

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No. **CD-107-99**
Staff: JRR-SF
File Date: 11/10/99
45th Day: 12/25/99
60th Day: 1/9/00
Commission Meeting: 12/10/99

FEDERAL AGENCY: CORPS OF ENGINEERS

DEVELOPMENT

LOCATION:

Ballona Creek Flood-Control Channel, Playa Vista, City of Los Angeles (Exhibits 1 and 2)

DEVELOPMENT

DESCRIPTION:

Replace existing flood-control gates with new ones that will allow more water into the wetlands and allow for adjusting water elevation (Exhibits 3-7)

EXECUTIVE SUMMARY

The Los Angeles District of the Corps of Engineers has submitted a consistency determination for a proposal to replace existing tidegates on Ballona Creek Flood-Control Channel with new gates that will allow more water into the Ballona Wetlands. Section 1135(b) of the Water Resources Development Act of 1990 authorizes the Corps to review the operation and design of previously constructed projects for the purpose of improving environmental conditions. An analysis of the Ballona Creek flood-control facility indicates that habitat resources within the

adjacent wetlands are degrading because the area is isolated from tidal influence. In order to reduce the continued damage from the flood-control facility to the wetlands, the Corps proposes to retrofit two existing culverts with self-regulating tidegates. These tidegates are a mechanical device that allows a reversible flow of water through the culverts. The new tidegates are float-actuated water control valves that automatically open and close based on tidal water levels. Since the proposed project will increase water circulation within the wetlands, it will improve the habitat value of the resource. The project, however, has the potential to affect nesting habitat for the Belding's Savannah sparrow, a state listed endangered species. If the endangered bird is nesting within the wetlands when the tidal increases their nests could be flooded. However, the Corps has modified its project to require that the tidal level will not change until after the nesting season is over. With this modification, the proposed project is consistent with Section 30240 of the Coastal Act. The proposed project will avoid significant impacts to water quality resources because the Corps has agreed to submit a water quality plan to the Commission before construction. Therefore, the project is consistent with Section 30231 of the Coastal Act. Finally, the Corps will minimize impacts to public access by avoiding construction activities between Memorial Day and Labor Day, and thus the project is consistent with Section 30210 of the Coastal Act. In conclusion, the project is consistent with the habitat, water quality, and public access policies of the California Coastal Management Program (CCMP).

SUBSTANTIVE FILE DOCUMENTS:

1. Draft Environmental Assessment, Ballona Wetlands 1335 Environmental Restoration Project, August 1999.
2. Draft Fish and Wildlife Coordination Act Report, for Ballona Wetlands Preliminary Restoration Plan, September 1999.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Corps proposes retrofitting two of three existing 60-inch corrugated metal pipe culverts, connecting Ballona Creek with the wetlands (Exhibits 3-7). The culvert retrofit will consist of attachment of two Self-Regulating Tidegates to the existing culvert at the central drainage channel, on the levee. Installation of the new tidegates requires excavation of a portion of the levee side slope and construction of a new outlet structure with cut-off walls.

The construction of the proposed self-regulating tide gates is expected to improve tidal action into the existing wetland. Ebb and flow is expected to be in complete synchronization with the normal tidal cycle of lower Ballona Creek. Retention time would be influenced only by the natural tide; near complete exchange of water volume is expected with each tidal cycle. One hundred percent exchange of water volume is expected within a 24-hour period. The tide gates will artificially regulate the height of the high tide.

The tidegate is a mechanical device that allows a reversible flow of water through a culvert. The tidegate is an actuated water control valve that automatically opens and closes based on tidal water levels, while using no external source of power. The existing one-way flap-gated culvert allows no reciprocal flow of water through the culvert and the new tidegates will allow tidal water to flow through the culvert, providing water input into the wetland system. Since the new tidegates are located on the tidal side of the culvert, they can be adjusted to close when the incoming water level reaches the design water level for the wetland system without changing the upland runoff drainage capabilities of the culvert. Thus the new tidegates will allow upland stormwater runoff to discharge into the Ballona Creek when tidal water levels are lower than wetland water levels.

Ancillary construction for the implementation of the recommended plan consists of minor levee excavation for the construction of a new cut-off wall, and, the retrofitting of two existing tidegates with self-regulating ones within the cut-off wall. The new tidegates will be recessed within the existing levee slope. This project feature will provide protection to the facility from hydraulic forces due to storm flow and debris flowing down the creek at high velocities during periods of storm flow. In addition, the new tidegate frame assemblies will not protrude above the slope of the existing levee. Construction of the outlet structure and cutoff walls will require excavation of the side slope. A concrete headwall approximately 9 meters long will be constructed. Two adjoining concrete cutoff walls will be constructed to provide stabilization of the excavated side slopes. A debris screen will be constructed over the outlet structure. The Corps will use conventional earthmoving and construction related equipment. Equipment to be utilized for the proposed project will include:

- 1-2 Haul Trucks
- 1 Bulldozer
- 1 Backhoe
- 1 Concrete-mix Truck
- 1 Water Truck
- 1 Forklift

The Corps will access to the site using existing roadways adjacent to and intersecting the earthen levee. Equipment will be stored and maintained in one or more designated staging areas for the duration of project construction activities. The Corps will use two lots, located on the southeast corner of the pedestrian bridge, near the mouth of Ballona Creek, as staging areas for construction activities. One asphalt lot (60' x 90') and one dirt lot (15' x 75'), abutting the asphalt lot's southern edge, would provide adequate temporary equipment space. The Corps will occupy these lots for approximately 8 to 12 weeks, the expected duration of construction activities. In addition, the Corps and/or local sponsor may designate additional staging areas. The Corps proposes to begin the construction in September 2000. The adjustment and calibration of the new tide will be performed in place. This adjustment period is typically conducted over approximately 2 tidal-cycles.

II. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has not incorporated the City of Los Angeles' LCP into the CCMP.

III. Federal Agency's Consistency Determination.

The Corps of Engineers has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

IV. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission concur with the Corps of Engineers' consistency determination.

The staff recommends a YES vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

A. Concurrence

The Commission hereby **concurs** with the consistency determination made by the Corps of Engineers for the proposed project, finding that the project is

consistent to the maximum extent practicable with the California Coastal Management Program.

V. Findings and Declarations:

The Commission finds and declares as follows:

A. **Habitat Resources.** The Coastal Act supports the protection and restoration of habitat resources. Section 30230 of the Coastal Act provides that:

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

Section 30240 of the Coastal Act provides that:

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

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

The purpose of the project is to enhance wetland and endangered species habitat within the Ballona Wetlands. In its environmental assessment, the Corps describes the Ballona Wetlands as follows:

*The 165 acre study area is dominated by a dense, near monotypic stand of low growing pickleweed (*Salicornia virginica*) (approximately 53 acres) (Reed 1998) [Exhibits 8 and 9]. Marsh heather (*Frankenia grandifolia*), salt grass (*Distichlis spicata*), and salt wort (*Salicornia subterminalis*) are also intermixed in the pickleweed stands.*

... [U]nder natural conditions pickleweed usually only dominates the upper littoral zone, which is subject to inundation only by high spring tides or storm tides. The dominance of pickleweed in the study area is

typical of Southern California salt marshes where tidal flushing is rare or infrequent. The ability of pickleweed to withstand a wide variety of environmental conditions (e.g., low soil moisture and high salinity) makes it the most widespread salt marsh vegetation in disturbed southern California marshes (Zedler 1982 and 1993).

