

CALIFORNIA COASTAL COMMISSION

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Submitted 2/23/01
Staff: PE-LB
Staff Report: 3/22/01
Hearing Date: 4/10/01
Commission Action:

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STAFF REPORT: REVOCATION REQUEST

APPLICATION NUMBER: 5-91-463A2

APPLICANT: Playa Capital LLC

AGENTS: Catherine Tyrrell, David Vena, Wayne Smith

PROJECT LOCATION: Ballona Wetlands, City and County of Los Angeles, also described as Playa Vista Areas A, B, and C, Lincoln and Jefferson Boulevards, City and County of Los Angeles, APN 4211-14-13, 7, 8, & 9

PROJECT DESCRIPTION (APPROVED SEPTEMBER 13, 1991) (1) Develop a 26.1 acre freshwater marsh restoration project; (2) to have Coastal Commission accept proposed freshwater marsh restoration and proposed riparian corridor restoration (which is outside of the coastal zone) as mitigation for future development proposals in other areas of Ballona Wetlands; and (3) adoption of recent (1991) delineation of wetland habitat in Area A of Ballona wetlands.

DESCRIPTION OF AMENDMENT APPROVED APRIL 8, 1992: Amendment A2: (1) Request to delete Condition D, definition for successful completion of the wetland restoration project, and replace with Condition C2, including new language requiring establishment of freshwater wetland system, one year of monitoring and additional assurances for long term management before release of mitigation credits; (2) change the expiration date from two years of approval of the permit to two years after issuance of the permit; (3) other minor modifications to the permit conditions.

PERSON REQUESTING REVOCATION: Marcia Hanscom, Wetlands Action Network

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission deny the request for revocation on the basis that no grounds exist for revocation under Section 13105(a), and there is a question whether the request was filed with due diligence.

1.

PROCEDURAL NOTE: The California Code of Regulations, Title 14 Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit (or permit amendment) are as follows:

Grounds for revocation of a permit shall be:

- a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
- b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations Section 13105.

REQUESTOR'S CONTENTION:

The request for revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous or incomplete information to the Commission in the coastal development permit (permit amendment) application. The contentions raised by the request include the following:

- 1) The applicant submitted inaccurate, erroneous or incomplete information on three issues, and the submittal of accurate information would have led the Commission to deny the project, or to determine that the applicant was not eligible to submit the application.

(a) The first allegation is that inaccurate information regarding the ownership of the property (known as the south/easternmost 60 acres of Area B) was submitted at the time of the request for amendment. The person requesting revocation alleges that in 1990 the State Lands Commission agreed to accept dedication of parcel 1, Area B also known as APN 4211-14-13. In support of this allegation, the requestor asserts that at a public meeting in the February 2001:

"The State Controller revealed that 60 acres of land in Area B had been conveyed to the State Lands Commission years ago. The transfer of land was required in exchange for an option extension developers had been granted related to Area C by Gray Davis when he was Controller."

Therefore, the requestor argues that:

"It appears that the permit applicant did not only fail to reveal the real owners of the land to the Commission but also did not have their permission. Certainly Controller Connell's office has not authorized or been made aware of the environmentally destructive work that Playa Vista Capital intends to do on this land that ought to be restored to its primary historical make-up as a functioning saltmarsh."

- 2) The second issue raised is soil gas; the requestor asserts:

"In the spring of 2001, the State Controller asked the State Lands Commission to undertake an independent study of Methane gas and fault concerns on both Areas C and B where the State owns land."

