finches, one lesser goldfinch, and one bushtit are observed on the south shore. Three pigeons are observed on high rises across Admiralty Way, and American crows and western gulls frequently fly over the eastern Basin. Upon reaching the cleared area from the previous day, the Biologist flushes several pairs of mourning doves. All the potential and inactive nests identified from the pre-construction bird survey are investigated and no activity is observed.

8:05 am. Upon completing the initial wildlife survey, the Biologist conducts Bio-awareness Training with Contractor personnel. Emphasis is placed on the presence of the California least tern and the killdeer nest exclusion zone. Contractor translates and all three personnel sign the sign-in sheet acknowledging they understand the Training. Contractor goes over the work plan for the day and indicates that work will include vegetation removal with handheld weed-whackers. In addition, installation of the construction trailer in Parking Lot 8 will take 2-3 hours. Because of the nature of

the work, the Biologist emphasizes that crews should be on the lookout for brush-loving birds that had been observed that morning (e.g. black phoebe, house finch) and ground squirrels. Crews are told to stop work immediately if any wildlife come within the work area.

8:15 am. Vegetation removal with handheld weed-whackers begins on the south bank. A yellow-breasted chat conducts a hovering display over the central Basin. A single male mallard flies over the Basin, and one bushtit and one Anna's hummingbird perch on the eastern fence. Two gadwall fly over and head toward Yvonne Burke Park. Waterfowl will be largely absent from the Basin for the remainder of the day. Contractor and the diver head over to inspect and measure the tide gates on the marina side.

8:30 am. An immature black-crowned night heron lands in the southeast channel. Wading birds are largely absent in the Basin to this point, and the great blue heron that has been in the Basin the last two days is nowhere to be seen. There is an increase in barn swallow activity, compared to the day before, particularly in the western and central Basin.

8:45 am. The Biologist conducts the Bio-awareness Training for the worker who is installing the construction trailer. He was not at the original Training because he was maneuvering the truck and trailer into place. The trailer install is limited to the parking lot; therefore, the Training's focus is on gulls, starlings, rock pigeons, and other species that may wander into the area, and the endangered California least tern. Contractor and the diver return from inspecting the tide gates at the marina.

9:00 am. A group of five house finches land in a pine tree on the south shore, approximately 300 feet from vegetation clearing activities. They show no signs of being disturbed. Two barn swallows fly over the work area and a flock of six European starlings fly along the north fence. Also observed are two mallards in the western Basin. As the crews finish vegetation removal on the south shore and move to the southeast channel, a dark-eyed junco is observed on the east bank. The County inspector, arrives on-site.

9:05 am. The California least tern flies into the project site, makes one dive in the central Basin, catches a fish, and flies off-site to the west. This is relatively typical behavior for the tern on-site – visits generally last less than 10 minutes and consist of fishing (hovering then diving) and circling the western and central Basin. The Biologist discusses the results of the tide gate investigation with the Contractor and the diver. The decision has been made to only plug the marina side of the tide gates. Contractor hopes to plug the gates by next week, but the schedule hinges on obtaining requisite permits and regulatory approval of the surface water diversion plan (still under agency review).

9:45 am. The diver leaves the site, and vegetation clearing continues along the southeast channel. Four house finches, one lesser goldfinch, and a black phoebe forage ahead of the clearing, always managing to stay about 30 feet ahead of the work area. Two mourning doves land in the recently cleared area, approximately 100 feet from the active work area. Several American crow and

swallow flyovers are observed. Most of the swallows are barn swallows, with sightings of northern rough-winged swallows largely limited to the east fence and the southeast corner of the site. In comparison to the previous day, significantly more flow coming into the Basin from the leak in the easternmost tide gate is observed.

10:15 am. Two Anna's hummingbirds are showing site fidelity to a large eucalyptus on the other side of the bike path, approximately 100 feet northeast of the pump house. They chase a mourning dove away from the tree. The Biologist surveys the tree and observes the hummingbirds, but no nest is discovered. Two tiger swallowtail butterflies and one cabbage white butterfly are observed along the southeast channel. One black phoebe perches on the pump house railing.

10:45 am. It appears that wildlife activity is slowing dramatically as the morning progresses. While activity within the Basin slows, flyovers are still common with two American crows, two mourning doves, two house finches, and three barn swallows flying across the Basin. Four rock pigeons are observed on the high rises across Admiralty Way and four house finches are observed in the palms at Marina City Drive. An estimated 50 small fish are observed congregating at the gates at the end of the southeast channel.

11:15 am. Four house finches are observed foraging on the recently-cleared banks. One lesser goldfinch perches on the south fence, and one monarch butterfly flies along the south shoreline. Swallows are still very common, with barn swallows flying out over the Basin and northern rough-winged swallows flying over the southeast channel and east fence.

11:45 am. Work stops as the crews and the Biologist break for lunch. The Biologist detours to observe the killdeer nest – no brooding, but the adults stay close to the eggs. A mourning dove rests on the ground approximately 5 feet from the eggs, but the killdeer do not appear phased. A snowy egret is perched on the tide gates.

1:00 pm. After speaking with the CDM Smith Project Manager, who has reviewed the permits and has reached out to CDFW, the Biologist informs Contractor that no work shall be conducted on the north shore (300-foot killdeer nesting buffer) until CDFW provides additional guidance regarding work activities in the vicinity of the nest. Vegetation removal with weed-whackers resumes around the pump house. One black phoebe perches near the pump house, two house finches fly about the southeast channel, and two American crows fly over the work area. Additionally, one northern mockingbird and one Anna's hummingbird fly along the east fence, and one northern rough-winged swallow flies over the southeast corner of the site. Several barn swallows and a western gull fly around the central Basin. No wildlife is disturbed by work activities. Vegetation clearing continues to the east. Clearing on the east bank is only conducted below the straw wattles (E&S control).

1:30 pm. One monarch butterfly and several cabbage white butterflies are observed flying along the southeast channel. Three snowy egrets and two mallards are observed foraging along the southern shoreline. One killdeer is seen brooding the eggs (first observation). The Biologist flags a 300-foot

buffer around the nest with orange tape. A song sparrow is flushed while cordoning-off the killdeer nest.

1:50 pm. The California least tern arrives and circles the western and central Basin. It dives several times before leaving to the west at 1:57 pm.

2:20 pm. Vegetation clearing ends around the stormwater inlet in the northeast corner of the site. The crew has reached the eastern limit of the 300-foot killdeer nesting buffer. The entire east and south banks have been cleared except for plants that are >24" tall and a shoreline buffer. On the east bank, clearing has only occurred below the straw wattles (E&S control).

As the crew cleared along the buffer boundary, the Biologist observed the killdeer for any reaction. No altered behavior, alarm calls, or displays were observed. This is likely due to the 10-foot high elevated northwest peninsula, which is one of two that jut out from the north shore into the Basin. The elevated northwest peninsula obstructs the work from view of the nest.

2:30 pm. All work on-site stops. One Allen's hummingbird is observed in the northeast corner of the site.

2:45 pm. Crews leave the site.

Weather conditions were mostly cloudy in the morning, transitioning to mostly sunny in the afternoon with temperatures in the mid to upper 70s (°F).

Additional Observations

Throughout the day, the biologist observed several birds, as listed in Table 1. As described previously, two monarch butterflies were also observed. Additional butterflies and dragonflies were observed, as described above. While no California ground squirrels were observed, recent burrowing activity was noted on the western bank. Unlike yesterday, when three stingrays were observed, no stingrays were observed at the tide gates today.

A single California least tern was observed on-site, on four separate occasions. The tern would repeatedly circle the central and western Basin, hover, and then dive into the water to forage for fish. Tern visits generally last for no more than 10 minutes, with the tern exiting the site to the west. When on site, the tern never came to within 1,000 feet of work activities and never appeared disturbed by activities within the Basin. If the tern had approached work activities, all work would be stopped.

Due to observed adult killdeer behaviors, the Biologist was fairly certain a nest was located on the northern mudflats. However, killdeer nests are no more than scrapes on the ground, and killdeer eggs resemble pebbles. Killdeer rely on this camouflage to hide eggs from predators. The killdeer nest on-site contains four eggs, but one egg is set apart from the others by a distance of 6-inches or so. It is unknown if this egg is being brooded, along with the others, or was discarded for some reason.

Table 1 provides a list of bird species observed during biological monitoring on June 2, 2015.

| Table 1. Bird Species Observed during Biological Monitoring on June 2, 2015 | | |
|--|-----------------------------------|--|
| Common Name | Scientific Name | Comments |
| Gadwall | <i>Anas strepera</i> | 2 individuals flying over the Basin |
| Mallard | <i>Anas platyrhynchos</i> | 2-3 individuals foraging along northern shore; several flyovers |
| Snowy Egret | <i>Egretta thula</i> | 4-5 individuals resting/foraging in Basin |
| Black-crowned Night Heron | <i>Nycticorax nycticorax</i> | 2-3, including adults and juveniles, foraging and resting in Basin |
| Killdeer | <i>Charadrius vociferous</i> | 2 individuals observed nesting along mudflats on north shore of Basin |
| Western Gull | <i>Larus occidentalis</i> | Very common; several flyovers of the Basin |
| California Least Tern | <i>Sternula antillarum browni</i> | 1 individual foraging in the west Basin |
| Anna's Hummingbird | <i>Calypte anna</i> | 5-6 individuals observed around Basin |
| Allen's Hummingbird | <i>Selasphorus sasin</i> | 1 individual seen in the northeast corner of the Basin |
| Black Phoebe | <i>Sayornis nigricans</i> | 4-5 individuals foraging around Basin |
| American Crow | <i>Corvus brachyrhynchos</i> | Several observed in vegetation, on utility poles, and flying over Basin |
| Lesser Goldfinch | <i>Carduelis psaltria</i> | 2 individuals observed along south and east shores of the Basin |
| Yellow-breasted Chat | <i>Icteria verins</i> | 1 individual observed hovering over central Basin |
| Yellow Warbler | <i>Dendroica petechia</i> | 1 individual observed along bike path |
| Bushtit | <i>Psaltriparius minimus</i> | 1 individual seen along the southeast shore of Basin |
| House Finch | <i>Haemorhous mexicanus</i> | Very common; several observed in vegetation in throughout the Basin |
| Song Sparrow | <i>Melospiza melodia</i> | 1 individual observed along north shore of Basin |
| Dark-eyed Junco | <i>Junco hyemalis</i> | 1 individual observed along the eastern bank |
| Rock Pigeon | <i>Columba livia</i> | Several observed flying over Basin, particularly in western portion and around high-rises south of Admiralty Way |
| Mourning Dove | <i>Zenaida macroura</i> | Several observed, particularly on power lines in the northern and western portions of the basin |
| Northern Rough-winged Swallow | <i>Stelgidopteryx serripennis</i> | Several observed flying over Basin; most common in residential area to east of Basin |
| Barn Swallow | <i>Hirundo rustica</i> | Very common; several observed flying over the western Basin |
| Northern Mockingbird | <i>Mimus polyglottos</i> | 2 individuals seen along the eastern fence |
| European Starling | <i>Sturnus vulgaris</i> | Several observed along Washington Blvd |

Conclusions

Biological monitoring was conducted on June 2, 2015, during vegetation removal and construction trailer installation activities at the site. Based on observations made during monitoring, the following conclusions were made:

1. Several bird species are present, foraging around the Basin. As the Basin transitions from a closed canopy to an open system, a larger number species that favor open, scrub habitats are being observed. The greatest songbird density is located near the bike path along the eastern fence of the site.
2. A pair of killdeer are showing site fidelity to the north mudflats. The killdeer do not display the characteristic "broken-wing" act to lead the Biologist away from a potential nest; however, they do the "cattle display", which is often used to keep cattle from stepping on eggs. The killdeer puff themselves up, display their tails over their heads, and occasionally mock charge. This convinces the Biologist that a nest is nearby, and a nest is found at the toe of slope where the northwest elevated peninsula meets the Basin shoreline. The nest is but a small scrape in the surrounding gravel, with the four eggs perfectly camouflaged with the surrounding pebbles. One of the eggs sits 6" apart from the other three, which rest against one another. The Biologist immediately cordons off a 50-foot buffer on either side of the nest with orange tape, as this distance is that at which the adults begin displaying. That distance is extended to 300-feet from the nest to afford it more protection.
3. CDFW was contacted regarding the killdeer nest. They suggest that the nest buffer be greater than 50-feet to a distance in which the adults are not flushed off the nest. However, they understand that natural vegetation or topographic features may obstruct the nest from view and resulting noises and vibrations from construction activities. They also request a bird nesting management plan be prepared for the killdeer. The plan will describe actions that will be taken to avoid take of the nest, eggs, and young, until such time the young are no longer dependent on the nest. The CDM Smith Biologist observed that, when approaching the nest from the east along the mudflats, the killdeer can see a far ways off and are flushed at approximately 100 feet from the nest. However, when approaching the nest from the west, the northwest peninsula that extends into the Basin blocks the view from the nest until one is within 50 feet. This information, combined with a CDFW-approved killdeer nesting plan for another California project that calls for a 125 to 150-foot buffer, suggests that a 150-foot buffer would be appropriate to the west, north and south of the nest and a 50 foot buffer, to the crest of the northwest peninsula, is appropriate to the east of the nest. CDM Smith will prepare the bird nesting management plan and submit to CDFW for review and approval. Until the nesting management plan is approved, a 150-foot buffer will be placed around the killdeer nest in all directions.
4. Killdeer are among the most tolerant of birds when it comes to nesting amongst human development. Killdeer have been known to nest in residential backyards, cattle pastures, and gravel rooftops. Unlike many bird species, it is extremely rare for a killdeer pair to abandon a

nest. Killdeer eggs generally hatch 22-28 days after they are laid. Young killdeer hatch with their eyes open, and as soon as their downy feathers dry (generally 2-4 days), they leave the nest area and follow their parents about searching for food. Therefore, the nest buffer will likely remain in place for a maximum of 32 days.