*In the absence of tidal circulation no low or mid-littoral zone or associated vegetation exist in the study area. For example, cordgrass (*Spartina foliosa*) is conspicuously absent from the study area.*

*The second largest type is largely composed of ruderal and exotic vegetation species (82 acres), such as brome (*Bromus spp.*), iceplant (*Carpobrotus edulis*), Oxalis (*Oxalis pescaprae*) and Ryegrass (*Lolium spp.*).*

The next largest habitat-type is the mudflat/saltflat type (21 acres) (Reed 1998). The intertidal mudflats in the study area is the narrow band of intertidal areas of the channels that are essentially devoid of vegetation and are periodically covered by water during the rise and fall of tides. The mudflat/saltflat habitat type occupies the area west of the main (or central) channel. This area is generally devoid of vegetation, except for the presence of green algae during spring. In general, this habitat type is not as regularly flooded as mudflats, but do[es] accumulate some water during the wet season and [is] covered with a salt crust in the dry season.

Vegetation surveys conducted for the larger Playa Vista Project (Reed 1998:10) report that the general vegetation change in Playa Vista Phase I & II Area B (see Figure 3) over the past ten years appears to be a change from saline conditions (and vegetation) to freshwater and upland vegetation.

*.... Estuarine fish populations in the tidal channels were dominated by the arrow goby (*Clevelandia ios*), mosquito fish (*Gambusia affinis*) (an introduced exotic species), topsmelt (*Atherinops affinis*) and killifish (*Fundulus parvipinnis*). These fish are common residents of small bays of southern California, and this fish fauna is considered relatively normal for an estuary with restricted tidal circulation.*

....

*Bird surveys performed in the wetlands consistently indicate a fair species diversity and number of birds; between 30-60 species of birds have been reported. Most species occur in fall and winter, when a relatively large number of migratory shorebirds move into the area. Many typical salt marsh species use the marsh, for example: shorebirds, gulls, terns, ducks. Other upland birds (such as small raptors and passerine birds) are also common visitors. The confirmed nesters in the marsh are the killdeer (*Charadrius alexandrinus*), northern mockingbird (*Mimus polyglottos*), loggerhead shrike (*Lanius ludovicianus*), Belding's Savannah sparrow (*Passerculus sandwichensis geldingi*), and the northern oriole (*Icterus galgula*).*

*The small mammal population is currently dominated by the exotic house mouse (*Mus musculus*). A depauperate population of native small mammals, such as the western Harvest mouse (*Reithrodontomys megalotis*), California meadow vole (*Microtus californicus*), cottontail rabbit (*Sylvilagus audubonii*), and pocket gopher (*Thomomys bottae*) also occurs in the study area. Predation of small mammals by the introduced red fox (*Vulpes vulpes*) is generally believed to be the cause of the poor small mammal diversity in the area. (The red fox is also believed to be a voracious predator of birds, eggs and nestlings in southern California coastal areas [Palazzo 1994:183]).¹*

Although the Ballona wetlands support many wetland plant and animal species, the quality of the resource has degraded over the years. Restrictions to tidal circulation are generally credited for the reduction in the quality of the habitat within this area. The Corps proposes to enhance the wetlands by improving the tidal flows into the wetlands. The proposed modifications to the tidegates will improve tidal flows and still protect nearby roads and development from flooding hazards. According to the Fish and Wildlife Service, the proposed project will improve the habitat values in the following ways:

1. Increase the number and diversity of fish and benthic species;
2. Provide better foraging habitat for shorebirds, waterfowl, herons, egrets, and terns;
3. Invigorate the existing pickleweed habitat;

¹ Environmental Assessment, pp. 23-25.

4. Increase native plant diversity; and
5. Create conditions unfavorable for non-native plant invasion and spread.²

In addition, the Service concludes that:

Without construction the preferred alternative, the salt marsh habitat in Area B [of Ballona] will likely continue to degrade over time with adverse effects on fish and wildlife resources. Degradation of habitat and loss of some species known from the project area have been noted between the 1970's and the 1990's. Non-native species, both plants and wildlife, have increased their presence in the area in the past 20 years. Presence of non-native species is correlated with declines of native species in many systems (Courtenay and Meffe, 1994)³

The Commission agrees with the conclusions of the Service and finds that the proposed project will enhance wetland resources and habitat diversity. The proposed project, however, has the potential to adversely affect the state listed Belding's savannah sparrow. The sparrow nests within the wetlands, on pickleweed vegetation. The increased water flow will flood areas currently used by the sparrow for nesting. If the tidegates are opened and the water elevation increases during the sparrow-nesting season, the project could destroy the nests and adversely affect the bird. The preferred alternative will allow inundation of 13.5 acres of wetlands. The tidal waters will fill existing channels and flood into marsh vegetation. According to the Service, the project will flood "part of the most heavily used Belding's Savannah sparrow nesting area."⁴ The Corps of Engineers has agreed to modify its project to avoid this impact. Specifically, the Corps will not begin construction until after September 1, 2000, and has committed to completing the project within 12 weeks, which would avoid any changes to the wetland hydrology during the nesting season of the Belding's Savannah sparrow. With this project change, the Corps will avoid direct impacts to the sparrow during the nesting season.

However, the changes to the wetland hydrology will reduce the area available to the sparrow for nesting, because the bird will avoid nesting in pickleweed habitat that is regularly flooded. The Ballona wetlands contain approximately 54 acres of pickleweed habitat that support 10 to 13 nesting pairs of sparrows.⁵ The project will flood an additional 10 acres of pickleweed habitat (currently 3.5 acres are flooded under the existing tidegates and 13.5 acres will be flooded after the improvements).

² Draft Fish and Wildlife Coordination Act Report, September 1999, pp. 27-28.

³ Draft Fish and Wildlife Coordination Act Report, September 1999, pp. 28-29.

⁴ Draft Fish and Wildlife Coordination Act Report, September 1999, p. 26.

⁵ Environmental Assessment, p. 27.

The project will not flood a significant percentage of the nesting area available to the sparrow. The remaining 43.8 acres of pickleweed is more than adequate to support the nesting sparrows. Finally, the project will improve the pickleweed habitat and may eventually result in an increase in nesting areas for the sparrow. Therefore, the Commission finds that the proposed project will enhance endangered species resources and wetland habitat in a manner consistent with the habitat policies of the CCMP.

B. Water Quality Resources. Section 30231 of the Coastal Act provides for the protection of water quality resources. That section provides that:

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

The proposed project will increase tidal circulation within Ballona Wetlands and the increased water flow will improve water quality within the wetlands. The project, however, includes use of heavy equipment adjacent to Ballona Creek and the use of nearby parking lots for staging and maintenance of equipment. These activities could result in an increase in non-point pollution into the wetlands and creek. The Corps' environmental assessment includes general statements that conclude that this impact will not be significant. The Corps, however, did not provide the Commission with a water quality protection plan that includes specific best management practices to prevent discharges of contaminants into coastal waters. In response to this concern, the Corps has agreed to develop a water quality protection plan that addresses non-point source pollution and best management practices. That plan will be submitted to the Commission before the Corps finalizes its agreement with the contractor. The Corps has also agreed to incorporate the terms of the water quality plan into the plans and specifications. With these measures, the Commission finds that the proposed project will protect water quality resources in a manner consistent with the policies of the CCMP.