- 3) The third issue is a request for a moratorium to allow opponents to appeal a ninth circuit decision on lawsuit challenging the Army Corps of Engineers issuance of a 404 permit for the freshwater marsh to the Supreme Court, (United States Central District, Wetland Action Network v United States Army Corps of Engineers June 24, 1998). The person seeking revocation states: "At the time the request was made by the Controller, a federal injunction had halted much of the activity in the Commission's permit area, due to protections of the federally delineated wetlands as ordered by the court. That injunction has now been lifted although our lawyers are preparing a Supreme Court application that would seek another stay. While no injunction is in place it seems important to preserve all options in this sensitive saltmarsh area and to insure that the study by the state is not severely compromised by Playa Vista Capital's digging up a huge detention basin in the location from where much of the gas seepage areas appear to emanate."
- 4) The fourth issue is the possible presence of endangered species. The requestor states: "A final item that needs to be considered by the Commission is that recent field notes uncovered through litigation show that the biologist consultants are aware that the state and federally listed endangered California Least tern forages in this area now, and the allowing this permit to go forward without required Section 7 consultation and biological options being issued about this endangered bird with the proper state and federal authorities may constitute a violation of the Endangered Species Act by the Commission. Given that this is public land, as opposed to private land, as previously thought the Endangered Species Act laws require significantly more thorough review and compliance.

Another federally and state endangered species that has been observed in the southern edge of the freshwater marsh area where a thicket of willows exists along the bluff toe, is the Southwestern Willow Flycatcher. The developer's own records show numerous observations of this bird, which led to their chopping down much of the vegetation in October of 1997. As willows grow quickly, thick willows are again in abundance in this area and consultation and biological opinions about this endangered songbird is also required.

The request for revocation does not assert that grounds for revocation in Section 13105(b) exist.

STAFF RECOMMENDATION: Staff recommends that the Commission **reject** the request for revocation because the person raising objections has not met the test of section 13105 of the California Code of Regulations.

MOTION: I move that the Commission grant revocation of Coastal Development Permit Amendment No. 5-91-463-A2.

The staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY REVOCATION:

The Commission hereby **denies** the request for revocation of the Commission's decision on Coastal Development Permit Amendment No. 5-91-463-A2 on the grounds that there is no:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application.

STAFF NOTE

A revocation of a permit removes a previously granted permit. Even if the permit is vested, i.e. the applicant has undertaken construction of the project, if the Commission revokes the permit, the applicant is required to stop work and if wishing to continue, to reapply for the project. In fact, if the evidence clearly shows that there are grounds for revocation, the Executive Director, upon receipt of a request for revocation, can order the project to stop work. Section 13107 provides, in part: "Where the executive director determines, in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be suspended." In this case, the Executive Director has not determined that grounds exist for revocation and the operation of the permit is not suspended.

Because of the impacts on an applicant, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to have second thoughts on a previously issued permit based on information that comes into existence after the granting of the permit, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the California Code of

Regulations. **The grounds for revocation are, of necessity, confined to information in existence at the time of the Commission's action.**

The revocation request is based on subsection (a) of Section 13105 of the Commission's regulations. The three elements of Section 13105(a) that must be proved before a permit can be revoked are:

- 1) That the applicant provided inaccurate or incomplete information
- 2) That any inaccurate or incomplete information was supplied knowingly and intentionally, AND
- 3) That, if the Commission had the accurate and complete information, it would have denied the permit or imposed different conditions.

In addition to these three elements, a person requesting revocation needs to have filed the revocation with due diligence. Section 13108(d) clearly establishes that the Commission must deny a revocation request that has not been filed with due diligence. Clearly it may take some months to prepare a request. In this case, the revocation request notes that its author raised the endangered species issues in a 1998 lawsuit against the United States Army Corps of Engineers. The person requesting revocation also appeared at a 1998 revocation request in which oil and gas issues were raised. However, this request was not filed until 2001. The Commission must determine whether this delay precludes a finding of due diligence.

II. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and Background

On September 13, 1991, the Commission approved the application of Maguire Thomas Partners for the following development:

- 1) Develop a 26.1-acre freshwater marsh restoration project;
- 2) To have the Coastal Commission accept proposed freshwater marsh restoration and proposed riparian corridor restoration which is outside of the Coastal Zone as a mitigation of wetland fill for future development proposals in other areas of the Ballona wetlands;
- 3) To have the Coastal Commission adopt a recent delineation of wetland habitat in Area A of Ballona wetlands. (Approved with conditions 9/13/91)