5. Two monarchs were observed at the site. The number of monarchs, as compared to surveys earlier in the year, are much lower. There was no “take” of monarchs during vegetation removal activities conducted at the site.
6. Wildlife tend to slowly move away from an area when crews approach to conduct vegetation removal and fence installation activities. They return to the area once the crews move on.
7. Algal blooms were observed throughout the basin.
8. Large numbers of fish are observed congregating at the tide gates and southeast channel gate. They appear to congregate most around the leak in the easternmost tide gate. These areas are primary capture areas for the relocation of fish.
9. **CDFW was contacted regarding the California least tern sighting. CDFW explained that no “take” (hunt, pursue, catch, capture, or kill) of terns is allowed. CDFW recommends that avoidance is the best practice for avoiding take. As long as no activities result in direct mortality or capture, work can continue. To ensure no mortality or capture occurs, the Biologist will continue to temporarily stop work if the tern comes within 500 feet of active work areas. In the unlikely event that the tern displays nesting behaviors, CDFW will be contacted immediately.**



Memorandum

To: Rick Sun, Los Angeles County Department of Public Works

From: Matt Petty, CDM Smith

Date: June 3, 2015

Subject: Final Daily Biological Monitoring for the Oxford Retention Basin Multiuse Enhancement Project

Introduction

This memorandum summarizes the findings of biological monitoring on June 3, 2015. Monitoring is being conducted on a daily basis through completion of construction activities for the Oxford Retention Basin Multiuse Enhancement project. This monitoring is being conducted in compliance with the Streambed Alteration Agreement and Amendment issued by the California Department of Fish and Wildlife for the project.

Methods

Biological monitoring was conducted by Matt Petty, CDM Smith biologist on June 3, 2015, beginning at 7:15 am and ending at 4:00 p.m. During the monitoring, the biologist observed herbaceous vegetation removal (i.e. "weed-whacking") activities as they were conducted in the project area. The biologist also observed the delivery of a tractor to the west parking lot (Parking Lot No. 8) and removal, by hand, of the old chain-link fence on the west bank of the Basin. Daily activities consisted of cutting herbaceous vegetation flush with the ground using gas-powered weed-whackers on the western side of the Basin, and removing tall (> 24") vegetation by shovel around the tide gates and along the south (Admiralty Way) fence. Plants along the shoreline at the toe of slope were left standing to provide a buffer. Delivery of the tractor involved unloading from the transport truck and staging next to the construction trailer within the fenced-off portion of Parking Lot No. 8.

The following sections provide the biologist's field log notes, with observations of the day's activities and wildlife presence and behavior.

Biologist's Field Log

7:15 am. Biologist arrived at Oxford Basin (site) and prepared and organized field equipment for initial biological survey. Contractor crew of two already at site but is waiting on superintendent to arrive.

7:30 am. The Biologist begins the initial biological survey of the site. Two black-crowned night herons and one double-crested cormorant are perched on the tide gates, while two western gulls fly

over the western Basin. Along the western shore, two house finches forage on the bank and one Anna's hummingbird perches on the grape vines. Two barn swallows forage for insects on the wing and two ground squirrels are observed excavating burrows in the northwest corner of the site. One snowy egret forages for fish on the north shore, and the two killdeer are observed at the nest (all four eggs are untouched and unmoved). Four European starlings are observed along the north fence, and one American crow flies over the central Basin. Two mallards forage in the central Basin, and a brown pelican circles once before leaving the site and perching on the roof of the Killer Café restaurant to the southwest. At the stormwater inlet in the northeast corner of the site, two house finches, one American crow, and one black phoebe are observed. Also in the northeast corner, but along the bike path, are two house sparrows. Moving to the southeast along the bike path, four house finches, and one Hutton's vireo are observed. At the pump house, four dark-eyed juncos forage along the ground, while two immature black-crowned night herons, and two snowy egrets forage in the southeast channel. Across Admiralty Way, six rock pigeons perch on the high-rise buildings. Along the southern shore, one bushtit, one black phoebe, two American crows, and one great blue heron are observed.

8:00 am. Upon completing the initial wildlife survey, the Biologist conducts Bio-awareness Training with Contractor personnel. Emphasis is placed on the potential presence of the California least tern and the killdeer nest exclusion zone. All three Contractor personnel sign the sign-in sheet acknowledging they understand the Training. The superintendent then goes over the work plan for the day and indicates that work will include vegetation removal with handheld weed-whackers on the west bank (up to the 300-foot killdeer nest buffer), and large (> 24") remaining vegetation around the tide gates and the south fence will be removed by shovel. In addition, a tractor will be delivered and staged in Parking Lot No. 8, and the old chain-link fence along the west bank will be removed by hand. Because of the nature of the work, the Biologist emphasizes that crews should be on the lookout for brush-loving birds that had been observed that morning (e.g. black phoebe, house finch) and ground squirrels. Crews are told to stop work immediately if any wildlife come within the work area.

8:15 am. Two stingrays and hundreds of small fish are observed congregating at the tide gates. The flow through the leak is much lower than yesterday and is similar to the flow observed on June 1. Algal growth is observed on the trash racks of the tide gates. Stingrays are not observed passing in and out through the trash racks today, but they were observed passing in and out through the trash racks on June 1. An Allen's hummingbird is observed in the grape vines along the south shore, and a mourning dove is observed perched on a power line. A barn swallow chases a northern rough-winged swallow across the Basin. An immature black-crowned night heron perches in the large pine next to the tide gates, and is harassed by a black-chinned hummingbird. Both species are observed in and around the pine for the remainder of the day. The Inspector of Record arrives on site. He reminds the crews that no ground disturbance is allowed at this point.

8:30 am. Vegetation clearing with a weed-whacker begins on the west bank. No wildlife is observed in the vicinity. Even with crews milling about the tide gates, the immature black-crowned night

heron and black-chinned hummingbird remain in the nearby pine, undisturbed. A house finch flies across the Basin within 200 feet of the work area, and a single male mallard sleeps on the mudflat in the northwest corner of the site. No wildlife is disturbed throughout the vegetation clearing on the west bank.

9:00 am. Very little wildlife activity is observed; activity is composed entirely of American crow, western gull, and barn swallow flyovers. At 9:05 am, one California least tern flies in from the west over the work area. The tern circles the Basin once, catches a fish, and flies off-site to the west. The tern continues to enter the site and exhibit unaffected behavior, even when vegetation clearing is occurring on the western shore. The tractor arrives at Parking Lot No. 8.

9:15 am. Vegetation clearing with a weed-whacker ends along the west bank as a light rain, misty and unmeasurable begins to fall. According to Weather Underground, which has a weather station in Marina del Rey, trace rainfall was recorded for 6/3/15; therefore, it was less than 0.02 inch. The ground was moist in the morning, transitioning to dry ground conditions in the afternoon. Two northern rough-winged swallows circle the central Basin. One California least tern flies into the western Basin and dives for fish no more than 50 feet from the Biologist observing on the tide gates. It leaves after spending no more than 30 seconds on site with a mouth full of fish. The tractor is unloaded in Parking Lot No. 8 and is staged near the construction trailer.

9:30 am. Manual removal of tall (> 24") herbaceous vegetation begins around the tide gates. This vegetation was not removed with weed-whackers and are now being removed using shovels. No ground is disturbed, as the shovels slice plant stalks flush with the ground. The black-chinned hummingbird is still upset with the immature black-crowned night heron perched in the large pine next to the tide gates. Anna's hummingbirds had previously shown site fidelity to this tree, and no nests were found. With the black-chinned hummingbird also showing site fidelity, the tree is scoured for nests and the hummingbird observed for 15 minutes. No nest is observed.

Jackhammering originating from a non-project related source begins opposite the southwest corner of the site across Admiralty Way. The work, conducted near the Killer Café restaurant parking lot, flushes two American crows.

10:15 am. Manual removal of tall vegetation continues at the south fence along Admiralty Way. Wildlife around the Basin is observed sheltering from the consistent light rain, misty and unmeasurable. All observed birds are perched in trees or hunkered down along the Basin shoreline. Activity is largely limited to infrequent western gull and American crow flyovers. House finches also occasionally fly out of roost trees and circle the Basin before returning from where they came. At 10:21 am, one California least tern circles the central and western Basin three times. It dives five times and leaves the site over the west fence with a fish at 10:26 am.

10:45 am. An adult killdeer is observed on the killdeer nest. The Biologist carefully approaches from the west to determine at what point the adult is flushed from the nest in order to establish an

adequate nest buffer and exclusion zone. Due to the elevated northwest peninsula, the Biologist can easily come to within 50 feet of the nest before flushing the adult. Once the Biologist disappears from view back over the northwest peninsula, the adult immediately returns to the nest. The biologist returned at a distance of approximately 60 feet and observed the killdeer on its eggs for 20 minutes. At no point was the adult disturbed. Also, the fourth egg, sitting 6" from the other three, is not being brooded. The adults have abandoned this egg for an unknown reason. At 10:48 am, the California least tern circles the central and western Basin for seven minutes making several dives. It leaves the site to the southwest towards the marina without any fish.

11:15 am. A dead mourning dove is observed along the east fence. Over the last three days, no work activity or equipment was located in this area. All work on the east bank was conducted below the straw wattles, approximately 100 feet away from the dead dove. The bird had been decapitated, but no other trauma to the body was observed. Due to the state of decomposition and the location of the bird in an open, regularly travelled route (the Biologist had walked the area in the pre-work survey), and no work activity or equipment was located in this area over the last three days, the bird mortality was not caused by project activities.

A northern mockingbird is observed on the stormwater inlet fence, and four house finches and two mourning doves are observed perching on power lines. A brown pelican makes one pass over the western Basin before departing to the southwest.

11:30 am. Using binoculars and standing on the northeast peninsula, the Biologist observes as two American crows land approximately 5 feet from the killdeer nest. The second adult killdeer immediately flies in to help the other adult at the nest try and lead the crows away. The crows search the area close to the nest. One of the two crows flies away and the other follows the displaying adult killdeer to the water's edge. When the crow doubles back towards the nest, one adult flies in front of it and makes shrill alarm calls. The crow is picking up pebbles in a search for the eggs. After ten minutes, the second crow flies off and both adult killdeer sprint back to the nest. Upon close examination, the Biologist confirms all four eggs have not been touched.

11:45 am. The removal of tall herbaceous vegetation by hand stops as the crew heads to the northwest corner of the site to extend the perimeter fence around an area of contaminated soil. The work is being conducted along Washington Boulevard and no wildlife is observed in the vicinity.

12:10 pm. All staff on site break for lunch.

1:00 pm. Work begins removing the old chain-link fence from the west bank of the site. The old fence is cut away by hand with wire cutters. The only wildlife in the vicinity is a snowy egret at the tide gates and three house finches in the grape vines on the west bank, approximately 100 feet from the work area. No wildlife is disturbed. Three mallards fly in from the west and land in the eastern Basin.

1:10 pm. The Biologist attends the initial construction meeting. After introductions, the group meets at the construction trailer to observe the site and discuss next steps. Following the meeting with the larger group, CDM Smith discusses the fish relocation plan with the County and Contractor. Additionally, the Biologist discusses the presence of ground squirrels on the west bank and how that may affect the planned removal of contaminated soils. Following this discussion, the Biologist takes the Inspector of Record and County staff to view the killdeer nest. Proposed killdeer nesting buffers are discussed. The meeting ends at 3:30 pm.

3:30 pm. The Biologist checks in with Contractor field crews and they confirm they are done for the day. Together, they gather equipment and belongings and lock the site gates.

4:00 pm. All personnel leave the site for the day.

Weather conditions were mostly cloudy with light rain that was misty and unmeasurable in the morning, transitioning to mostly sunny in the afternoon with temperatures in the upper 60s and lower 70s (°F). According to Weather Underground, which has a weather station in Marina del Rey, trace rainfall was recorded for 6/3/15; therefore, it was less than 0.02 inch. The ground was moist in the morning, transitioning to dry ground conditions in the afternoon.

Additional Observations

Throughout the day, the biologist observed several birds, as listed in Table 1. Unlike on previous days, no monarchs and very few butterflies and dragonflies in general were observed. This is likely due to the poor weather conditions for much of the day. Two California ground squirrels were observed excavating burrows in the early morning. Ground squirrels have established an extensive network of burrows, primarily on the north and west banks. Unlike yesterday, when no stingrays were observed, two stingrays were observed at the tide gates today.

It is assumed that the California least tern that has been repeatedly observed is the same individual. Over the last three days, it has displayed very consistent behavior. The tern repeatedly circles the central and western Basin, hovers, and then dives into the water to forage for fish. Based on observations over the last three days, tern visits are most likely to occur in the morning before 11:00 am, and generally last for no more than 10 minutes, with the tern exiting the site to the west. **When on site, the tern never appears disturbed by activities within the Basin. If the tern had approached work activities, all work would be stopped. Consistent with CDFW guidance from Betty Courtney on June 2, 2015 (personal communication via email to CDM Smith), "...everyone just needs to avoid the least tern so there is no direct mortality or capture, as defined by the code."**

For the first time this week, a brown pelican was observed soaring over the Basin.

