

Attachment L

Dudek Memorandum from August 14, 2025

MEMORANDUM

To:	Tom Sandefur, Assistant City Engineer, City of Newport Beach Public Works Department
From:	Tommy Molioo, Senior Biologist
Subject:	Protection Status of Nesting Great Blue Herons at the Balboa Branch Library
Date:	August 14, 2025
Attachment(s):	CDFW CNDDDB Species Summary Table Report

The following memorandum documents the professional opinion of Dudek's Senior Biologist Tommy Molioo regarding the protection status of nesting great blue herons (*Ardea herodias*) at the Balboa Branch Library project site. This memorandum also addresses comments related to received by the City of Newport Beach in an appeal letter sent by Adkisson Pitet LLP on behalf of the Friends of Library Park (FLP) dated July 17, 2025. Specifically, Dudek is addressing comments related to the protection status of great blue herons and the eucalyptus tree on site planned for removal. The evaluation of the tree replacement has already been provided by Dudek in a letter to the City dated May 5, 2025.

Paragraph 1 of page 2 of the FLP letter states the great blue heron is a federally protected species. While the great blue heron is afforded protection under the Migratory Bird Treaty Act (MBTA), particularly while nesting, it is not federally listed as threatened or endangered under the Federal Endangered Species Act (FESA) and therefore, is not a federally protected species. After a review of the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database for great blue heron, it lists the species with a Global ranking of G5 and State ranking of S4, which is considered secure globally and in California (Attachment A). The species is only listed as sensitive by the California Department of Forestry and Fire Protection Services, particularly during timber operations.

Additionally, the MBTA extends federal protection to the majority of native migratory bird species in the United States, making it unlawful to cause any action that would result in "take" of a native migratory bird or its nest. Additionally, the California Fish and Game Code Sections 3503, 3503.5, and 3513 extend state protection to nests or eggs of any bird, birds of prey, and migratory non-game birds. Therefore, approximately less than a dozen great blue herons that nest at the project site are protected while nesting. And while rookeries may be afforded additional protection in other states or if designated as protected due to other means, the herons that nest on site are only protected while actively nesting and rookeries are not protected further. Lastly, previous tree trimming or maintenance activities conducted for the library while Dudek has been under contract with the City have been conducted outside of the nesting season and after clearance surveys conducted by Dudek's biologists determined the nests were inactive. Any future removal of the on-site eucalyptus tree and any remaining nests would also be conducted outside of the nesting season (February through August) and after a biologist can determine there is no active nesting.

The letter also asserts the eucalyptus tree on site that contains heron nests qualifies as an Environmentally Sensitive Habitat Area (ESHA) under the City's Local Coastal Plan (LCP). The City's LCP is written into the City's

Municipal Code as Chapter 21.30B.030, which designates ESHAs as, “Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments shall be designated as an environmentally sensitive habitat area (ESHA)”. The eucalyptus tree the letter refers to as a “landmark tree” is non-native and not a rare species, nor does it play a special role in an ecosystem as it is located in a developed area as ornamental landscaping. Additionally, the Municipal Code provides exceptions for ESHA as existing developed areas and existing fuel modification areas, of which the project site and eucalyptus tree would qualify for both due to the existing development, the Balboa Branch Library. The site also lacks natural communities, rare plants or wildlife, coastal streams, and connectivity to other natural areas as the site is surrounded by development. Therefore, the eucalyptus tree on the project site does not qualify as ESHA as defined by the City’s Municipal Code.

Attachment A

CNDDB Species Summary Table Report



Summary Table Report
California Department of Fish and Wildlife
California Natural Diversity Database



Query Criteria: Species> IS (Ardea herodias)

Name (Scientific/Common)	CNDDB Ranks	Listing Status (Fed/State)	Other Lists	Elev. Range (ft.)	Total EO's	Element Occ. Ranks						Population Status		Presence		
						A	B	C	D	X	U	Historic > 20 yr	Recent <= 20 yr	Extant	Poss. Extirp.	Extirp.
Ardea herodias great blue heron	G5 S4	None None	CDF_S-Sensitive IUCN_LC-Least Concern	-230 5,110	156 S:156	23	21	10	2	3	97	132	24	153	3	0