In acting on the proposed project, the Commission determined that the freshwater marsh restoration and proposed riparian corridor outside the Coastal Zone could serve as mitigation for future fill of marine wetlands within the Coastal Zone. A half year later, on April 8, 1992, the Commission approved an amendment. This is the action that the requestor seeks to have revoked. The amendment authorized changes in conditions that

related to time limits and to monitoring the biological productivity of the marsh after its completion. The conditions principally addressed what would or would not make the freshwater marsh complex suitable for mitigation of wetland fill elsewhere in Ballona wetlands. The project included some berms and a 26.1-acre marsh/riparian system located inside the coastal zone. At the 1992 amendment action, the Commission, at the request of the applicant, changed the standard conditions that controlled the expiration of the permit, ruling that the permit would expire two years after issuance of the permit. The permit was issued in the fall of 1992 and subsequently activated. However, the freshwater wetland has not yet been completed, as a result of a federal court injunction that was issued in litigation challenging the Army Corps of Engineers' approval of a permit for the project. This injunction was recently lifted.

At its hearings on the freshwater marsh, the Commission considered testimony from those who opposed the entire Playa Vista project, and also from those who believed that there should be no separate freshwater marsh and that freshwater runoff should enter the saltmarsh directly. After the Commission acted, other agencies, including the U. S. Army Corps of Engineers (ACOE) and the City of Los Angeles, proceeded with their own approvals of those portions of the project that were within their jurisdictions.¹

B. BASIS FOR REVOCATION REQUEST AND REVOCATION REQUEST'S CONTENTIONS.

1. OWNERSHIP.

The Coastal Act requires that an applicant for a permit must have an interest in the property or permission from the legal owner of the property in order to file a valid application. The person requesting revocation alleges that in April 1992, when Maguire-Thomas Partners - Playa Capital received an amendment that extended the life of its permit, Playa Capital did not own the property and did not have permission from the true owner, the State Lands Commission to apply for the permit. The person requesting revocation cites a public comment on the part of a state officer, the Controller.

On September 28, 1990, U. S. Trust, acting for the State, agreed to grant Maguire Thomas Partners -- Playa Vista an exclusive option to buy Area C (which was held by US Trust for benefit of the state) for an agreed price. In this Agreement, Maguire Thomas Partners—Playa Vista (MTP-PV) agreed to restore and then convey certain wetlands (the "Expanded Wetlands") to the State, or if the State refused to accept the land, to the City. The "Expanded Wetlands" are the "portion of Area B of Playa Vista which is located east of the recently designated wetlands and south of Jefferson Boulevard". This includes the site of the freshwater marsh approved in CDP 5-91-463 as amended in 5-91-463A2. The transfer of wetlands depended on certain contingencies, which were laid out in the agreement and modified in a 1994 amendment to the agreement. (Exhibits 12, 13,14)

In a letter to the applicant clarifying the status of the transfer of the Expanded Wetlands, David Vena, the applicant's counsel explained:

As I believe you are further aware, on September 28, 1990, Playa Capital 's predecessor in interest, "MTP-P/V" entered into an agreement with U.S. Trust Company of California (The Area C Trustee") pursuant to which the MTP-PV was granted an option to purchase Area C and certain other rights with respect to Area C (the "Area C Option Agreement"). Among other considerations for such option, MTP-PV agreed that if it exercised the Area C option, it would in addition to payment of the purchase price for the property deliver to the State title to the Expanded Wetlands Parcel subject to the various covenants, conditions, restrictions and easements which would allow MTP-PV and its licensees to utilize the Expanded Wetlands Parcel for freshwater and salt marsh restoration purposes and the construction of certain Playa Vista related infrastructure improvements. On February 15, 1994, the Area C Trustee and MTP-PV entered into a First Amendment to Agreement amending the Area C Option Agreement to provide, among other things that the expanded wetland parcel would be conveyed to the State regardless of whether MTP-PV purchased any portion of Area C, provided, however that such conveyance need not be completed until February 15, 2004.

On December 29, 1994, the Area C Option Agreement was further amended in various respects, but without altering the arrangements regarding the Expanded Wetlands Parcel.