Table 1 provides a list of bird species observed during biological monitoring on June 3, 2015.

| Table 1. Bird Species Observed during Biological Monitoring on June 3, 2015 | | |
|--|-----------------------------------|--|
| Common Name | Scientific Name | Comments |
| Brown Pelican | <i>Pelecanus occidentalis</i> | 1-2 individuals seen soaring over western Basin |
| Mallard | <i>Anas platyrhynchos</i> | 3-4 individuals foraging along northern shore; several flyovers |
| Snowy Egret | <i>Egretta thula</i> | 5-6 individuals resting/foraging in Basin |
| Great Blue Heron | <i>Ardea herodias</i> | 1 individual observed on the south shore |
| Black-crowned Night Heron | <i>Nycticorax nycticorax</i> | 5-6, including adults and juveniles, foraging and resting in Basin |
| Double-crested Cormorant | <i>Phalacrocorax penicillatus</i> | 1 individual observed at the tide gates |
| Killdeer | <i>Charadrius vociferous</i> | 2 individuals observed nesting along mudflats on north shore of Basin |
| Western Gull | <i>Larus occidentalis</i> | Very common; several flyovers of the Basin |
| California Least Tern | <i>Sternula antillarum browni</i> | 1 individual foraging in the west Basin |
| Anna's Hummingbird | <i>Calypte anna</i> | 2-3 individuals observed around Basin |
| Allen's Hummingbird | <i>Selasphorus sasin</i> | 1 individual seen in the southwest corner of the Basin |
| Black-chinned Hummingbird | <i>Archilochus alexandri</i> | 1 individual in the large pine tree near the tide gates |
| Black Phoebe | <i>Sayornis nigricans</i> | 2-3 individuals foraging around Basin |
| American Crow | <i>Corvus brachyrhynchos</i> | Several observed in vegetation, on utility poles, and flying over Basin |
| Hutton's Vireo | <i>Vireo huttoni</i> | 1 individual in the trees along the bike path |
| Bushtit | <i>Psaltriparius minimus</i> | 1 individual seen along the southeast shore of Basin |
| House Finch | <i>Haemorhous mexicanus</i> | Very common; several observed in vegetation in throughout the Basin |
| Song Sparrow | <i>Melospiza melodia</i> | 1 individual observed along north shore of Basin |
| Dark-eyed Junco | <i>Junco hyemalis</i> | 4 individuals observed near the pump house |
| Rock Pigeon | <i>Columba livia</i> | Several observed flying over Basin, particularly in western portion and around high-rises south of Admiralty Way |
| Mourning Dove | <i>Zenaida macroura</i> | Several observed, particularly on power lines in the northern and western portions of the basin |
| Northern Rough-winged Swallow | <i>Stelgidopteryx serripennis</i> | Several observed flying over Basin; most common in residential area to east of Basin |
| Barn Swallow | <i>Hirundo rustica</i> | Very common; several observed flying over the western Basin |
| Northern Mockingbird | <i>Mimus polyglottos</i> | 1 individual seen along the northeastern fence |
| European Starling | <i>Sturnus vulgaris</i> | Several observed along Washington Blvd |

Conclusions

Biological monitoring was conducted on June 3, 2015, during vegetation removal and old fence removal activities at the site. Based on observations made during monitoring, the following conclusions were made:

1. Several bird species are present, foraging around the Basin. As the Basin transitions from a closed canopy to an open system, a larger number species that favor open, scrub habitats are being observed. The greatest songbird density is located near the bike path along the eastern fence of the site.
2. Killdeer are among the most tolerant of birds when it comes to nesting amongst human development. Killdeer have been known to nest in residential backyards, cattle pastures, and gravel rooftops. Unlike many bird species, it is extremely rare for a killdeer pair to abandon a nest. Killdeer eggs generally hatch 22-28 days after they are laid. Young killdeer hatch with their eyes open, and as soon as their downy feathers dry (generally 2-4 days), they leave the nest area and follow their parents about searching for food. Therefore, the nest buffer will likely remain in place for a maximum of 32 days.
3. To assist with the preparation of the bird nesting management plan, the Biologist wanted to acquire more site-specific observations on the tolerance of the nesting pair of killdeer. The Biologist carefully approached the killdeer nest from both directions to determine when the adult is flushed from the nest to establish adequate nest buffers and an exclusion zone. Due to the elevated northwest peninsula, the Biologist can easily come to within 50 feet of the nest from the west before flushing the adult. Once the Biologist disappears from view back over the northwest peninsula, the adult immediately returns to the nest. Therefore, a 75-foot buffer to the west of the nest should be adequate to prevent the adult from flushing due to nearby work activities. When approaching the nest from the east, the flat mudflats provide sight lines from the nest. Therefore, the adult killdeer is flushed much more easily, generally at a distance of 100 feet. Because of this, a 150-foot buffer to the east of the nest should be adequate to prevent the adult from flushing due to nearby work activities. CDM Smith will prepare the bird nesting management plan. CDM Smith will submit the Draft bird nesting management plan to CDFW, on behalf of the County, for review and approval. Until the nesting management plan is approved, a 150-foot buffer will be placed around the killdeer nest in all directions.
4. Wildlife tend to slowly move away from an area when crews approach to conduct vegetation removal and fence removal activities. They return to the area once the crews move on.
5. The deceased mourning dove that was found along the eastern fence had most likely been killed during the late morning hours. All work today was concentrated in the western Basin, and the Biologist was the only staff on site to even walk in the eastern half of the Basin. Therefore, the death was not the result of project activities.
6. Algal blooms were observed throughout the Basin.

7. Two stingrays and large numbers of fish are observed congregating at the tide gates and southeast channel gate. They appear to congregate most around the leak in the easternmost tide gate. The tide gates appear to be closed.
8. The presence of an endangered species – the California least tern – on-site requires that California Department of Fish and Wildlife and U.S. Fish and Wildlife Service be consulted. CDFW was contacted and they explained that no “take” (hunt, pursue, catch, capture, or kill) of terns is allowed. CDFW recommends that avoidance is the best practice for avoiding take. As long as no activities result in direct mortality or capture, they can continue. To ensure no mortality or capture occurs, the Biologist will continue to temporarily stop work if the tern approaches work areas. In the unlikely event that the tern displays nesting behaviors, the Biologist will stop work and CDFW will be contacted immediately.
9. The California least tern flies into the project site, makes one dive in the central Basin, catches a fish, and flies off-site to the west. This is relatively typical behavior for the tern on-site – visits generally last less than 10 minutes and consist of fishing (hovering then diving) and circling the western and central Basin. Today, the tern was on site on four separate occasions for approximately 14 minutes over a period of 1 hour and 45 minutes.
10. On one occasion when the California least tern failed to catch fish, it departed the site to the southwest toward the marina. When it catches fish, the tern is consistently observed leaving the site over the western fence and over the Hilton Garden Inn hotel. This behavior suggests that the Basin is possibly one of several foraging sites in the area for the California least tern.
11. The brown pelican, which was observed flying over the project site for the first time today, was once state and federally listed as endangered. However, due to the recovery of populations along the Pacific Coast, it was de-listed in 2009.



Memorandum

To: Rick Sun, Los Angeles County Department of Public Works

From: Matt Petty, CDM Smith

Date: June 4, 2015

Subject: Final Daily Biological Monitoring for the Oxford Retention Basin Multiuse Enhancement Project

Introduction

This memorandum summarizes the findings of biological monitoring on June 4, 2015. Monitoring is being conducted on a daily basis through completion of construction activities for the Oxford Retention Basin Multiuse Enhancement project. This monitoring is being conducted in compliance with the Streambed Alteration Agreement and Amendment issued by the California Department of Fish and Wildlife for the project.

Methods

Biological monitoring was conducted by Matt Petty, CDM Smith biologist on June 4, 2015, beginning at 7:15 am and ending at 4:00 p.m. During the monitoring, the biologist observed herbaceous vegetation removal by hand and mechanized “scraping” activities as they were conducted in the project area. The biologist also observed the continuing removal, by hand, of the old chain-link fence on the west bank of the Basin. Daily activities consisted of removing tall (> 24”) vegetation by shovel along the southeast channel and east fence, and mechanized “scraping”, in which plants were removed and ground smoothed by tractor, along the east bank. Plants along the shoreline at the toe of slope were left standing to provide a buffer. Continued removal of the old chain-link fence on the west bank by hand using wire-cutters was also observed.

The following sections provide the biologist’s field log notes, with observations of the day’s activities and wildlife presence and behavior.

Biologist’s Field Log

7:15 am. Biologist arrived at Oxford Basin (site) and prepared and organized field equipment for initial biological survey. Contractor crew of two is already at the site but is waiting on superintendent to arrive.

7:25 am. The Biologist begins the initial biological survey of the site. The water level in the Basin appears significantly lower than at any point this week. There is almost no water at the stormwater inlet or in the eastern Basin. Significant algae exists in the eastern and central portions of the Basin.

There is a noticeable odor in the southeast channel near the pump house. The odor is a natural sulfuric smell (not sewage).

A great blue heron is observed along the western shoreline. Six snowy egrets, seven black-crowned night herons, and four western gulls are wading in the eastern Basin catching fish. Also present in the eastern Basin are two mallards, and three double-crested cormorants and four western gulls are observed flying over the eastern Basin. One mallard is present in the central Basin, and two barn swallows and one mourning dove fly over the central Basin. Two mourning doves are perched on power lines along the north shore, four European starlings are observed in the palm trees along Washington Boulevard. In the northeastern corner of the site, one black-crowned night heron is observed within the stormwater inlet culvert, and one bushtit and one house finch are observed foraging on the bank. Eight house finches are perched along the east fence. On the other side of the fence along the bike path, one Anna's hummingbird and one bushtit are observed in the trees. Along the southeast channel, one black-crowned night heron, one dark-eyed junco, and two snowy egrets are present. Two American crows are perched on the light poles along Admiralty Way on the other side of the south fence.

An adult killdeer is on the nest brooding its three eggs. The fourth egg is present 6" away, but is not being brooded. The Biologist approaches the nest slowly from the east, and the adult is flushed when coming within 75 feet. Both adult killdeer are present on the mudflats. The Biologist moves the western 50-foot buffer boundary tape to 75 feet – the recommended distance. Fresh raccoon tracks are observed on the mudflats close to the nest, but all four eggs are untouched.

The initial survey is completed at 8:00 am.

8:15 am. The east tide gate motor turns on for approximately two minutes and shuts off flow into the Basin. When the motor turns on, the water at the tide gates becomes turbulent and two stingrays and hundreds of small fish are observed. The Contractor (superintendent and two crew) arrives on site and positions a port-o-john near the construction trailer. Three rock pigeons fly over Parking Lot No. 8, and one black-crowned night heron flies over the tide gate and off-site to the south.

8:30 am. The Biologist conducts Bio-awareness Training with the Contractor. The superintendent and two crew sign the sign-in sheet indicating they understand and will follow BMPs and wildlife protection measures. The superintendent goes over the work for the day and indicates that scraping with a tractor will occur along the flat terraces of the east bank. However, prior to beginning, the Contractor is waiting on the go-ahead from the Inspector of Record. Three mallards are observed landing in the eastern Basin.

9:00 am. A black-chinned hummingbird is observed in the large pine next to the tide gates. It is likely the same individual observed in the same tree all day yesterday. The Biologist searches for a nest, but none is found. While awaiting direction from the Inspector of Record, the work crew

begins hand clearing tall (>24"), herbaceous vegetation along the south fence with shovels. Three house finches are approximately 100 feet away, but are unaffected by work activity.

9:30 am. The hand clearing of tall vegetation ends and the crew moves the tractor from its staging area near the construction trailer to the northeast corner of the site (access via Washington Boulevard through the stormwater inlet gate). Two mourning doves perched on the north fence fly off across the Basin, but no other wildlife appears affected. Three European starlings observe the activity from the palm trees along Washington Boulevard. The Biologist watches the adult killdeer on its nest, but the adult does not appear disturbed by the activity 400-feet away. Five house finches are observed foraging along the north bank; three mallards are sleeping on the stormwater inlet; and one barn swallow flies by; however, no wildlife is affected by work activities.

9:45 am. Scraping with the tractor begins on the northeast bank. Scraping occurs only on the flat terraces at the top of bank, not on the slopes (E&S controls – straw wattles are in place). Hand removal of tall, herbaceous vegetation also occurs along the east fence adjacent to the bike path. Three more mallards land in the eastern Basin, and one black phoebe is perched on a rock in the southeast channel. The water levels are slowly rising in the east Basin and southeast channel.

10:15 am. Scraping by tractor and hand removal of tall vegetation continues east. A northern rough-winged swallow follows approximately 50 feet behind the tractor and catches insects kicked up by the work activity. Two house finches are perched on power lines, and one American crow is perched on a power pole nearby. One Anna's hummingbird and one house sparrow are observed in residential backyard trees on the other side of the bike path. One great blue heron lands on the northeast peninsula.

11:00 am. Work continues along the eastern side of the site. One black phoebe and four house finches forage along the east shoreline. Swallows occasionally swoop over the work area, and significant American crow and European starling activity is observed along Washington Boulevard. No wildlife is disturbed by work activities. No California least tern sightings to this point. This is notable because most sightings occur before 11:00 am.