C. Public Access to the Shoreline. The Coastal Act provides for the protection of public access to the shoreline. Section 30210 of the Coastal Act provides that:

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

The proposed project requires the use of two staging areas. The Corps proposes to use existing public parking areas as staging areas. These parking areas are used for public parking for access to coastal resources, including Ballona Creek levee, Ballona wetlands, and the beach. In its environmental assessment, the Corps concludes that this impact will not be significant. The Corps basis this conclusion on one site visit that its staff conducted in May. This evidence is not sufficient to relieve the Commission of concerns over the impact to public access. These parking lots are located within an urban area and adjacent to popular coastal areas including Marina del Rey and Dockweiler State Beach. The Commission believes that these parking areas could be heavily used and that the project could remove parking spaces that would be used for access to the coast. In order to mitigate for this impact, the Corps has modified its project to include the following measures:

1. The staging areas will only be used after the Labor Day weekend and before Memorial Day;
2. The Corps will notify the Commission for its review and approval before it utilizes another staging area.

With these measures, the project will not significantly affect public access to the shoreline. Therefore, the Commission finds that the project is consistent with the access policies of the CCMP.

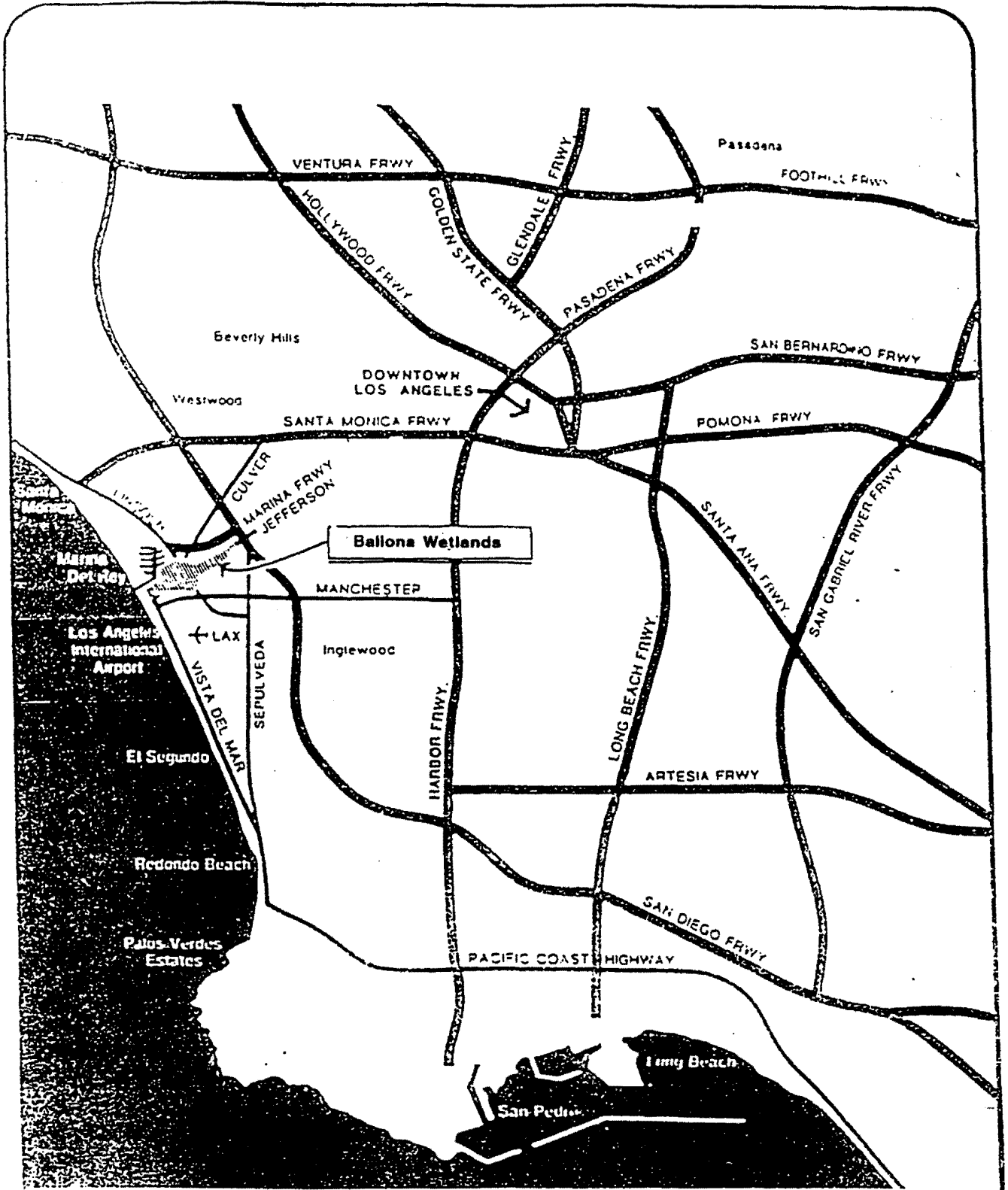


EXHIBIT NO. 1

APPLICATION NO. CD-107-99

VICINITY MAP

California Coastal Commission

FIGURE 1

SANTA MONICA BAY

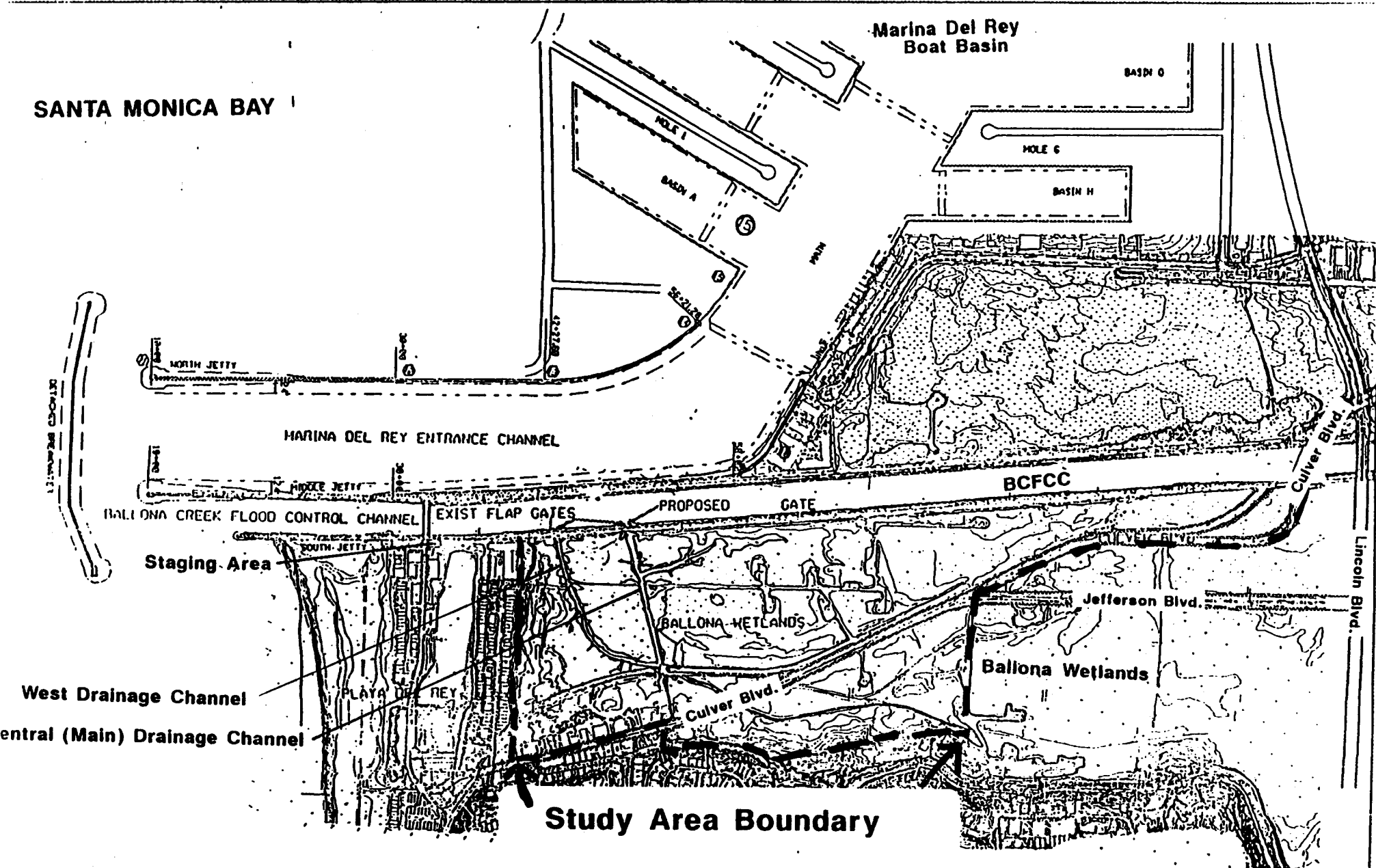


EXHIBIT NO. 2

APPLICATION NO. CD-107-99

PROJECT STUDY AREA

California Coastal Commission

FIGURE 2

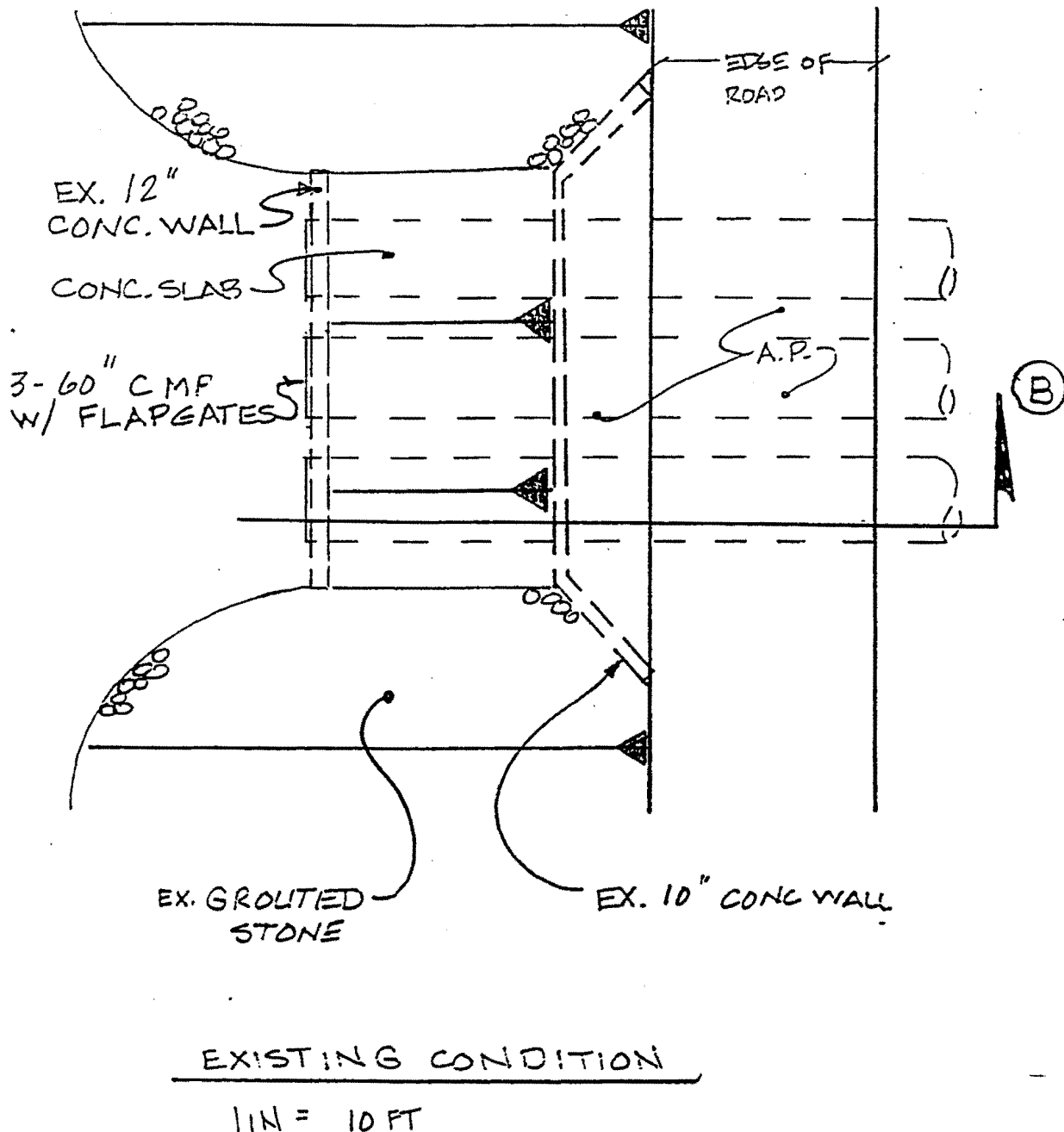
FIGURE 2

COMPUTATION SHEET

PROJECT BALLONA CREEK WETLAND
ITEM RESTORATION
STA 32+56.00

SHEET NO. OF SHEETS
DATE JULY 30, 1999
FILE
REF. DRWG. NO.