Lastly, in contemplation of conveying the Freshwater Marsh Parcel to the State, in 1998, Playa Capital as successor in interest to the MTP-PV negotiated a form of grant deed with the State Lands Commission (the "Form of Deed"). The Form of Deed contains specific reservations for the benefit of Playa Capital allowing it to construct and maintain the freshwater marsh upon the Freshwater Marsh Parcel in accordance with the permits it holds for the construction of such marsh from the U.S. Army Corps of Engineers, the California Coastal Commission and the City of Los Angeles. (See paragraph D of the enclosed Form of Deed.) In December 1998, the State Lands Commission voted to accept conveyance of title to the Freshwater Marsh Parcel pursuant to the Form of Deed. Although so approved, the property has not yet been conveyed to the State Lands Commission pending completion of construction of the freshwater marsh, at which time such conveyance will take place.

...

In summary, the Freshwater Marsh Parcel is owned by Playa Capital and will be retained by Playa Capital until the earlier to occur of construction of the freshwater marsh or February 15, 2004, at which time it will be conveyed to the State Lands Commission ... (Exhibits 8,12,13,14)

In 1998, the State Lands Commission (in approving the Form of Deed) agreed to accept the land in question after the restoration work is complete. The actual transfer of this land

has not yet taken place because the wetland restoration work is not complete (Lance Kiley, Staff Counsel, State Lands Commission, personal communication). The land in Area B continues to be owned by Playa Capital. (Exhibits 12,13,14,18)

The Commission also finds that the parties requesting revocation have not provided a deed or other documentation indicating that the State currently owns Area B or owned it in 1992. The Commission finds that the applicant provided evidence of legal interest in the property at the time of the approval and amendment of the permit and that there is no evidence that the applicant provided incorrect or incomplete information with regard to ownership. There are no grounds for revocation based on ownership issues. The applicant owned the land in fee in April 1992 when the Coastal Commission granted an amendment to the permit. (Exhibits)

2. CURRENT METHANE STUDY.

The person requesting revocation alleges that another ground for revocation is a changed circumstance: "the Controller has asked the State Lands Commission, which she currently chairs, to undertake an independent study of methane gas and fault concerns on both Areas B and C where the State owns land." As noted above, the State does not yet own land in Area B where this freshwater marsh is proposed. Secondly, a new or changed circumstance, in this case, a study proposed in 2000, is not grounds for revocation of a permit granted in 1992. Methane gas explosions are a concern in enclosed structures. In an open marsh area, gas will not accumulate. Therefore, creation of a freshwater marsh will not create hazards from methane gas.

A ground for revocation is inaccurate or incomplete information knowingly provided at the time of the Commission's approval. Information that is discovered after the decision is not grounds for revocation. In April 1992 the Controller had not requested this study. There was no methane study underway in the area until mid-1998. Newly discovered information cannot be considered in analyzing a revocation request, which can address only information that was known by the applicant at the time the permit was considered by the Commission. Therefore, the Commission finds that the applicant did not intentionally provide inaccurate or incomplete information in 1992. Furthermore, even if the applicant had intentionally provided inaccurate or incomplete information regarding methane gas and fault concerns, there is no evidence that the Commission would have reached a different decision.

3. REQUEST FOR A MORATORIUM TO ALLOW AN APPEAL OF A FEDERAL LAWSUIT.

The person requesting revocation alleges that another ground for revocation is a changed circumstance – a federal injunction on the development was lifted in March 2001. The person suggests that the Commission should consider revoking the permit to prevent further work on the freshwater marsh while opponents appeal a decision on the United

States Army Corps of Engineers 404 permit for the freshwater marsh to the Supreme Court. The person requesting revocation indicates that the injunction associated with the lawsuit challenging the 404 permit would have enabled the methane study to be completed without the disturbance resulting from the excavation necessary to create the marsh basin. The person argues that "it seems important to preserve all options in this sensitive saltmarsh area and to insure that the study by the State is not severely compromised by Playa Vista Capital digging up a huge detention basin in the location from where much of the gas seepage areas appear to emanate."

The Commission must base any revocation on inaccurate or incomplete information knowingly provided at the time of its decision. A revocation may only be granted if the criteria for granting a revocation are met. It can not be granted as a way to reconsider a permit decision. The lifting of the federal injunction nine years later could not have resulted in false information being provided when the Commission considered the project in 1992. As explained above, the methane study that was not requested until 2000 cannot be considered information that should have been provided to the Commission in 1992.