11:15 am. Western gull and American crow flyovers of the Basin are extremely frequent. A northern mockingbird flies from a power line in the northeast corner of the site to a palm tree along Washington Boulevard. A black phoebe and two house finches are observed foraging in the recently scraped area.

12:00 pm. All staff on site break for lunch.

1:00 pm. Scraping and manual vegetation removal continues along the eastern fence. The Biologist takes 15 minutes to examine the tide gates with the CDM Smith Project Manager in preparation for future fish removal.

1:30 pm. Wildlife observations on-site include three mourning doves on the south bank, a south egret at the tide gates, a great blue heron on the north shore, three mallards near the stormwater inlet, and frequent swallow and house finch fly-overs. These fly-overs tend to originate from residential areas to the east of the site, continue over the eastern Basin, and end back in the residential areas to the east. Work activities have no observed effect on wildlife.

2:00 pm. One tiger swallowtail butterfly is observed along the southeast channel. Butterfly observations have decreased over the last two days. One black phoebe and one mourning dove are also observed on the banks of the southeast channel. Four house finches are observed in trees along the bike path. A very large group of 18 western gulls is observed riding thermals and soaring in a circular pattern approximately five miles east of the site.

2:15 pm. One double-crested cormorant lands on the stormwater inlet and rests on the structure, which is already occupied by three mallards. One western gull lands in the central Basin. One great blue heron and one snowy egret are perched on the tide gates.

2:30 pm. Scraping with the tractor stops. All terraced areas at the top of the east bank have been scraped, and all vegetation has been manually removed along the eastern fence. The tractor exits the site through the pump house gate and continues down Admiralty Way before parking at the southwest gate (tide gates). No wildlife is disturbed during tractor relocation because none are observed in the vicinity.

3:00 pm. Removal of the old chain-link fence along the west bank by hand begins. Three house finches are observed in the grape vines, approximately 100 feet from the work area, but are undisturbed.

3:30 pm. The removal of the old chain-link fence stops as crews begin packing up for the day. A brown pelican is observed soaring over the western Basin.

4:00 pm. All personnel leave the site for the day.

Weather conditions were mostly cloudy all day with temperatures in the upper 60s (°F).

Additional Observations

Throughout the day, the biologist observed several birds, as listed in Table 1. Unlike on previous days, no monarchs and very few butterflies and dragonflies in general were observed. This is likely due to the cloudy weather conditions for much of the day.

It is assumed that the California least tern that has been repeatedly observed is the same individual. For the first time since construction started this week, the California least tern was not observed. **If the tern had approached work activities, all work would be stopped. Consistent with CDFW guidance from Betty Courtney on June 2, 2015 (personal communication via email to CDM Smith),**

“...everyone just needs to avoid the least tern so there is no direct mortality or capture, as defined by the code.”

Yesterday, June 3, 2015, was the first time a brown pelican was observed within the project site, and a brown pelican was once again observed today.

Table 1 provides a list of bird species observed during biological monitoring on June 4, 2015.

| Table 1. Bird Species Observed during Biological Monitoring on June 4, 2015 | | |
|--|-----------------------------------|--|
| Common Name | Scientific Name | Comments |
| Brown Pelican | <i>Pelecanus occidentalis</i> | 1 individual seen soaring over western Basin |
| Mallard | <i>Anas platyrhynchos</i> | 6-7 individuals resting/foraging throughout Basin; several flyovers |
| Snowy Egret | <i>Egretta thula</i> | 7-8 individuals resting/foraging in Basin |
| Great Blue Heron | <i>Ardea herodias</i> | 1 individual observed moving about the Basin |
| Black-crowned Night Heron | <i>Nycticorax nycticorax</i> | 6-7, including adults and juveniles, foraging and resting in Basin |
| Double-crested Cormorant | <i>Phalacrocorax penicillatus</i> | 3-4 individuals observed in the central Basin and flying over the Basin |
| Killdeer | <i>Charadrius vociferous</i> | 2 individuals observed nesting along mudflats on north shore of Basin |
| Western Gull | <i>Larus occidentalis</i> | Very common; several flyovers of the Basin |
| Anna's Hummingbird | <i>Calypte anna</i> | 2-3 individuals observed around Basin; largely along bike path |
| Black-chinned Hummingbird | <i>Archilochus alexandri</i> | 1 individual in the large pine tree near the tide gates |
| Black Phoebe | <i>Sayornis nigricans</i> | 2-3 individuals foraging around Basin |
| American Crow | <i>Corvus brachyrhynchos</i> | Several observed in vegetation, on utility poles, and flying over Basin |
| Bushtit | <i>Psaltriparius minimus</i> | 2-3 individuals seen in the eastern Basin |
| House Finch | <i>Haemorhous mexicanus</i> | Very common; several observed in vegetation in throughout the Basin |
| House Sparrow | <i>Passer domesticus</i> | 1 individual observed along north shore of Basin |
| Dark-eyed Junco | <i>Junco hyemalis</i> | 4 individuals observed near the pump house |
| Rock Pigeon | <i>Columba livia</i> | Several observed flying over Basin, particularly in western portion and around high-rises south of Admiralty Way |
| Mourning Dove | <i>Zenaida macroura</i> | Several observed, particularly on power lines in the northern and western portions of the basin |
| Northern Rough-winged Swallow | <i>Stelgidopteryx serripennis</i> | Several observed flying over Basin; most common in residential area to east of Basin |
| Barn Swallow | <i>Hirundo rustica</i> | 4-5 individuals observed flying over the western Basin |
| Northern Mockingbird | <i>Mimus polyglottos</i> | 1 individual seen along the northeastern fence |
| European Starling | <i>Sturnus vulgaris</i> | Several observed along Washington Blvd |

Conclusions

Biological monitoring was conducted on June 4, 2015, during vegetation removal, mechanical scraping, and old fence removal activities at the site. Based on observations made during monitoring, the following conclusions were made:

1. Several bird species are present, foraging around the Basin. As the Basin transitions from a closed canopy to an open system, a larger number species that favor open, scrub habitats are being observed. The greatest songbird density is located near the bike path along the eastern fence of the site.
2. Killdeer are among the most tolerant of birds when it comes to nesting amongst human development. Killdeer have been known to nest in residential backyards, cattle pastures, and gravel rooftops. Unlike many bird species, it is extremely rare for a killdeer pair to abandon a nest. Killdeer eggs generally hatch 22-28 days after they are laid. Young killdeer hatch with their eyes open, and as soon as their downy feathers dry (generally 2-4 days), they leave the nest area and follow their parents about searching for food. Therefore, the nest buffer will likely remain in place for a maximum of 32 days.
3. To assist with the preparation of the bird nesting management plan, the Biologist has determined that a 75-foot buffer to the west of the nest should be adequate to prevent the adult from flushing due to nearby work activities. When approaching the nest from the east, the flat mudflats provide sight lines from the nest. Therefore, the adult killdeer is flushed much more easily, generally at a distance of 100 feet. Because of this, a 150-foot buffer to the east of the nest should be adequate to prevent the adult from flushing due to nearby work activities. CDM Smith will prepare the bird nesting management plan. CDM Smith will submit the Draft bird nesting management plan to CDFW, on behalf of the County, for review and approval. To this point, and until the nesting management plan is approved, a 300-foot buffer has been placed around the killdeer nest in all directions. No activity has been allowed within 300 feet of the buffer the entire week.
4. Wildlife tend to slowly move away from an area when crews approach to conduct vegetation removal and fence removal activities. They return to the area once the crews move on.
5. Algal blooms were once again observed throughout the Basin. On sunny days, the amount of algae covering the Basin increases. On cloudy days like today, algae is still significant but is not as extensive.
6. A noticeable odor was recorded around the southeast channel near the pump house. The extremely low water levels exposed mucky channel substrate and algal mats, which could explain the natural, sulfuric odor. The odor did not smell like sewage.
7. Low water levels in the morning resulted in a congregation of more than 20 wading birds, including herons and egrets. This observation is important to consider in anticipation of the fish

relocation and draining of the Basin. Relocation efforts need to occur as soon as water levels drop or else birds will easily be able to pick off the fish.

8. Two stingrays and large numbers of fish are observed congregating at the tide gates. They appear to congregate most around the leak in the easternmost tide gate. Today, the gate motor came on for the first time and closed the gates.
9. The presence of an endangered species – the California least tern – on-site requires that California Department of Fish and Wildlife and U.S. Fish and Wildlife Service be consulted. CDFW was contacted and they explained that no “take” (hunt, pursue, catch, capture, or kill) of terns is allowed. CDFW recommends that avoidance is the best practice for avoiding take. As long as no activities result in direct mortality or capture, they can continue. To ensure no mortality or capture occurs, the Biologist will continue to temporarily stop work if the tern approaches work areas. In the unlikely event that the tern displays nesting behaviors, the Biologist will stop work and CDFW will be contacted immediately.
10. For the first time since construction started, the California least tern was not observed at the project site. On one occasion when the California least tern failed to catch fish, it departed the site to the southwest toward the marina. When it catches fish, the tern is consistently observed leaving the site over the western fence and over the Hilton Garden Inn hotel. This behavior suggests that the Basin is possibly one of several foraging sites in the area for the California least tern.
11. The brown pelican, which was observed flying over the project site for the second time today, was once state and federally listed as endangered. However, due to the recovery of populations along the Pacific Coast, it was de-listed in 2009.



Memorandum

To: Rick Sun, Los Angeles County Department of Public Works

From: Matt Petty, CDM Smith

Date: June 5, 2015

Subject: Final Daily Biological Monitoring for the Oxford Retention Basin Multiuse Enhancement Project

Introduction

This memorandum summarizes the findings of biological monitoring on June 5, 2015. Monitoring is being conducted on a daily basis through completion of construction activities for the Oxford Retention Basin Multiuse Enhancement project. This monitoring is being conducted in compliance with the Streambed Alteration Agreement and Amendment issued by the California Department of Fish and Wildlife for the project.

Methods

Biological monitoring was conducted by Matt Petty, CDM Smith biologist on June 5, 2015, beginning at 7:15 am and ending at 4:00 p.m. During the monitoring, the biologist observed herbaceous vegetation removal by hand as it was conducted in the project area. The biologist also observed the continuing removal, by hand, of the old chain-link fence on the west bank of the Basin. Daily activities consisted of removing tall (> 24") vegetation by shovel along the southeast channel and south fence. Plants along the shoreline at the toe of slope were left standing to provide a buffer. Continued removal of the old chain-link fence on the west bank by hand using wire-cutters was also observed.

The following sections provide the biologist's field log notes, with observations of the day's activities and wildlife presence and behavior.

Biologist's Field Log

7:15 am. Biologist arrived at Oxford Basin (site) and prepared and organized field equipment for initial biological survey. Contractor crew of three, including the superintendent, is already at the construction trailer, along with the diver.

7:30 am. The Biologist conducts Bio-awareness Training with the Contractor crew and the diver. The Contractor crew and diver sign the sign-in sheet indicating they understand and will follow BMPs and wildlife protection measures. In addition to the Training for activities and wildlife within the Basin site, the Training includes discussing health and safety measures and avoidance of aquatic species and their habitats with the diver. The superintendent goes over the work for the day and

indicates that vegetation removal by hand will continue along the southeast channel and the old chain-link fence will be removed along the west bank. The diver will be cleaning the tide gates on the marina side of barnacles, sediment, and other debris so that the plugs can be properly fit.

8:00 am. The superintendent and the diver head over to the marina side of the tide gates to begin work. The Biologist begins the initial biological survey of the site. The water level in the Basin appears low, similar to the very low levels observed the day before. There is almost no water at the stormwater inlet or in the eastern Basin. Significant algae exists in the eastern and central portions of the Basin. The odor that was detected yesterday in the southeast channel is no longer noticeable.

One house sparrow, three American crows, and one barn swallow are observed along the western shore. Two western gulls and three mallards fly over the western Basin. Seven additional mallards are foraging or resting in the western Basin, and one great egret fishes in the central Basin. Two American crows are observed on the south shore, and two rock pigeons fly over the central Basin. An additional two American crows and six house finches forage along the southeast channel. While fewer wading birds are observed fishing in the shallow waters compared to the day prior, four snowy egrets and three black-crowned night herons are present in the eastern Basin. Two black phoebes and one northern mockingbird are observed along the east fence. In the trees along the bike path, two Anna's hummingbirds and four house finches are observed. Three northern rough-winged swallows fly amongst the residences to the east of the bike path. In the northeast corner of the site, two dark-eyed juncos and one mourning dove forage in areas cleared the day prior.

As the Biologist approaches the killdeer nest from the east, one European starling flies along the north fence. At the nest, an adult killdeer is on the nest brooding its three eggs. The fourth egg is present 6" away, but is not being brooded. The Biologist approaches the nest slowly from the east, and the adult is flushed when coming within 100 feet. The killdeer are becoming more acclimated to the Biologist's presence as the adult does not display and returns to the nest with the Biologist observing from 20 feet. The Biologist continues to restrict activities within 300 feet of the nest and prohibits activities within 150 feet.

8:30 am. The manual removal of the old chain-link fence on the western bank continues. The superintendent approaches the Biologist and requests the ability to remove the fence in its entirety by hand. The remaining portion ends in the northwest corner of the site, approximately 275 feet from the killdeer nest. Because, coming from the west, the killdeer do not flush until activity comes within 60 feet and the presence of the elevated northwest peninsula to obstruct the view of work from the nest, the Biologist allows the removal of the fence in its entirety. The Biologist keeps a watchful eye on the nest through binoculars as the work is completed. The adult does not flush off the nest, and it appears relaxed as it broods the eggs. Work would have been stopped if activities disturbed the nesting killdeer.