COMPUTED BY CHECKED BY

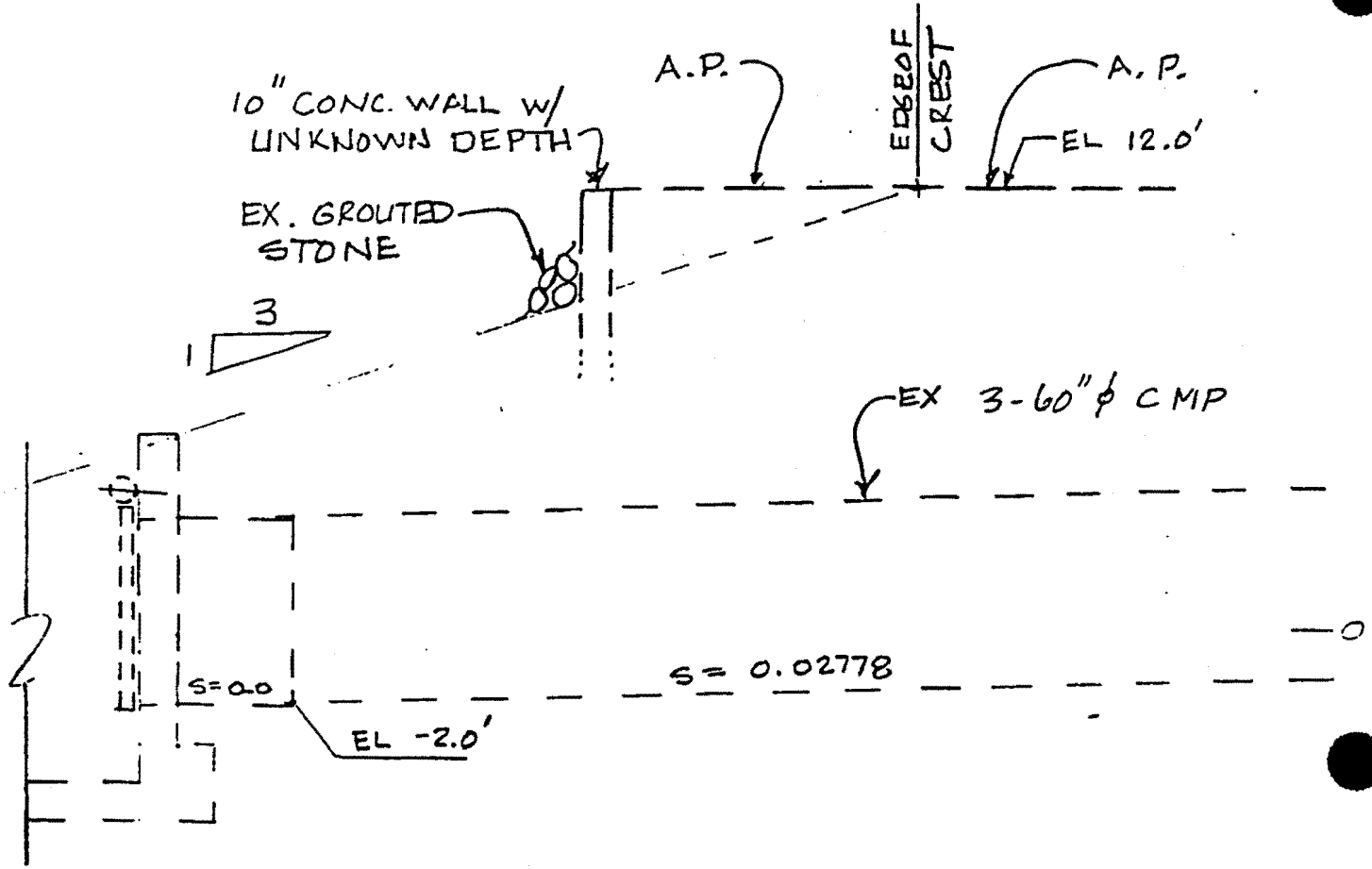


THREE-PIPE OUTLET W/FLAP GATE, EXISTING CONDITION
EXHIBIT NO. 3
APPLICATION NO. CD-107-99

COMPUTATION SHEET

PROJECT BALLONA CREEK WETLANDS
ITEM RESTORATION
STA 32+50.00
COMPUTED BY DJD CHECKED BY _____

SHEET NO. ____ OF ____ SHEETS
DATE _____, 19____
FILE _____
REF. DRWG. NO. _____



(B) EXISTING CONDITION
1 IN = 5 FT

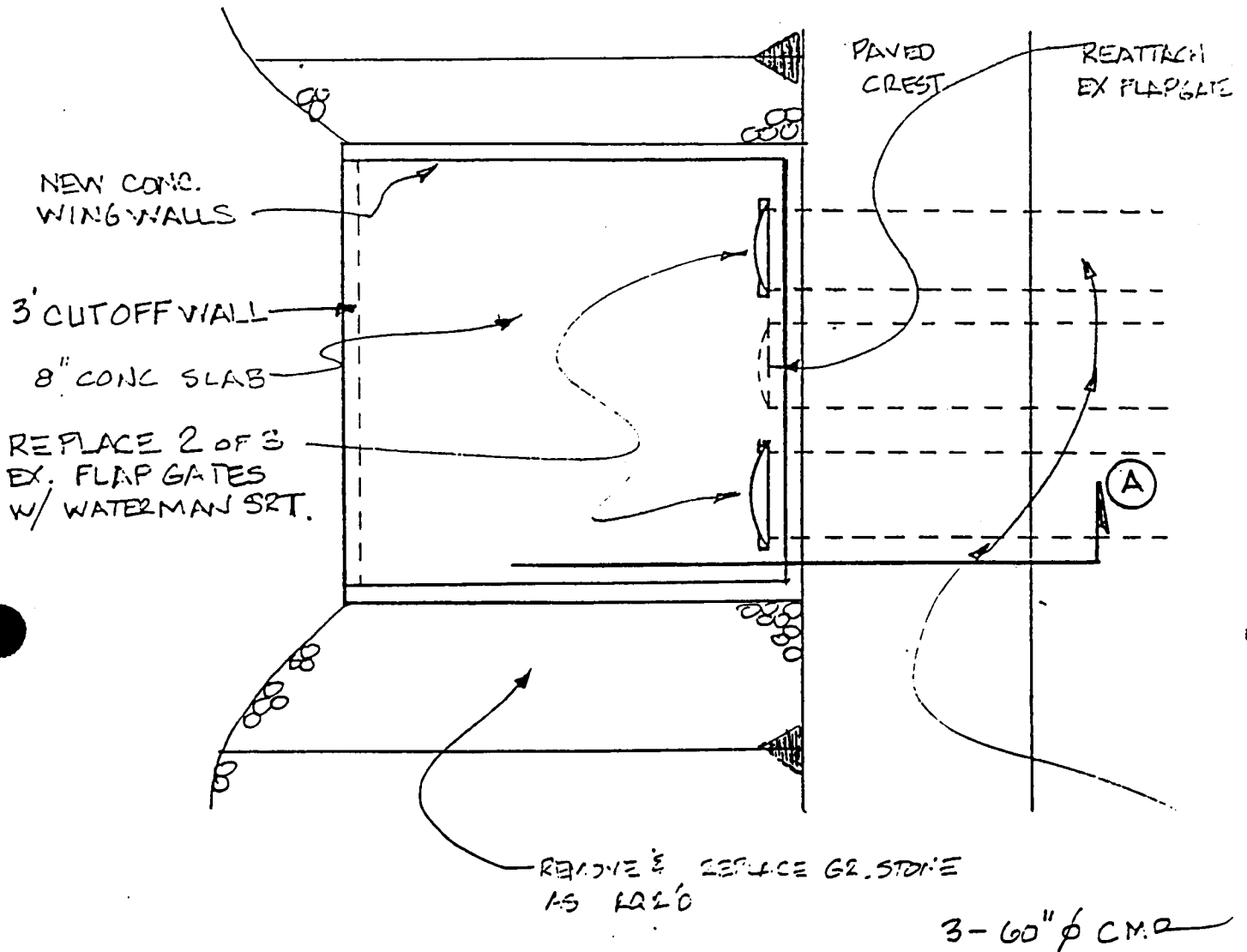
CROSS-SECTION

SINGLE-PIPE FLAP GATE, EXISTING CONDITION

EXHIBIT NO. 4
APPLICATION NO. CD-107-99

COMPUTATION SHEET

PROJECT BALLONA CREEK WETLAND RESTORATION SHEET NO. OF SHEETS
 ITEM STA 32+50.00 DATE JULY 31, 19 97
 COMPUTED BY DD CHECKED BY FILE
 REF. DRWG. NO.