4. THE ENDANGERED SPECIES ACT.

The person requesting revocation alleges that another ground for revocation is non-conformity with the Endangered Species Act. The requestor alleges two things: first that "the biologists' consultants are aware that the state and federally listed endangered California least tern forages in this area now and allowing this permit to go forward without the required Section 7 consultation and biological opinions being issued about this endangered bird may constitute a violation of the endangered species act by the Commission." Secondly, the requestor alleges, "Another federally and state endangered species that has been observed in the southern edge of the freshwater marsh area where a thicket of willows exists along the bluff toe, is the Southwestern Willow Flycatcher. The developer's own records show numerous observations of this bird, which led to their chopping down much of the vegetation in October of 1997. As willows grow quickly, thick willows are again in abundance in this area and consultation and biological opinions about this endangered songbird is also required. Biologists' notes revealed in a federal Endangered Species Act lawsuit reveal that the developer's biologists were aware of the presence of a "Southwestern willow flycatcher, an endangered bird."

The issue here is (1) whether inaccurate or incomplete information regarding the presence of endangered species on the site was provided to the Commission in 1992, and (2) whether in March and April, 1992, the applicant or its consultant were aware that the information regarding endangered species that was provided to the Commission was inaccurate or incomplete. If it is determined that there was inaccurate or incomplete information that was intentionally provided in 1992, the Commission must determine whether the Commission would have made a different decision if complete information was available.

A. Least tern:

- (1) **Inaccurate or incomplete information.** In 1970, Ballona Lagoon, a mile west-northwest of this site, was identified as critical habitat for the endangered California Least tern. During the seventies, Least terns nested on Ballona Wetland in the salt pans in Area B. These salt pans are not located in the area subject to the development, but are located north of Jefferson. When the Commission certified the LUP in 1984, the salt pan nesting area no longer existed. The terns had moved to a nesting site on the beach at Marina del Rey and to the port. In 1984, in approving the LUP, the Commission reviewed extensive material about local birds, including Least Terns. The existence of least terns in the area was reflected in information available to the Commission in an appendix to the LUP, "Biota of the Ballona Wetlands" prepared by the Los Angeles County Museum Foundation. These documents describe the California Least Terns as birds that feed in open water and nest on beaches and do not suggest that willow thickets or agricultural fields are habitat for the terns, who dive into shallow water and scoop up small fish. These bird surveys available to the staff did not show any terns in the willow thicket or on the mixed agricultural wetland areas of the Area B. Instead, it identified Least Terns on beaches and salt pans.
- (2) There is no evidence that the "agricultural fields" on the project site were habitat for the least tern in 1992. However, there was extensive debate at the time of the LUP hearing on whether the southeast corner of Area B was a salt marsh or an agricultural field, with a patch of wetland.
- (3) The California Department of Fish and Game and the United States Fish and Wildlife Service also were notified of both the LUP and the Commission's consideration of the freshwater marsh permit application and amendment application. The resource agencies communicated with the staff in writing concerning the extent and location of wetlands, and appropriate uses on wetlands and other habitat areas. In reviewing the freshwater marsh, Fish and Game was most concerned that the quality of the water entering the marsh be high enough that the facility would be more than a "detention facility". They did not state that the project might impact the California least tern.
- (4) The Corps analyzed this issue in 1998 in response to an Endangered Species lawsuit. In 1998, in a letter to the Fish and Wildlife Service, addressing the impact of the freshwater marsh on endangered species, Richard Schubel, Chief Regulatory Branch of the United States Army Corps of Engineers, stated

"Historically California least terns were known to nest within the saltmarsh on Playa Capital's property. However, the last known nesting occurred in 1981. There was an observation of a California least tern flying over the Centinela creek in June 1995 as reported by Kathleen Keane. The Corps discussed the 1995 sighting with Ms. Keane and concluded that her observation of the