Three house finches forage in sea lavender approximately 100 feet from the work area, and three barn swallows fly above the western Basin foraging for insects. One double-crested cormorant

lands near the tide gates and begins fishing. Both it, and a snowy egret at the tide gates, are very successful catching fish. No wildlife is disturbed by fence removal activities on the western bank.

9:00 am. Significant house finch, mourning dove, European starling, and rock pigeon activity is observed in the palms alongside Washington Boulevard (off-site). A western gull flies over the Basin as a snowy egret stalks the north shoreline, approximately 150 feet from the active work area. One Anna's hummingbird and one black-chinned hummingbird perch on the north fence. They chase one another, with the black-chinned hummingbird returning to the fence after driving the Anna's hummingbird across Washington Boulevard. The great egret continues to forage in the central Basin, but most other wading birds have left the site. Swallow flyovers are witnessed frequently, with both barn and northern rough-winged species present.

9:20 am. The cutting of the old fence in the northwest corner of the site ends. The old fencing is rolled up and piled in front of the construction trailer along the west bank. Hauling old fence continues until 9:35 am. The member of the killdeer pair not on the nest forages along the south bank. A double-crested cormorant and three mallards fly off-site to the west. Remodeling work, unrelated to the project, in the high-rises across Admiralty Way begins and flushes three rock pigeons out over the Basin.

9:45 am. A black-crowned night heron flies over the western Basin, as the killdeer foraging on the south shore rejoins its mate at the nest. Wildlife activity is largely limited to house finches in the grape vines on the west bank and European starlings along the north fence. One Allen's hummingbird feeds on sea lavender flowers along the west bank.

10:00 am. An unidentified, but uniformed, man enters the site and checks the tide gates. He enters the tide gate house and leaves the site after 5 minutes. All work on the site stops as all work associated with the old chain-link fence on the west bank is completed.

10:10 am. The Biologist speaks with SWCA Environmental regarding future fish relocation. The Biologist describes site conditions, fish species present, and equipment needs. The two sides discuss the fish relocation plan and the call ends at 10:30 am. A double-crested cormorant lands in the western Basin.

10:30 am. The superintendent and diver arrive back at the construction trailer. Contractor crews put up green privacy screen on the staging area perimeter fence along Washington Boulevard (outside the site). The Inspector of Record arrives, and he, the superintendent, the diver, and the Biologist discuss the fish relocation plan.

10:45 am. The diver leaves the site. The Biologist informs the superintendent that there is a bee hive located behind the construction trailer in an irrigation cover.

11:00 am. The crew begins hand removal of tall (>24") vegetation along the southeast channel with shovels. Los Angeles DWP (Water & Power) arrives and spray paints the location of their utilities so that they can be avoided during construction. Per SWCA's request, the Biologist identifies fish at the tide gates (largely topsmelt and gobies) and the southeast channel (largely mosquitofish). Two American crows rest and four house finches forage at the southeast channel on the bank opposite the vegetation clearing. Three mourning doves and one European starling are observing on the south bank. One snowy egret, three mallards, and one double-crested cormorant rest near the stormwater inlet.

11:40 am. One monarch and one tiger swallowtail butterfly fly along the southeast channel. Six cabbage white butterflies are also observed around the eastern Basin. Very little wildlife activity is observed as vegetation removal continues. Two American crows are observed along the east bank and an Anna's hummingbird flies around the pump house.

1:30 pm. Crews continue to remove tall vegetation by hand along the southeast channel. A large school of topsmelt is present at the 81" tide gate; it stretches 20 feet from the trash grate into the western Basin. Five mallard are observed swimming in the central Basin. One American crow and two mourning doves rest along the south shore. Two snowy egrets forage around the stormwater inlet, and three house finches and one black phoebe are observed near the pump house.

2:10 pm. The Inspector of Record arrives in the work area. He observes the vegetation clearing for five minutes before walking the site perimeter outside of the perimeter fence. No wildlife activity is observed near the work area.

2:30 pm. Vegetation clearing activities along the southeast channel stop for the day. One Anna's hummingbird and one American crow fly over the southeast channel. One house finch is observed foraging along the southeast channel, on the bank opposite vegetation clearing. The Biologist moves the orange tapes marking the killdeer nest, so that there are two sets: one set at 300-feet and another at the recommended distances of 75-feet (west) and 150-feet (east). Two house sparrows are observed foraging along the north bank.

2:45 pm. Crews begin pruning the grape vines along the western fence with hand clippers. The superintendent explains that the 10 individual grape plants will be saved for replanting on-site following construction. One monarch butterfly is observed flying near the tide gates. One black-crowned night heron lands at the tide gates, and one black-chinned hummingbird is observed in the large pine next to the tide gates. One mourning dove is perched on the western fence approximately 200 feet from the work area, and one snowy egret fishes along the northwest mudflats approximately 100 feet from the work area. No wildlife is disturbed by work activities.

3:30 pm. Pruning of the grape vines stops as crews begin packing up for the day. One stingray is observed swimming along the southwest shoreline.

4:00 pm. All personnel leave the site for the day.

Weather conditions were mostly cloudy in the morning and mostly sunny in the afternoon with temperatures in the upper 60s (°F).

Additional Observations

Throughout the day, the biologist observed several birds, as listed in Table 1. A great egret was observed for the first time this week at the site. Great egrets were observed often during biomonitoring in January, but many migrate north for the summer.

Two monarchs and quite a few butterflies and dragonflies were observed as the clouds parted in the late morning and afternoon. The previous two days had very little butterfly and dragonfly activity. This is likely due to cloudy weather conditions on those days.

It is assumed that the California least tern that has been repeatedly observed is the same individual. For the second day since construction started (and the second day in a row), the California least tern was not observed. **If the tern had approached work activities, all work would be stopped. Consistent with CDFW guidance from Betty Courtney on June 2, 2015 (personal communication via email to CDM Smith), "...everyone just needs to avoid the least tern so there is no direct mortality or capture, as defined by the code."**

Unlike the previous two days, a brown pelican was not observed flying over the project site today.

The potential and inactive bird nests identified during the pre-construction bird nesting survey on May 31, 2015, are checked daily during the initial site survey. Thus far, no activity has been observed at any of the potential or inactive nests.

Table 1 provides a list of bird species observed during biological monitoring on June 5, 2015.

| Common Name | Scientific Name | Comments |
|---------------------------|-----------------------------------|--|
| Mallard | <i>Anas platyrhynchos</i> | 7-8 individuals resting/foraging throughout Basin; several flyovers |
| Snowy Egret | <i>Egretta thula</i> | 6-7 individuals resting/foraging in Basin |
| Great Egret | <i>Ardea alba</i> | 1 individual observed foraging in the Basin |
| Black-crowned Night Heron | <i>Nycticorax nycticorax</i> | 4-5, including adults and juveniles, foraging and resting in Basin |
| Double-crested Cormorant | <i>Phalacrocorax penicillatus</i> | 2-3 individuals observed in the central Basin and flying over the Basin |
| Killdeer | <i>Charadrius vociferous</i> | 2 individuals observed nesting along mudflats on north shore of Basin |
| Western Gull | <i>Larus occidentalis</i> | Very common; several flyovers of the Basin |
| Anna's Hummingbird | <i>Calypte anna</i> | 2-3 individuals observed around Basin; largely along the east and north fences |

| | | |
|-------------------------------|-----------------------------------|--|
| Black-chinned Hummingbird | <i>Archilochus alexandri</i> | 2 individuals; one on north fence and one in the large pine tree near the tide gates |
| Allen's Hummingbird | <i>Selasphorus sasin</i> | 1 individual foraging along the west bank |
| Black Phoebe | <i>Sayornis nigricans</i> | 2-3 individuals foraging around Basin |
| American Crow | <i>Corvus brachyrhynchos</i> | Several observed in vegetation, on utility poles, and flying over Basin |
| House Finch | <i>Haemorhous mexicanus</i> | Very common; several observed in vegetation in throughout the Basin |
| House Sparrow | <i>Passer domesticus</i> | 2-3 individuals observed; primarily along north shore of Basin |
| Dark-eyed Junco | <i>Junco hyemalis</i> | 2 individuals observed in the northeast corner of the Basin |
| Rock Pigeon | <i>Columba livia</i> | Several observed flying over Basin, particularly in western portion and around high-rises south of Admiralty Way |
| Mourning Dove | <i>Zenaida macroura</i> | Several observed, particularly on power lines in the northern and western portions of the basin |
| Northern Rough-winged Swallow | <i>Stelgidopteryx serripennis</i> | Several observed flying over Basin; most common in residential area to east of Basin |
| Barn Swallow | <i>Hirundo rustica</i> | Several observed flying over the western Basin |
| Northern Mockingbird | <i>Mimus polyglottos</i> | 1 individual seen along the east fence |
| European Starling | <i>Sturnus vulgaris</i> | Several observed, primarily along Washington Blvd |

Conclusions

Biological monitoring was conducted on June 5, 2015, during vegetation removal and old fence removal activities at the site. Based on observations made during monitoring, the following conclusions were made:

1. Several bird species are present, foraging around the Basin. As the Basin transitions from a closed canopy to an open system, a larger number species that favor open, scrub habitats are being observed. The greatest songbird density is located near the bike path along the eastern fence of the site.
2. Killdeer are among the most tolerant of birds when it comes to nesting amongst human development. Killdeer have been known to nest in residential backyards, cattle pastures, and gravel rooftops. Unlike many bird species, it is extremely rare for a killdeer pair to abandon a nest. Killdeer eggs generally hatch 22-28 days after they are laid. Young killdeer hatch with their eyes open, and as soon as their downy feathers dry (generally 2-4 days), they leave the nest area and follow their parents about searching for food. Therefore, the nest buffer will likely remain in place for a maximum of 32 days.
3. To assist with the preparation of the bird nesting management plan, the Biologist has determined that a 75-foot buffer to the west of the nest should be adequate to prevent the adult from flushing due to nearby work activities. When approaching the nest from the east, the flat

mudflats provide sight lines from the nest. Therefore, the adult killdeer is flushed much more easily, generally at a distance of 100 feet. Because of this, a 150-foot buffer to the east of the nest should be adequate to prevent the adult from flushing due to nearby work activities. CDM Smith will prepare the bird nesting management plan. CDM Smith will submit the Draft bird nesting management plan to CDFW, on behalf of the County, for review and approval. To this point, and until the nesting management plan is approved, a 300-foot buffer has been placed around the killdeer nest in all directions. While no activity had been allowed within 300 feet of the buffer the entire week, a portion of the old fence on the west bank approximately 275-feet from the killdeer nest was allowed to be removed by hand today under the careful watch of the Biologist. The Contractor has been advised that absolutely no work will occur within 150 feet from the killdeer nest.

4. Wildlife tend to slowly move away from an area when crews approach to conduct vegetation removal and fence removal activities. They return to the area once the crews move on.
5. Algal blooms were once again observed throughout the Basin. On sunny days, the amount of algae covering the Basin increases. On cloudy days, algae is still significant but is not as extensive.
6. Low water levels in the morning resulted in a congregation of more than 10 wading birds, including herons and egrets. This observation is important to consider in anticipation of the fish relocation and draining of the Basin. Relocation efforts need to occur as soon as water levels drop or else birds will easily be able to pick off the fish.
7. One stingray and large numbers of fish are observed congregating at the tide gates. Fish at the tide gate were observed to be largely topsmelt and gobies. They appear to congregate most around the leak in the easternmost tide gate. Mosquitofish are common within the southeast channel.
8. The presence of an endangered species – the California least tern – on-site requires that California Department of Fish and Wildlife and U.S. Fish and Wildlife Service be consulted. CDFW was contacted and they explained that no “take” (hunt, pursue, catch, capture, or kill) of terns is allowed. CDFW recommends that avoidance is the best practice for avoiding take. As long as no activities result in direct mortality or capture, they can continue. To ensure no mortality or capture occurs, the Biologist will continue to temporarily stop work if the tern approaches work areas. In the unlikely event that the tern displays nesting behaviors, the Biologist will stop work and CDFW will be contacted immediately.
9. For the second straight day, the California least tern was not observed at the project site. It is likely that the Basin is one of several foraging sites in the area for the California least tern.

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Appendix B

Streambed Alteration Agreement

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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION
3883 RUFFIN ROAD
SAN DIEGO, CA 92123



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2012-0148-R5
Oxford Retention Basin

LA COUNTY PUBLIC WORKS
OXFORD RETENTION BASIN MULTI-USE ENHANCEMENT PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and LA County Public Works (Permittee) as represented by Paul Maselbas.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on August 6, 2012, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located at Oxford Retention Basin, a flood control facility in unincorporated Marina Del Rey, County of Los Angeles. The project is located south of the intersection of W. Washington Boulevard and Oxford Avenue and can be found using the following information; Latitude 34.98587, Longitude -118.4594; Assessor's Parcel Number [4224-006-900].