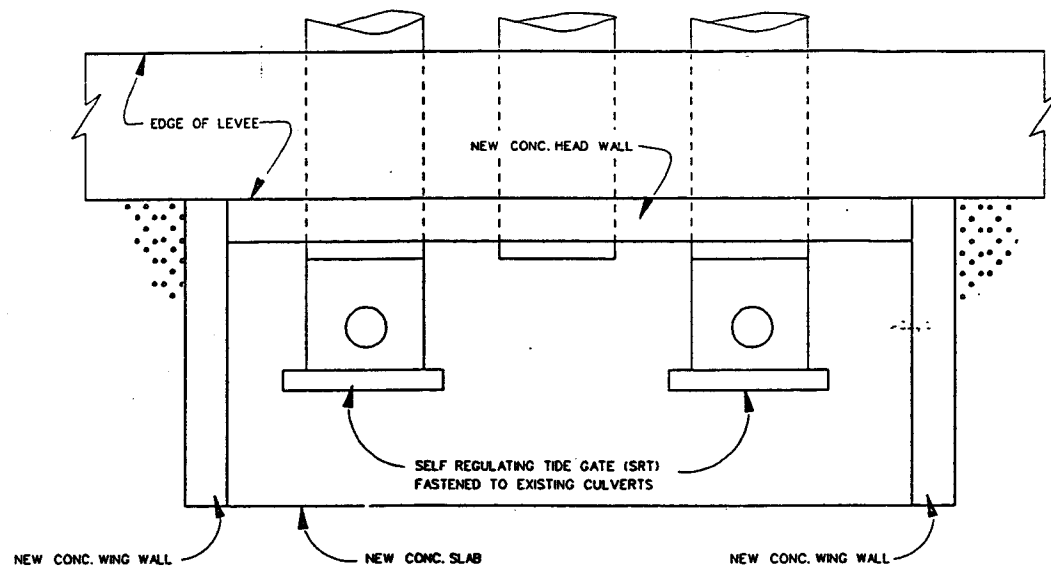


NOTE: HANDRAIL AND/OR GUARDRAIL SHOULD BE INSTALLED AT HEIGHTS GREATER THAN 5'-0".

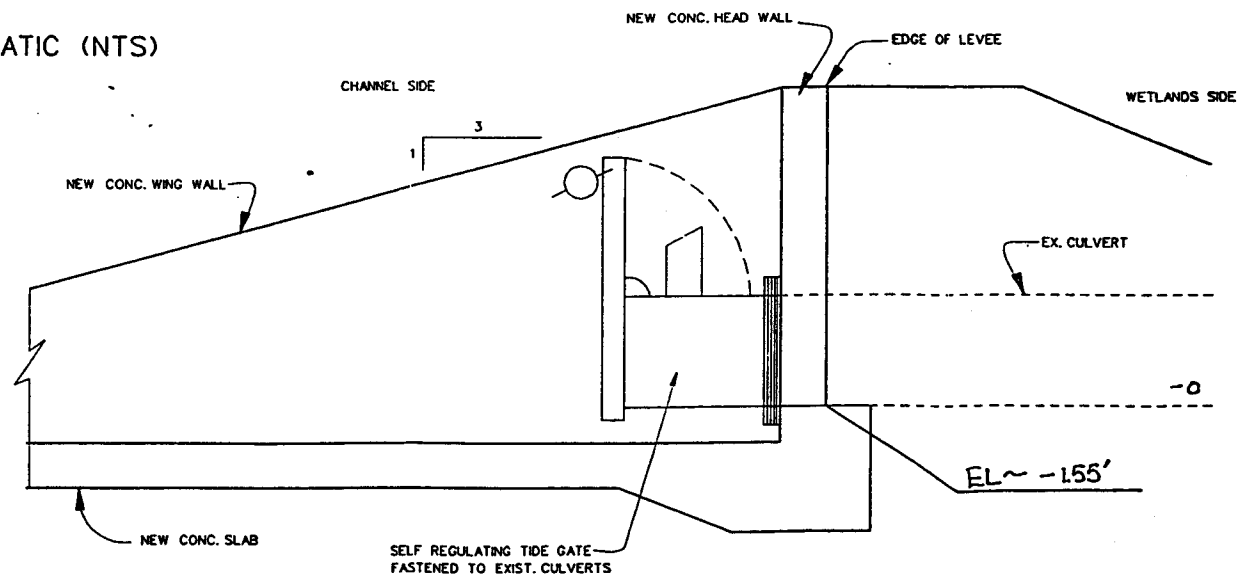
**PROPOSED SRT PLACEMENT
 AND
 ANCILLARY CONSTRUCTION**

EXHIBIT NO. 5

APPLICATION NO. CD-107-99



TOP VIEW SCHEMATIC (NTS)



PROPOSED PROJECT, TOP AND SIDE-VIEW SCHEMATIC (NTS)

FIGURE 7

EXHIBIT NO. 6

APPLICATION NO. CD-107-99

California Coastal Commission

DESIGNED BY	LOUISIANA COUNTY DRAINAGE AREA (LACON)
DRAWN BY	MARINA DEL REY, CALIFORNIA
CHECKED BY	
DATE	
PROJECT NO.	
DISTRICT FILE NO.	
SHEET NO.	
TITLE	BALLONA WETLANDS RESTORATION
PROJECT	OUTLET STRUCTURE, STA 0+991 (STA 32+50)
DATE	
BY	
FOR	
DESCRIPTION	
REVISIONS	

EXHIBIT NO. 8

APPLICATION NO. CD-107-99

California Coastal Commission

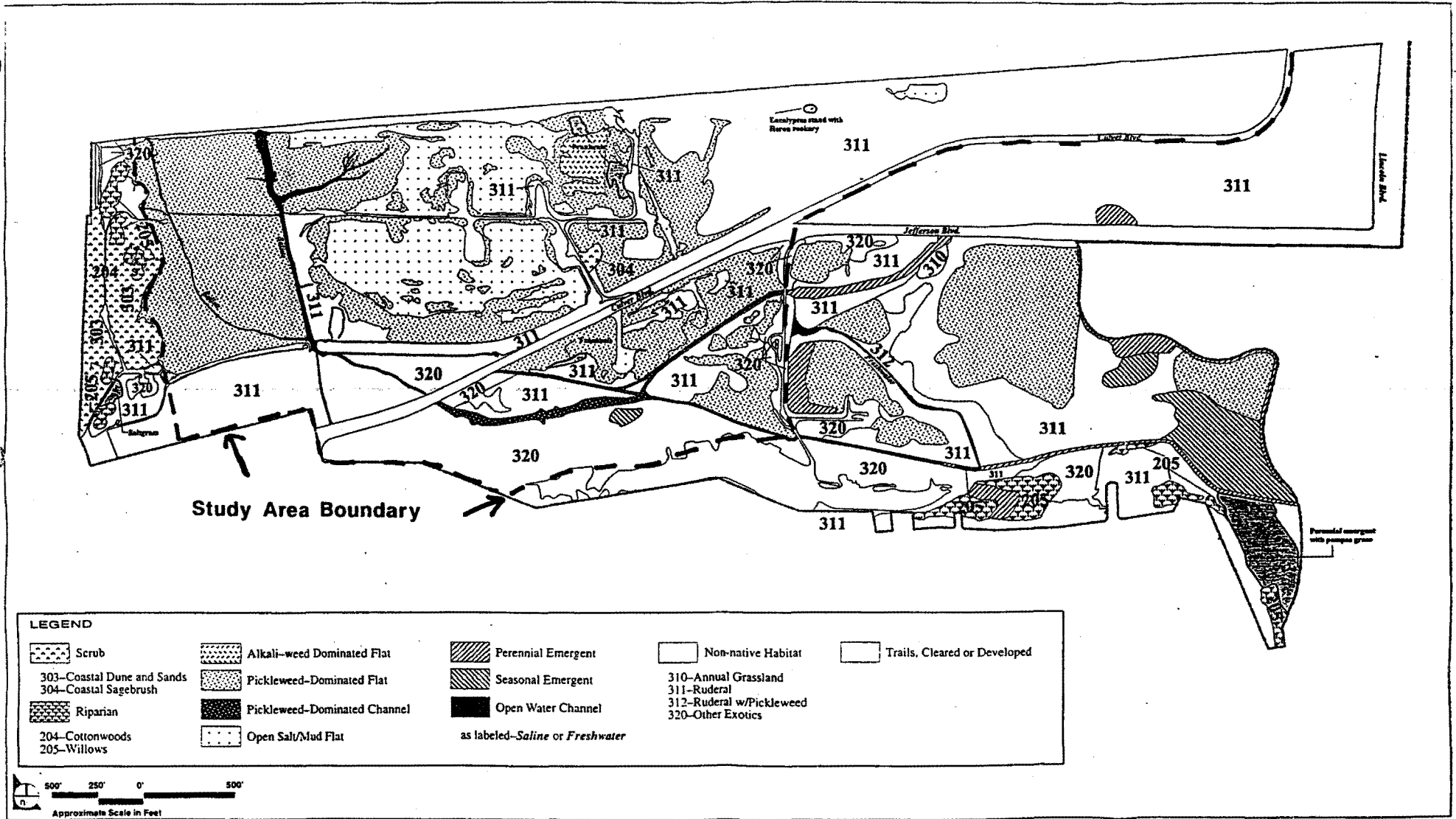


Figure 14. Habitats within the Ballona Wetlands 1135 Study Area.