PROJECT DESCRIPTION

The project is a general basin sediment cleanout with enhancement components to improve flood protection, water quality, habitat quality, aesthetics and recreational opportunities. The project is limited to the following:

- Excavation of approximately 2,900 cubic yards (CY) of accumulated sediment along the bottom of Oxford Basin to restore basin capacity.
- Construction of a parapet wall along the northwestern and southern boundaries of Oxford Basin. The reinforced concrete wall will be approximately 1,050 linear feet long and a maximum of 2 feet in height. The wall will provide enhanced protection from flooding along Washington Avenue.
- Replacement of the two existing tide gates used to regulate water from entering and exiting the basin. Construction of a berm between the tide gates and reprogramming the opening cycle of the existing tide gates to improve water circulation in Oxford Basin.
- Mitigation of localized flooding by modifying the existing 7-foot-wide catch basin on the south side of Oxford Avenue at the intersection of Oxford Avenue and Olive Street by modifying the catch basin and providing a Tideflex "Check-mate" flap-gate connection to Storm Drain Project 5243. Local drainage will be further improved by the removal and replacement of existing Tideflex G-37 valves in four catch basins on Oxford Avenue and Olive Street with more efficient Tideflex "Check-mate" flap-gates.
- Construction of an 8-foot-wide walking trail with wildlife-friendly lighting around the perimeter of Oxford Basin. The sidewalk along Admiralty Way will be replaced with landscaped parkway, bioswales and integrated with the new walking trail.
- Reconstruct approximately 400 linear feet of slope along Admiralty Way near Storm Drain Project No. 3872 with geogrid or approved equal to stabilize the underlying soils.
- Installation of approximately 3,550 linear feet of 4-foot-high ornamental steel fence around the perimeter of Oxford Basin.
- Removal of approximately 400 trees and 300 shrubs and approximately 6,700 CY of contaminated soils along the perimeter of Oxford Basin (3,700 CY and 3,000 CY to be disposed at Class I and Class III landfills, respectively) and replacement with clean imported fill and attractive, drought-tolerant native plants to provide aesthetic enhancement, which will also serve to enhance habitat surrounding Oxford Basin.
- Installation of an irrigation system to establish the new native plants.
- Construction of a maintenance vehicle access ramp from Admiralty Way adjacent to the tide gate control house.

- Installation of a steel-grated landing above the two tide gate inlet structures in the basin to provide safer access for trash rack maintenance.
- Construction of a permanent boat ramp near the outlet of Storm Drain Project No. 3872 to allow Flood Maintenance Division and the Department of Beaches and Harbors access to Oxford Basin for routine maintenance, trash removal, and water quality monitoring.
- Construction of four observation decks along Admiralty Way and two observation areas with park benches along Washington Boulevard, overlooking Oxford Basin.
- Installation of interpretative signage at the observation decks and along the walking trail to educate users about storm water pollution prevention measures, native plants, and area wildlife.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect, based on information received from the Permittee, include: **Birds:** California brown pelican (*Pelecanus occidentalis Californicus*), California least tern (*Sternula antillarum browni*), great egret (*Ardea alba*), snowy egret (*Egretta thula*), black-crowned night-heron (*Nycticorax nycticorax*), loggerhead shrike (*Lanius ludovicianus*), mallard (*Anas platyrhynchos*), Lesser scaup (*Aythya affinis*), pied-billed grebe (*Podilymbus podiceps*), eared grebe (*Podiceps nigricollis*), Western grebe (*Aechmophorus occidentalis*), great blue heron (*Ardea Herodias*), green heron (*Butorides virescens*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), American coot (*Fulica Americana*), killdeer (*Charadrius vociferous*), Western gull (*Larus occidentalis*), Anna's hummingbird (*Calypete anna*), Allen's hummingbird (*Selasphorus sasin*), belted kingfisher (*Megaceryle alcyon*), barn swallow (*Hirundo rustica*), bushtit (*Psaltriparus minimus*), ruby-crowned kinglet (*Regulus calendula*), Cedar waxwing (*Bombycilla cedrorum*), yellow-rumped warbler (*Dendroica coronate*), orange-crowned warbler (*Vermivora celata*), Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), white-crowned sparrow (*Zonotrichia leucophrys*), snowy plover (*Charadrius alexandrinus nivosus*), house finch (*Carpodacus mexicanus*), Lesser goldfinch (*Spinus psaltria*), house sparrow (*Passer domesticus*); **Fish:** topsmelt (*Atherinops affinis*), shadow gobies (*Quietula y-cauda*), longjaw mudsucker (*Gillichthys mirabilis*), arrow gobies (*Clevelandia ios*), cheekspot gobies (*Ilypnus gilbert*); **Mammals:** California ground-squirrel (*Spermophilus beecheyi*); **Native Plants:** southern tarplant (*Centromadia parryi* ssp. *australis*), Orcutt's pincushion (*Chaenactis glabriuscula* var. *orcuttiana*), woody pickleweed (*Salicornia virginica*), spearscale (*Atriplex prostrata*), rabbit's foot grass (*Polypogon monspeliensis*), saltmarsh sand spurry (*Spergularia marina*), toad rush (*Juncus bufonius*), alkali heliotrope (*Heliotropium curvassavicum*), scarlet pimpernel (*Anagallis arvensis*), alkali weed (*Cressa truxillensis*), slender-leaved cat-tail (*Typha domingensis*), lesser wart-cress (*Lepidium didymum*), tall limonium (*Limonium arborescens*), curly dock (*Rumex crispus*), yellow sweet clover (*Metilotus*

indicus), garden beet (*Beta vulgaris*), kikuyu grass (*pennisetum clandestinum*), prickly lettuce (*Lactuca serriola*), Australian saltbush (*Atriplex semibaccata*); **Reptiles:** southern alligator lizard (*Elgaria multicarinata*); and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

Temporary Impacts

The Permittee proposed project-related activities shall result in the following temporary impacts to the Oxford Retention Basin. Approximately 5.21 acres of CDFW jurisdiction, including 0.16 acre to Sea Lavendar marsh and 0.34 acre to Salicornia marsh, shall be temporarily impacted by project related activities.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

1.1 Complete Design Plans. Prior to execution of this Agreement, 100% plans shall be submitted to CDFW for review and approval. As part of the final design, please reduce the size of the large observation deck as seen in enlargement D on sheet LS 2.5 of the 90% plans submitted with the notification. Also, please design the observation decks located on Admiralty Way to be cantilevered to prevent impacts to the bank.

1.2 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.

1.3 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.

1.4 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.

1.5 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.

1.6 Regional Water Quality Control Board. CDFW believes that permit/certification(s) may be required from the Regional Water Quality Control Board for this project. Should such permits/certification(s) be required, a copy shall be submitted to CDFW.

1.7 Personnel Compliance On Site. If the Permittee or any employees, agents, contractors and/or subcontractors violate any of the terms or conditions of this agreement, all work shall terminate immediately and shall not proceed until CDFW has taken all of its legal actions.

1.8 Pre-project briefing. A pre-construction meeting/briefing shall be held involving all the contractors and subcontractors, concerning the conditions in this Agreement.

1.9 Notification Requirements. CDFW requires that the Permittee:

1.9.1 Immediately notify CDFW in writing if monitoring reveals that any of the protective measures were not implemented during the period indicated in this program, or if it anticipates that measures will not be implemented within the time period specified.

1.9.2 Immediately notify CDFW if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring, and recommendations, if any, for alternative protective measures. CDFW shall verify compliance with protective measures to ensure the accuracy of the Permittee's mitigation, monitoring and reporting efforts.

1.9.3 CDFW may, at its sole discretion, review relevant documents maintained by the Permittee, interview the Permittee's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement.

1.10 Implementation Requirements. The agreed work includes activities associated with the Project Location and Project Description that is provided above. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Permittee with the Notification Package, and shall be implemented as proposed unless directed differently by this Agreement.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

2.1 Best Management Practice's (BMPs). To avoid or minimize adverse impacts to fish and wildlife resources identified above, the Permittee has proposed and shall implement each measure listed below. Avoidance and minimization measures for this project include:

- 2.1.1 Sediments will not be discharged into receiving waters. Sediments generated on site will be contained with appropriate BMPs
- 2.1.2 Prior to any vegetation removal during the nesting season, a biologist will survey for nesting birds. No trees with active nests will be removed unless the nests are vacated. A biologist will be present during activities that involve heavy construction near heron or egret rookeries to monitor the bird behavior and determine if additional measures need to be implemented to avoid disturbance.
- 2.1.3 Revegetation will take place to ensure there is no net loss of wetlands.

In addition to Permittee-proposed BMP's, the following additional measures shall be implemented to fully protect aquatic and terrestrial species during project-related activities.

Aquatic and Terrestrial Species Specific Protection

2.2 Leave Wildlife Unharmd. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed. If any listed wildlife is encountered, the Permittee shall contact the CDFW immediately or proceed as described in the Incidental Take Permit for the project.

2.3 Check for Wildlife in the Project Site. Permittee shall have a qualified biologist visually check the project site for the presence of wildlife prior to initiation of project activities. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed. If the wildlife does not leave the project site, the qualified biologist shall make every effort to relocate the species out of harm's way to the extent feasible. Should CDFW personnel visit the site during initial construction activities and no biological monitor is available, construction activities shall be halted.

2.4 Threatened and/or Endangered Species Surveys. Prior to work within suitable habitat for threatened and/or endangered species, a qualified biologist shall perform a survey of the project site to determine the presence of any threatened or endangered species. Results of this survey shall be provided to CDFW prior to commencing work. If CDFW determines that any threatened or endangered species shall be impacted by the work proposed, work at that location shall stop, a species protection plan shall be developed, and the habitat or nest site in question shall be avoided. The Permittee shall contact CDFW's South Coast Region to obtain information on applying for the state take permit for state-listed species, if any potential for take exists as a result of Permittee's Project-related activities. The Permittee may need to obtain the appropriate federal and state permits for take of threatened or endangered species.

2.5 Incidental Take Permit. An Incidental Take Permit (ITP) from CDFW may be required if the project, project construction, or any project-related activity during the life of the project will result in "take," as defined by the Fish and Game Code, of any species protected by CESA [Fish & G. Code, §§86, 2080, 2081, subd. (b) (c)]. This Agreement does not authorize take of any rare, threatened or endangered species that may occur within or adjacent to the proposed work area. If there is a potential for take, the Permittee may request consultation with CDFW and obtain the necessary state permits and/or submit plans to avoid any impacts to the species. Consultation with USFWS or NOAA would be required to receive take authority for federal threatened and endangered species.

2.6 Observations of Threatened and/or Endangered Species. If threatened or endangered species are observed in the area, no work shall occur from March 1st through September 15th to avoid direct or indirect (noise) take of listed species and State and/or Federal threatened/endangered species. Permittee shall stop work until consulting with CDFW. Please note that additional state permits may be required prior to commencing project activities. This Agreement does not authorize take of species listed as Threatened and/or Endangered.

2.7 Non-listed Special Status Species and other vertebrates-methodology. A qualified biological monitor shall be present during work in all CDFW jurisdictional areas during initial construction activities to monitor for non-listed special-status and/or common ground-dwelling vertebrates encountered in the path of project-related activities. The monitor shall make every effort to relocate the species out of harm's way to the extent feasible by doing one of the following: (1) Utilize shovel, rake, or similar hand tool to gently re-direct the animal out of work area; (2) Install silt fence or other exclusionary fencing to prevent species from re-entering disturbance area; and (3) Capture/relocate species to appropriate habitat outside the disturbance area. The biological monitor shall have the authority to temporarily stop construction activities until the species is determined to be out of harm's way. Any exclusionary devices shall be checked by the biologist, or designee of the biologist, on a daily basis to check/ensure continued exclusionary device effectiveness. Should CDFW personnel visit the site during initial construction activities and no biological monitor is available, construction activities shall be halted.

2.8 Reporting Observations to CNDDDB. The Permittee shall be responsible for reporting all observations of threatened/endangered species or of species of special concern to CDFW's Natural Diversity Data Base within ten (10) days of sighting.

2.9 Contractor Education. Permittee shall have a qualified biologist prepare for distribution to all Permittee contractors, subcontractors, project supervisors, and consignees a "Contractor Education Brochure" with pictures and descriptions of all sensitive plant and animal species, and specifically bats potentially occurring within the work areas. Permittee contractors and consignees shall be instructed to bring to the

attention of the project biological monitor any sightings of species described in the brochure.

Biological Surveys and Time Restrictions

2.10 Nesting and/or Breeding Bird Surveys. The Permittee shall not remove or otherwise disturb vegetation or conduct any other project activities on the project sites from March 1st to August 31st to avoid impacts to breeding/nesting birds; OR, PRIOR to project-related activities or site preparation activities, and those activities fall within the above breeding date restrictions, the Permittee shall have a qualified biologist survey breeding/nesting habitat within the project site and adjacent to the project site for breeding/nesting birds. Activities must be initiated within 72 hours of the conclusion of surveys. The Biologist shall provide CDFW field notes or other documentation within 24 hours of completing the surveys. An email report with a letter report to follow may be used. The email/letter report should state how impacts of any nesting birds will be avoided by citing the appropriate information from these conditions.

2.11 Active Breeding and/or Nest. If the nesting season cannot be avoided and construction or vegetation removal occurs between March 1st to September 15th (January 1st to July 31st for Raptors), the Permittee will do one of the following to avoid and minimize impacts to nesting birds;

1) Implement default 300 foot minimum avoidance buffers for all passerine birds and 500 foot minimum avoidance buffer for all raptors species. The breeding habitat/nest site shall be fenced and/or flagged in all directions, and this area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project.¹

2) Develop a project specific Nesting Bird Management Plan. The site-specific nest protection plan shall be submitted to CDFW for review and approval. The Plan should include detailed methodologies and definitions to enable a CDFW qualified avian biologist to monitor and implement nest-specific buffers based on topography, vegetation, species, and individual bird behavior. This Nesting Bird Management Plan shall be supported by a Nest Log which tracks each nest and its outcome. The Nest Log will be submitted to CDFW at the end of each week.