FIGURE 14.



Wetlands Action Network

protecting & restoring wetlands along the Pacific Migratory Pathway

EXHIBIT NO. 10

APPLICATION NO. CD-107-99

October 25, 1999

Mr. Robert E. Koplín, Chief, Planning Division
U.S. Army Corps of Engineers
Attn: Ms. Stephanie Hall
P.O. Box 532711
Los Angeles, CA 90053-2325

 California Coastal Commission

re: DRAFT Environmental Assessment - Ballona Wetlands 1135

Dear Mr. Koplín & Ms. Hall:

This letter, combined with the letter from Robert Roy J. van de Hoek, Wetlands Action Network's Director of Research and Restoration, constitute an official response by our organization to your August, 1999 DRAFT Environmental Assessment for the Ballona Wetlands 1135 "Environmental Restoration Project." While we are still very much in objection to the closed and limited public process that has occurred related to this project, we appreciate your extending the time period for comments, as we only received notice from the California Coastal Commission of this project's status days before the original comments were due.

Public Process:

Our shortage of information until recently about this project was not due to a lack of interest or attempts to discover the status of this project, as we are VERY concerned about the deficiency of water - both tidal water, as well as freshwater - that the current and former landowners have kept from connecting the water and the land, as is proper for a functioning coastal wetlands ecosystem. Two years ago Bruce Robertson of the Ballona Valley Preservation League, and I contacted then-U.S. Congressman Jane Harman's office when we had heard of a meeting on this subject matter. We were told the meeting was canceled and we would be informed of a future meeting. We never were informed of any further meetings, and recently learned that the meeting had not been canceled, but that there were those who evidently wanted our organizations kept from these meetings.

In October, 1997, Roy van de Hoek, formerly of Friends of Ballona Wetlands' staff and now with our organization, was at that original meeting with Ms. Harman, and this year he has inquired repeatedly of Heal the Bay's staff executives as to the status of this project, only to be told each time that they knew not of the status of the project. (Heal the Bay was one of only two groups who have evidently been privy to these meetings and discussions that we were shut out of.) The last inquiry was made only days before we met with the Chair of the California Coastal Commission on another issue, and she informed us that she and the Commission staff had contacted your office to tell you that we ought to be included in the communications for this project, due to our obvious and very publicly stated "interest" in protecting and restoring all of the Ballona Wetlands ecosystem. We still were not contacted and initiated contact with you ourselves, which leads us to the substance of our comments on this DRAFT Environmental Assessment.

Public process and inclusion of those who are concerned about restoration of the Ballona Wetlands, as well as what constitutes the best of restoration alternatives for this area, are at the heart of a U.S. District Court ruling on a related area that is connected to this current Ballona Wetlands 1135 proposed project. Given this ruling that was issued by the Honorable Ronald S.W. Lew in June of 1998, our legal counsel and Board of Directors have expressed bewilderment and amazement at the fact that the Corps is actually considering issuing a permit for a restoration project at Ballona without it being part of the full Environmental Impact Statement (EIS) for the entire Ballona/Playa Vista area that Judge Lew ordered as part of this judgment.

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(310)457-0300 • fax: (310) 457-0302

Following a Federal Court Order:

When the former permit was issued by the Regulatory Branch of the Los Angeles District Corps office, a similar short-cut E.A. was completed, and this E.A. was determined by Judge Lew to be "arbitrary, capricious and otherwise not in accordance with the law." In fact, we are at a loss for understanding why Playa Capital has not submitted an application for this EIS and allowed the Corps to begin work it estimates to take two years to complete. While our critics have wrongly suggested we are "holding up the restoration" by obtaining a Court ruling that exposes the euphemistically named "freshwater marsh" for the fraud that it is, we would suggest that Playa Capital and the Army Corps of Engineers are together holding up the *real* restoration that Ballona truly needs by evading the Court order and not beginning the EIS process these wetlands deserve. Since we know that this 1135 project has been contemplated for at least the last two years, why, when Judge Lew's ruling was issued last year, was this 1135 project not placed together - as the ruling requires - with the other segmented parts of this land and its proposed uses - and a full EIS process begun?

Perhaps the Regulatory Branch of the Los Angeles District did not communicate to you of this ruling. If so, for your convenience, we are placing in the mail to you a copy of the 53-page ruling. While this may be an excuse for your mistaken issuance of a draft E.A., it is puzzling to us as to why others, who are quite aware of this ruling, did not inform you that an E.A. was ruled unacceptable to the federal Court for another piecemealed portion of proposed wetlands restoration at Ballona. These people are listed in your official mailing list (i.e., Playa Capital, L.A. City Councilmember Ruth Galanter, Friends of Ballona Wetlands), and we now know they have been involved for quite some time in discussions with you about this project. This is also problematic due to your reliance on the "Freshwater Marsh" as an underlying premise for some of the information you have analyzed (such as Continuous Point Source Pollutants.) Given that there is no permitted stormwater system yet for the Playa Vista Phase I project due to this federal ruling, your reliance on these "facts" is incorrect.

While the 1135 Draft E.A. suggests that this project can be segmented and completed in a vacuum from the greater Playa Vista "restoration" and development project, the words included in the E.A. are in direct contradiction with this notion. "The proposed Federal restoration alternatives are coordinated with the non-Federal, larger effort so as not to constrain other future proposed restoration opportunities." (page 3, ¶ 1.) While the statement is made that this 1135 project "neither facilitate nor compromises the Playa Vista Project," and is "an independent stand-alone project that is proposed for construction," neither is true.

If this were a truly independent project, the best scientific alternative would be studied and it would matter not whether or not it would "constrain" Playa Vista's plans. Page 7 states that one of the constraints determined as necessary for guidance in preparing this E.A. was that it "not constrain or preclude future plans to restore a larger portion of the wetland as proposed in the he larger Playa Vista project." Please re-read Judge Lew's opinion related to segmentation of the project site. Throughout the E.A. are references to the Playa Vista project, and it is obvious that the project is quite related to Playa Vista and its plans.

Besides the legal procedural reasons the Court articulated that NEPA requires an EIS for a project such as this, there are other very practical reasons as to why a more thorough review that would be completed in an EIS is important to the environmental success of the project you propose. Below we point out only a few of the issues that are not adequately addressed and we believe need the full light of day an EIS would offer.

State-listed Endangered Species:

The Belding's Savannah Sparrow's nesting site proximity to the proposed project area is problematic and challenging for the method currently proposed for this restoration project. Due to the very short season between nesting activities (including late nesting by some birds observed on this site) and the first songs the male Sparrows sing for courtship as early as November, there are only two months of free and clear time during which to experiment with increasing tidal flow to this area. While full tidal flow is desirable for this area, more pickleweed habitat needs to be planted at the same time, so that the birds can increase their range and have plenty of time to move to the newer habitat areas. This process will take three to four years if properly done, and needs a much more extensive planning and environmental review process than this E.A. provides.