3) The Permittee may propose an alternative plan for avoidance of nesting birds for CDFW concurrence.

2.12 Migratory Birds. Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish

¹ NOTE: Buffer area shall increase to 300 feet for passerines and 500 feet for raptors if any endangered, threatened, or CDFW species of special concern are identified during protocol or pre-construction presence/absence surveys.

and Game Code that prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

2.13 Take of Bird Nests. The Applicant shall not take or destroy nests (or eggs) of birds that are designated under Federal and California State laws, MBTA and Fish and Game code sections 3503, 3503.5, 3511, and 3513

Habitat Protection

2.14 Public Access. Providing recreational facilities and entry points for pedestrians within the project is likely to increase long-term effects on the sensitive species. To minimize these effects the following items will be incorporated into the project design: 1) measures to keep pedestrians on trails and preclude entry into environmentally sensitive areas (such as fencing, boulders, or unforgivable vegetation); 2) signage indicating environmentally sensitive areas; 3) measures to minimize the potential for establishment of transient homes and vandalism (such as regular patrols and fencing); 4) lighting in the park shall be designed to minimize glare into the riparian habitat including using low level light and designing the light posts so the light is shielded and directed towards the trail.

2.15 Revegetation Requirement. Permittee shall restore all exposed/disturbed areas and access points within the work area, with a plant palette approved by the CDFW. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeding placed after October 15 shall be covered with broadcast straw, jute netting, coconut fiber blanket or similar erosion control blanket.

2.16 Remove Temporary Access Road. Permittee shall restore all temporary access roads to pre-activity conditions by February 10, 2019.

2.17 Irrigation. Supplemental watering shall be used as necessary to establish and maintain plant growth.

2.18 Authorized Herbicide. Whenever possible, invasive species shall be removed by hand or by hand-operated power tools, rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Permittee shall employ only those herbicides, such as Rodeo/Aquamaster (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which is approved for aquatic use.

2.19 Herbicide Application. The Permittee shall apply any herbicides in accordance with state and federal law. No herbicides shall be used where Threatened or Endangered species occur. No herbicides shall be used during bird nesting season or

when nesting birds could be exposed. No herbicides shall be used when wind velocities are above 5 miles per hour.

2.20 Authorized Uses of Herbicides. No herbicides shall be used on native vegetation unless specifically authorized, in writing, by CDFW. A small amount of selective trimming of native species (e.g. willow, oak and sycamore) may occur to prevent overspray of herbicide from reaching these branches, but only as provided within the conditions of this Agreement. Native vegetation may only be trimmed; individual plants shall not be removed. Material in excess of three (3) inches DBH shall require specific notice to and consultation with CDFW. All trimming shall be conducted using hand saws and hand tools.

2.21 Substrate. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed and or banks of the stream, except as otherwise addressed in the project description.

2.22 Hours of Operation and Lighting. Permittee's construction activities shall take place during daylight hours only. No night work is authorized.

2.23 Domestic Animals. The Permittee shall not permit pets on or adjacent to the construction site.

2.24 Weapons. The Permittee shall ensure that no guns/or other weapons are on-site during construction, with the exception of the security personnel and only for security type functions. No hunting shall be authorized/permitted during project-related activities.

Fill and Spoils

2.25 Spoils. Spoil storage sites shall not be located within a stream, where spoils can be washed back into a stream, or where it will cover aquatic or riparian vegetation.

2.26 Disturbed Soils. Permittee shall stabilize all disturbed soils within the Project site to reduce erosion potential, both during and following construction. Planting, seeding with native species, sterile seed mix, and mulching is acceptable. Where suitable vegetation cannot reasonably be expected to become established, seeding placed after October 15 shall be covered with non-erodible materials, such as coconut fiber matting, shall be used for such stabilization.

Placement of In-stream Structures

2.27 Stranded Aquatic Life. The Permittee shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic

life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any State or federally listed species, or State listed species of special concern.

2.28 Diversion Maintenance. Permittee shall maintain the diversion in good operating condition throughout the construction period and the following rainy season. If the diversion fails, Permittee shall employ corrective measures, and the CDFW shall be notified, immediately. Materials used in the sediment barriers shall not pose an entanglement risk to fish/wildlife

2.29 Restore Normal Flows. Permittee shall restore normal flows to the effected stream or lake immediately upon completion of work at that location.

2.30 Unauthorized Materials. Any materials placed in seasonally dry portions of a stream that could be washed downstream or could be deleterious to aquatic life shall be removed prior to inundation by high flows.

2.31 Concrete. The Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering into the channel outside of those structures. No concrete or any cement product may be poured if measurable rain is forecasted within 5 days. If any concrete is poured after November 1st, a quick-cure ingredient shall be added to the concrete mix to ensure a faster set or drying time. Cement shall not be poured in or near a flowing stream, to reduce the potential for significant adverse impacts to the stream, water, or biota.

Turbidity and Siltation

2.32 Predicted Rain. If measurable rain with 50% or greater probability is predicted within 72 hours during project-related activities, all activities shall cease and protective measures to prevent siltation/erosion shall be implemented/maintained.

2.33 Sediment Control. Sediment from project-related activities shall not be placed in upland areas where it might likely be washed into the stream, or where it is likely to have a negative impact on emergent native vegetation, or where it is likely to have a negative impact on native trees.

2.34 Erosion Control. Any erosion control shall exclude the use of use of plastic or "hard" netting. If netting is to be used, it must be flexible so that snakes or other animals do not become trapped in the netting.

2.35 Sediment Control Devices. The Permittee shall install an appropriate sediment control device downstream of the work area to filter sediment created from water re-entering the creek. Acceptable materials include silt fence, straw bales, or other appropriate devices to prevent sediment runoff during rewatering activities. Silt control

shall remain in place only until the water running through the work area is clear of sediment.

2.36 Maintain Sediment Barriers. Permittee shall maintain the sediment barrier(s) in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. If the sediment barrier fails to retain sediment, Permittee shall employ corrective measures, and the CDFW notified, immediately. Materials used in the sediment barriers shall not pose an entanglement risk to fish/wildlife.

2.37 Dust Control. No stream water may be used in construction, such as in dust control. All construction water shall be from developed sources. Any dust produced from demolition of existing structures shall be vacuumed on a daily basis from the creek channel, and from any location where it may pass into waters of the state from rain or wind.

2.38 Sediment and Turbidity Levels. Upon CDFW determination that turbidity/siltation levels resulting from project-related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective CDFW-approved control devices are installed, or abatement procedures are initiated.

2.39 Mud, Silt and Other Pollutants. Permittee shall prevent water containing mud, silt or other pollutants from grading, aggregate washing, equipment washing, or other activities to enter a lake or stream or to be placed in locations that may be subjected to high storm flows. Such water shall be settled, filtered, or otherwise treated prior to discharge back into the water body. Permittee shall place and maintain silt barriers, such as straw bales, "biologs," or filter fabric silt fencing, around the storm drain inlets until the threat of erosion from surrounding drainage ceases.

Equipment and Access

2.40 Staging and Material Storage. Staging/storage areas for equipment and materials shall be located outside of the stream in an area selected due to its non-vegetated status. Project building material and/or construction equipment shall not be placed where materials could pass into the waters of the state or where they may cover aquatic or riparian vegetation.

2.41 Clean Equipment. All heavy equipment that will be entering the live stream shall be cleaned of materials deleterious to aquatic life including oil, grease, hydraulic fluid, soil and other debris. Cleaning of equipment shall take place outside of the Watercourse and Lake Protection Zone (WLPZ) and prior to entering the water.

2.42 Equipment Maintenance and Fueling. No equipment maintenance or fueling shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas.

2.43 Wash water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

2.44 Vehicle Maintenance. Any equipment or vehicles driven and/or operated adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

2.45 Pollution Prevention. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.

Pollution, Litter and Cleanup

2.46 Remove Cleared Material from Stream. All trimmed or cleared material/vegetation shall be removed from the area and deposited where it cannot re-enter the stream.

2.47 Pollutants and Debris. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated project-related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into, waters of the State. Any of these materials, placed within or where they may enter a stream, by the Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately. When project-related activities are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

2.48 Pollution Compliance. The Permittee shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Permittee to insure compliance.

2.49 Pick Up Debris. Permittee shall pick up all debris and waste daily.

2.50 Pollution Clean-up. The clean-up of all spills shall begin immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding clean-up procedures.

2.51 Trash Receptacles. The Permittee shall install and use fully covered trash receptacles with secure lids (wildlife proof) that contain all food, food scrapes, food wrappers, beverage and other miscellaneous trash generated by work force personnel.

3. Compensatory Measures

This project is a restoration in itself and will benefit the ecosystem overall. To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 Habitat Mitigation and Monitoring Plan (HMMP). To mitigate for 5.21 acres of temporary impacts, including 0.16 acre to Sea Lavendar marsh and 0.34 acre to Salicornia marsh resulting from project-related activities, the Permittee shall develop and implement a HMMP. A suitable HMMP must contain at minimum a discussion on: which species will be impacted as well as a vegetation map by community, as recognized by the California Manual of Vegetation, existing elevations of impacted vegetation communities and the proposed post construction elevations, proposed seed/planting palette(s), the required replacement of any trees, specific data collection and reporting measures, success criteria for the Department to validate success of the ecosystem restoration, as well as ensure the end result of at least 5.21 acres of CDFW jurisdiction, including but not limited to coastal marsh habitat comprised of at least 0.16 acre of Sea Lavendar marsh and 0.34 acre of Salicornia marsh. The HMMP must receive written approval from CDFW prior to initiation of project related activities.

3.2 Success Criteria. All planting shall have a minimum of 80% survival, by species, the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years and 90% cover after 5 years for the life of the project. Prior to the mitigation site(s) being determined successful, they shall be entirely without supplemental irrigation for a minimum of 2 years. No single species shall constitute more than 50% of the vegetative cover, no woody invasive species shall be present, and herbaceous invasive species shall not exceed 5% cover. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting.

The Permittee shall also, perform exotic species removal and control as defined by the following measures.

Exotic Species Removal and Control

3.3 Pest Species. The Permittee, shall remove any non-native vegetation *Arundo* (*Arundo donax*), tamarisk (*Tamarix* spp.), eucalyptus-immature 3"< (*Eucalyptus* spp.), pepper tree (*Schinus molle*), castor bean (*Ricinus communis*), African umbrella sedge (*Cyperus* spp.), mustards (*Brassica* spp.), tree tobacco (*Nicotiana glauca*), periwinkle (*Vinca minor*), and pampas grass (*Cortaderia selloana*) from the work area and shall dispose of it in a manner and a location which prevents its reestablishment.

3.4 *Arundo donax*. Giant cane (*Arundo*), if present, shall be cut to a height of six inches or less, and the stumps painted with an herbicide approved for aquatic use within five minutes of cutting. Herbicides shall be applied at least three times during the period from May 1st to October 1st to eradicate these plants. Where proposed methods for removing giant cane deviate from this procedure, the Permittee shall present the alternate methods, in writing, to CDFW for review and approval, prior to implementation.

3.5 Exotics Removal and Control Mechanisms. Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Permittee shall employ only those herbicides, such as Rodeo/Aquamaster (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 Notification Prior to Work. The Permittee shall notify CDFW, in writing, at least five (5) days prior to initiation of project-related activities and at least five (5) days prior to completion of project and mitigation activities. Notification shall be sent to the email address: R5LSACompliance@wildlife.ca.gov, Reference # 1600-2012-0148-R5.

4.2 Reporting. All surveys, pre and post construction notifications, monitoring reports and any other required communication between the Permittee and CDFW shall be submitted in at least a digital copy. The digital copy shall be submitted to R5LSACompliance@wildlife.ca.gov, Reference # 1600-2012-0148-R5. If a hard copy is submitted, it shall be mailed to: 3883 Ruffin Road., San Diego 92123, Attn: Streambed Unit, Reference # 1600-2012-0148-R5.

4.3 Final Construction Report. Permittee shall provide a final construction report to CDFW no later than **two weeks after the project is fully completed** including color photographs of before and after project-related activities, including the surrounding staging areas. The construction report at a minimum shall contain pre-project photographs, total amount of area impacted post-project, a discussion on the successes

and failures of the project thus far and post-project photographs. This shall be submitted to the CDFW no later than February 10, 2019.

4.4 Mitigation and Monitoring Report. Permittee shall provide a mitigation and monitoring report to CDFW **one year from completion of the project each year for five years** or until the mitigation has been deemed successful and approved by CDFW. This report shall include at least documentation of the number and species of replacement plants, documentation of revegetation survival percentages/sizes/species, percentage cover of non-native species and photos from designated stations.

4.5 Compliance. CDFW shall verify compliance with protective measures to ensure the accuracy of the Operator's mitigation, monitoring and reporting efforts. CDFW may, at its sole discretion, review relevant documents maintained by the Operator, interview the Operator's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Paul Maselbas
LA County Public Works
900 S. Fremont Avenue
Alhambra, CA 91803-1331

To CDFW:

Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, California 92123
Attn: Lake and Streambed Alteration Program
Notification #1600-2012-0148-R5
Email: R5LSACompliance@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers,

employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on February 10, 2019, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Preliminary Site Plans - Oxford Retention Basin Multi-use Enhancement Project; County of Los Angeles, Department of Public Works - July 19, 2012.
- B. Draft Mitigated Negative Declaration and Initial Study; Oxford Retention Basin Multi-use Enhancement Project – May 2013.
- C. Biological Evaluation of Oxford Basin; Marina del Rey, Los Angeles County, California – November 22, 2010.
- D. Review of Existing Biological Conditions at Oxford Basin; Marina del Rey, Los Angeles County, California – November 19, 2012.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR LA COUNTY PUBLIC WORKS

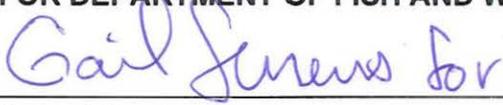


Paul Maselbas
Designated Representative

3-13-2014

Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Betty J Courtney
Environmental Program Manger

4/15/14

Date

Prepared by: Brock Warmuth
Environmental Scientist

Notice of Determination

To:
Office of Planning and Research
U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:
1400 Tenth Street, Room 113
Sacramento, CA 95814

From:
Public Agency: Department of Fish and Wildlife (CDFW)
Address: 3883 Ruffin Road
San Diego, CA 92123
Contact: Brock Warmuth
Phone: 858-636-3160

Lead Agency:
Name: Los Angeles County Flood Control
District
Address: 900 South Fremont Avenue
Alhambra, CA 91803-1331
Contact: Terri Grant
Phone: (626) 458-4309

SUBJECT: *Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.*

State Clearinghouse Number: (if submitted to State Clearinghouse): 2013051061

Project Title: Oxford Retention Basin Multiuse Enhancement Project

Project Applicant: County of Los Angeles Flood Control
900 South Fremont Avenue
Alhambra, CA 91803-1331

Project Location (include county): The project is located at Oxford Retention Basin, a flood control facility in unincorporated Marina Del Rey, County of Los Angeles. The project is located south of the intersection of W. Washington Boulevard and Oxford Avenue and can be found using the following information; Latitude 34.98587, Longitude -118.4594; Assessor's Parcel Number [4224-006-900].

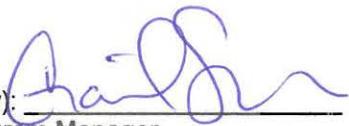
Project Description:

CDFW is intending to execute a Lake and Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code (# 1600-2012-0148-R5) to the project applicant, County of Los Angeles Department of Public Works. The project proposes to impact 5.21 acre of streambed/lake, including 0.16 acre to Sea Lavendar marsh and 0.34 acre to Salicornia marsh and mitigate with at least 5.21 acres of reestablishment, including but not limited to coastal marsh habitat comprised of at least 0.16 acre of Sea Lavendar marsh and 0.34 acre of Salicornia marsh.

This is to advise that the CDFW acting as a Lead agency / Responsible agency has approved the above described project on August 16, 2013, and has made the following determinations regarding the above described project:

1. The project [will /] will not have a significant effect on the environment.
2. A Negative Declaration was prepared for this project pursuant to CEQA.
3. Mitigation measures [were / were not] made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan [was / was not] adopted by CDFW for this project.
5. A Statement of Overriding Considerations [was / was not] adopted by CDFW for this project.
6. Findings [were / were not] made pursuant to the provisions of CEQA.). The CDFW did, however, adopt findings to document its compliance with CEQA.
7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
 - Payment is submitted with this notice.
 - A copy of a receipt showing prior payment is on file with the CDFW.

This is to certify that the Negative Declaration prepared by the Lead Agency for the project is available to the General Public at the office location listed above for the Lead Agency. CDFW's administrative record of proceedings is available at the CDFW office above.

Signature (Public Agency): 
Title: Environmental Program Manager
Date: 4/15/14

Date Received for Filing at OPR: 04/15/14

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



January 2, 2015

BY U.S. MAIL AND EMAIL

Mr. Vincent Yu
County of Los Angeles - Department of Public Works
900 S. Fremont Avenue
Alhambra, CA 91803-1331

Subject: Amendment of Streambed Alteration Agreement (Notification No. 1600-2012-0148-R5), Oxford Retention Basin

Dear Mr. Yu:

As I explained to you during our telephone conversation on December 31, 2014, the Department of Fish and Wildlife (Department) has determined it is necessary to amend the above-referenced streambed alteration agreement ("Agreement") to protect fish and wildlife resources the Oxford Retention Basin project might adversely affect. The amendments are shown below in strike-out and bold-faced type/italics.

Amendment 1:

Project Impacts

Existing fish or wildlife resources the project could substantially adversely affect, based on information received from the Permittee, include: Birds: California brown pelican (*Pelecanus occidentalis Californicus*), California least tern (*Sternula antillarum browni*), great egret (*Ardea alba*), snowy egret (*Egretta thula*), black-crowned night-heron (*Nycticorax nycticorax*), loggerhead shrike (*Lanius ludovicianus*), mallard (*Anas platyrhynchos*), Lesser scaup (*Aythya affinis*), pied-billed grebe (*Podilymbus podiceps*), eared grebe (*Podiceps nigricollis*), Western grebe (*Aechmophorus occidentalis*), great blue heron (*Ardea Herodias*), green heron (*Butorides virescens*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), American coot (*Fulica Americana*), killdeer (*Charadrius vociferous*), Western gull (*Larus occidentalis*), Anna's hummingbird (*Calypte anna*), Allen's hummingbird (*Selasphorus sasin*), belted kingfisher (*Megaceryle alcyon*), barn swallow (*Hirundo rustica*), bushtit (*Psaltriparus minimus*), ruby-crowned kinglet (*Regulus calendula*), Cedar waxwing (*Bombycilla cedrorum*), yellow-rumped warbler (*Dendroica coronate*), orange-crowned warbler (*Vermivora celata*), Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), white-crowned sparrow (*Zonotrichia leucophrys*), snowy plover (*Charadrius alexandrinus nivosus*), house finch (*Carpodacus mexicanus*), Lesser goldfinch (*Spinus psaltria*), house sparrow (*Passer domesticus*); Fish: topsmelt (*Atherinops affinis*),

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shadow gobies (*Quietula y-cauda*), longjaw mudsucker (*Gillichthys mirabilis*), arrow gobies (*Clevelandia ios*), cheekspot gobies (*Ilypnus gilberti*); ***Invertebrates: Monarch butterfly (*Danaus plexippus*)***; Mammals: California ground-squirrel (*Spermophilus beecheyi*); Native Plants: southern tarplant (*Centromadia parryi* ssp. *australis*), Orcutt's pincushion (*Chaenactis glabriuscula* var. *orcuttiana*), woody pickleweed (*Salicornia virginica*), spearscale (*Atriplex prostrata*), rabbit's foot grass (*Polypogon monspeliensis*), saltmarsh sand spurry (*Spergularia marina*), toad rush (*Juncus bufonius*), alkali heliotrope (*Heliotropium curvassavicum*), scarlet pimpernel (*Anagallis arvensis*), alkali weed (*Cressa truxillensis*), slender-leaved cat-tail (*Typha domingensis*), lesser wart-cress (*Lepidium didymum*), tall limonium (*Limonium arborescens*), curly dock (*Rumex crispus*), yellow sweet clover (*Metilolus indicus*), garden beet (*Beta vulgaris*), kikuyu grass (*pennisetum clandestinum*), prickly lettuce (*Lactuca serriola*), Australian saltbush (*Atriplex semibaccata*); Reptiles: southern alligator lizard (*Elgaria multicarinata*); and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

Amendment 2:

1.1 **Complete Design Plans.** Prior to execution of this Agreement, 100% plans shall be submitted to CDFW for review and approval. As part of the final design, please reduce the size of the large observation deck as seen in enlargement D on Sheet LS 2.5 of the 90% plans submitted with the notification. Also, please design the observation decks located on Admiralty Way to be cantilevered to prevent impacts to the bank. ***If project design plans are revised, the revised plans shall be submitted to the Department. Revisions to the project may require revisions to current conditions or additional conditions to protect fish and wildlife resources.***

Amendment 3:

1.8 **Pre-project Briefing.** A pre-maintenance meeting/briefing shall be held involving all the contractors and subcontractors, concerning the conditions in this Agreement. ***A signed attendance sheet shall be submitted to the Department following the Pre-Project Briefing.***

Amendment 4:

2.3 **Check for Wildlife in the Project Site.** Permittee shall have a qualified biologist visually ***onsite to inspect*** check the project site for the presence of wildlife prior to initiation of ***and during all vegetation removal activities and ground disturbing project activities to 18 inches in depth.*** If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed. If the wildlife does not leave the project site, the qualified biologist shall make every effort to relocate the species out of harm's way to the extent feasible. Exclusionary devices shall be erected to prevent the migration into or the return of species into the work areas

if determined appropriate and feasible by the qualified biologist. Such exclusionary devices shall be checked by the biologist, or designee of the biologist, on a daily basis to check/ensure continued exclusionary device effectiveness. Should CDFW personnel visit the site during construction activities and no **qualified** biological monitor is **onsite** available, construction activities shall be halted.

Amendment 5:

2.6 Observations of Threatened and/or Endangered Species. If threatened or endangered species are observed in the area, no work shall occur ~~from March 1st through September 15th~~ to avoid direct or indirect (noise, **vibration, habitat removal, etc.**) take of listed species and State and/or Federal threatened/endangered species. Please note that additional state permits may be required prior to commencing project activities. This Agreement does not authorize take of species listed as Threatened and/or Endangered.

Amendment 6:

2.7 Non-listed Special Status Species and other vertebrates-methodology. A qualified biological monitor shall be present during work in all CDFW jurisdictional areas during initial project-related activities **and during vegetation removal and ground disturbing activities to 18 inches in depth** to monitor for non-listed special-status and/or common **fish and wildlife species** ~~ground-dwelling vertebrates~~ encountered in the path of project-related activities. The monitor shall make every effort to relocate the species out of harm's way to the extent feasible by doing one of the following: (1) Utilize shovel, rake, or similar hand tool to gently re-direct the animal out of work area; (2) Install silt fence or other exclusionary fencing to prevent species from re-entering disturbance area; and (3) Capture/relocate species to appropriate habitat outside the disturbance area. The biological monitor shall have the authority to temporarily stop construction activities until the species is determined to be out of harm's way. Any exclusionary devices shall be checked by the biologist, or designee of the biologist, on a daily basis to check/ensure continued exclusionary device effectiveness. Should CDFW personnel visit the site during construction activities and no **qualified** biological monitor is available, construction activities shall be halted.

Amendment 7:

2.9 Contractor Education. Permittee shall have a qualified biologist prepare for distribution to all Permittee contractors, subcontractors, project supervisors, and consignees a "Contractor Education Brochure" with pictures and descriptions of all sensitive plant and animal species, and specifically bats potentially occurring within the work areas. Permittee contractors and consignees shall be instructed to bring to the attention of the project biological monitor any sightings of species described in the

brochure. ***A signed attendance sheet shall be submitted to the Department following the Pre-Project Briefing.***

Amendment 8:

2.27 Stranded Aquatic Life. The Permittee shall ***have a qualified biologist inspect and relocate any*** check daily for stranded aquatic life as the level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatering areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not all for the take or disturbance of any State or federally listed species, or State listed species of special concern.

Amendment 9:

2.32 Predicted Rain. If measurable rain (***greater than 0.02 of an inch***) with 50% or greater probability is predicted within 72 hours during project-related activities, all ***project-related activities with the project work area*** shall cease and protective measures to prevent siltation/erosion shall be implemented/maintained.

Amendment 10:

2.46 Remove Cleared Material from Stream. All trimmed or cleared material/vegetation shall be removed from the ***stream area daily and during trimming/clearing process material/vegetation should be placed*** deposited where it cannot re-enter the stream.

Amendment 11:

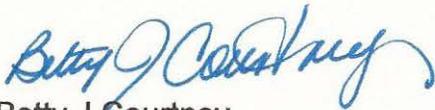
3.1 Habitat Mitigation and Monitoring Plan (HMMP). To mitigate for 5.21 acres of temporary impacts, including 0.16 acre to Sea Lavendar marsh and 0.34 acre to Salicornia marsh resulting from project-related activities, the Permittee shall develop and implement a HMMP. A suitable HMMP must contain at minimum a discussion on: which species will be impacted as well as a vegetation map by community, as recognized by the California Manual of Vegetation, existing elevations of impacted vegetation communities and the proposed post construction elevations, proposed seed/planting palette(s) the required replacement of any trees, specific data collection and reporting measures, and success criteria for the Department to validate success of the ecosystem restoration, as well as ensure the end result of at least 5.21 acre of CDFW jurisdiction, including but not limited to coastal march habitat comprised of at least 0.16 acres Sea Lavendar marsh and 0.34 acre of Salicornia marsh. The HMMP must receive written approval from CDFW prior to initiation of project related activities. ***An analysis of the soils within the mudflats should be conducted to ensure the***

restored areas contain the same soil type and structure to support fish and wildlife species.

Please sign and return one copy of this letter to acknowledge the amendment. Copies of the Agreement and this amendment must be readily available at project worksites and must be presented when requested by a Department representative or agency with inspection authority.

If you have any questions regarding this matter, please contact Erinn Wilson, Senior Environmental Scientist (Supervisory), at 562-342-7172 or Erinn.Wilson@wildlife.ca.gov.

Sincerely,



Betty J Courtney
Environmental Program Manager I

ACKNOWLEDGEMENT

I hereby acknowledge and agree to the amendments contained herein on behalf of Los Angeles County Department of Public Works.

Print Name: _____ Date: _____

Signature: _____