Oil Spill:

The recent oil spill in Ballona Creek points to a larger issue that has not been properly analyzed in this report. First, the new tides gates and their associated operating procedures do not adequately address minimizing oil spill impacts to the wetlands. While it was widely reported that the spill did "not go past Centinela," this is

inaccurate. A very high tide the day of the spill discovery meant that tidal waters were as far east as Inglewood Blvd. The tide had already been receding for several hours by the time the spill was allegedly "under control." Today if you walk on the Creek side near the tide gates you will see numerous fresh tar and oil globs that are a result of this spill.

The spill's source has been identified as an apartment complex that was built partially underground with subterranean parking lots in an area with a high groundwater table and historical crude oil deposits. This description aptly depicts the plans for the 13,000 residential units Playa Vista plans for the areas just east of the 1135 project site. (See Regional History section of the E.A. that provides a very brief discussion of former crude oil drilling, refinery and storage operations.) Given the additional stress this dense of a development will create on top of similar high groundwater/historical crude oil deposit sites much nearer to the wetlands, there exists a potential hazardous oil spill scenario that cries out to be studied by a full Environmental Impact Statement. While we are certain there will be those who falsely accuse us of - again - trying to "stop the restoration," do Santa Monica Bay and Ballona Wetlands deserve anything but the best assurance of protection of sensitive ecosystems from a highly probable massive oil spill caused by adjacent development? We hope you will ultimately agree with us that proper precautions must be made. We believe this is the crux of why Judge Lew ruled that the development is connected to the restoration and that impacts from one to the other are important enough to analyze through a thorough EIS process.

Missing Reports:

Another problem caused by the exclusive and closed public process under which this project has been analyzed is that there are reports mentioned and referred to in the DRAFT E.A. document that were not made available to us or to others who received this report late and, therefore, are not able to be integrated into the determination as to whether or not this project is best for the wetlands. One such seemingly crucial report is the "Ecosystem Restoration Report" (ERR.) Without this document, it is virtually impossible to properly analyze or comment on the E.A. We will appreciate receiving a copy of this document as soon as it is possible for you to duplicate and mail one to us. We also will appreciate receipt of all unpublished references cited in the E.A.

Federally-listed Endangered Species:

In January, 1998, The Southwest Center for Biological Diversity (now called Center for Biological Diversity), CALPIRG and Wetlands Action Network filed a lawsuit against the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service and Playa Capital for non-compliance with Section 7 of the federal Endangered Species Act. (*California Brown Pelican v. U.S. Army Corps of Engineers.*) Perhaps this is another missing item from your files that Regulatory, or at least Playa Capital, ought to have informed you of. Please let us know if you would like to see a copy of that complaint and do not have easy access to it.

This lawsuit, while ruled moot due to Judge Lew's ruling rescinding the Army Corps permit for "Phase I" of Playa Vista, was never adjudicated on the merits, and, in fact, the Corps and the Service initiated formal consultation of the Southwestern Willow Flycatcher as a result of the lawsuit. We believe that the case - which is possible to revive should there again be a valid Army Corps permit - raises substantial issues related to consultation that must be properly dealt with by the appropriate agencies in order for all parties to be in compliance with the Endangered Species Act. When this case was brought forward, one of the arguments the developers and the federal agencies made was that many of the species (e.g., California Least Tern, California Brown Pelican, etc.) were more often found in areas that would be part of Phase II or a then-contemplated Phase III and would be subject to more thorough consultation in the EIS for those Phases. This 1135 area is the area where more consultation was to be completed. This is a compelling reason for the 1135 project to require completion of a full EIS, not an E.A.

Your analysis of compliance with the Endangered Species Act is based on an inaccurate understanding of Section 7 compliance. Section 7 consultation is required before you can determine whether or not there is an adverse affect on a species. This determination is a part of the Section 7 consultation process. Compliance with Judge Lew's order would be a good step in the right direction to insure legal compliance with the ESA, NEPA and other federal environmental laws.

Contamination Issues:

While contamination issues are addressed briefly, it is obvious that the Corps only received limited information about this issue from the landowner/developer. This issue is another area that screams out for a full EIS. On

page 18 the E.A. states, "...the contaminated portions of the Ballona Aquifer are in the process of being remediated under LARWQCB direction..." Have you reviewed the Cleanup & Abatement Order (C&AO) issued by the RWQCB last December that states the remediation has *not* been successful? What about reviewing subsequent quarterly reports required by the RWQCB related to this C&AO? The latest studies cited in this section of the E.A. are from 1991, nearly a decade ago. In fact, there are very few recent studies related to *any* of the many important issues that have only been provided with very cursory reviews or mentions. At the very least, you ought to review the due diligence report Playa Capital had completed before they bought the land from Maguire Partners. It is quite an eye-opener and ought to convince you of the necessity of an EIS.

Biological Resources:

The information in the biological resources section is stated to rely on seven reports, only two of which have been published after 1991. Those two reports were written by Kathy Keane, whose specialty is birds. There are not other biological expertise areas covered in any recent studies relied on in this E.A., such as vegetation, fish and other wildlife. Since this project will effect an entire ecosystem, it is imperative for further study, such as that done in an EIS, be completed and analyzed by a public that includes non-biased, independent scientists. (Kathy Keane is a consultant for the Playa Vista development project.) The Monitoring and Adaptive Management Plan is so completely inadequate it is obvious that no experienced coastal wetland restoration scientists that are not in the employ of Playa Capital were consulted.

SUMMARY

We are in full support of supplying more tidal water to the Ballona Wetlands. However, given the problems outlined in this letter, we would prefer to keep the broken gates in place which provide just about the same amount of water as your planned unbroken gates would provide. We do see the need for the new gates ultimately, but they ought to be part of the full EIS, and problems related to the issues raised in this letter need adequate review and resolution in order to fully protect the ecosystem.

The best option for the ecosystem would be to provide more water than the landowner/developer actually wants, which would conflict with their plans to construct residential and commercial units adjacent to the tidal flow area. Given the current and former landowners' poor stewardship of this land in the past, as well as to this present day, the best and most prudent action that can be taken immediately is to begin application and preparation of a full EIS for the entire Playa Vista/Ballona Wetlands area. We trust you will begin forthwith.

Sincerely,



Marcia Hanscom
Executive Director

cc: Lawyers: David Williams, Steve Crandall, Sharon Duggan, Tara Mueller, Debbie Cook
Wendy Wendlandt, CALPIRG
Allison Rolfe, Center for Biological Diversity
Michael Davis, Deputy Assistant Secretary of the Army, Civil Works
Bruce Robertson, Ballona Valley Preservation League
Sabrina Venskus, Ballona Wetlands Land Trust
Eve Kliszewski; Christopher Jones, Surfrider Foundation
Mark Massara, Sierra Club
Steve Fleischli, Executive Director, Santa Monica Baykeeper
Terry Tamminen, Environment Now!
Sara Wan, Chair, California Coastal Commission
Jack Fancher, U.S. Fish & Wildlife Service
Robert Hoffman, National Marine Fisheries Service
Lia Marcus, Regional Administrator, U.S. Environmental Protection Agency
Loretta Poppets, California Department of Fish & Game
Honorable Tom Hayden, California Senator, Chair, Senate Natural Resources & Wildlife Committee