California least tern is insufficient to support a "may affect" determination. ... Centinela creek ..does not provide suitable foraging or nesting habitat for the terns. Flow is ephemeral ((June 11, 1998)

- (5) In 1998, the Fish and Wildlife Service responded to the Corps, concurring that the freshwater MARSH project would have no effect on listed species other than the Southwestern willow flycatcher.
- (6) Conclusion. There is no evidence that any least terns were sighted on the freshwater marsh project site on or before the Commission's approval in 1991, or its amendment in 1992. The tern sighted was sighted in 1995, after the Commission acted. When the Corps investigated that sighting, it failed to confirm that the area of the freshwater marsh should be considered tern habitat. There is no evidence of inaccurate or incomplete information provided to the Commission at the time of its decision, or at the time of the amendment concerning the California Least tern. In addition, assuming for the purpose of this analysis, inaccurate or incomplete information regarding the presence of Least terns was provided, there is no evidence that the applicant intentionally provided inaccurate or incomplete information.

At the time of its action on the amendment, the Commission had extensive files on the habitat of the area. There is no evidence that the wetland restoration contemplated in this permit will adversely impact the Least terns. The Least terns feed in open water. There is no open water in this area. Secondly, the Least tern nests on beaches and salt pans. There are no beaches or salt pans on this part of the site. Therefore, even assuming for the purpose of this analysis, that the applicant intentionally provided inaccurate or incomplete information regarding the presence of least terns, there is no evidence that the Commission would have imposed different conditions or denied the application.

B. The Southwestern willow flycatcher. The allegations are that the presence of the bird was known in 1992 and the information was withheld. The person requesting revocation states had the Commission reviewed accurate or complete information relating to the Southwestern willow flycatcher, the Commission would have made a different decision regarding removal and replacement of willows for the freshwater marsh project.

- 1) The Southwestern willow flycatcher was listed as an endangered bird on February 27, 1995, three and a half years after the Commission made its initial decision and over two years after the approval of the amendment. Therefore, the Commission's findings that there were no endangered birds present in the area subject to construction were accurate at the time. The Southwestern willow flycatcher was listed as a candidate species in 1989. It is found in the southwest on patches of willow and tamarisk separated by "vast stretches of arid lands." California had listed a "willow fly catcher" as endangered in 1991. This is a similar bird, but is not the same species. The USFWS lists loss of riparian lands as a key reason for loss of population. It notes that "federally approved projects that involve ...pond

construction or stream channelization when such activity is conducted in accordance with reasonable and prudent measures resulting from a section 7 consultation (should not result in take) ...however the USFWS notice that impoundment and storm water detention basins built without such guidance can harm the species."

- 2) The 1986 LUP showed the area in which the freshwater marsh is located as agricultural and wetland, which was designated to be filled and developed with commercial and residential structures. Background documents reviewed by the Commission in certifying the LUP (the "Biota Report: *op. cit.*) indicated that "willow flycatchers and songbirds" were seen but did not nest in the various willow thickets on the property. The bird surveys did not specifically identify in which willow thickets these birds were seen, and which subspecies were seen. The vegetation reports (Henrickson) specifically identified part of the area impacted by the freshwater marsh as willow wetland.
- 3) In 1991, the Commission reviewed the subject proposal to develop the area as a willow thicket and wetland, served by from the development. The Commission approved the proposal 5-91-463. The proposal did not identify these willows specifically as habitat for flycatchers. Instead, it indicated that the area on which willows would be found would substantially increase to 5.5 acres of "willow scrub wetland" and 3.7 acres of "mixed riparian" wetland. The report indicated that once the area was established, flycatchers were among the species that would be expected to appear.
- 4) A 1998 Fish and Wildlife letter in response to the ACOE letter indicated that based on a 1995 and 1997 sighting, more mitigation for impacts to willows in this area may be needed. It stated "although the 1995 sighting appeared to occur outside the permit area ... there was a more recent sighting in September 1997 by Brian Leatherman, in the degraded willow stand located in the southern part of the footprint of the freshwater marsh. He confirmed that (contrary to his declaration and portions of his October 1997 report) he could not verify that he had observed the federally listed Southwestern willow flycatcher. However, he also states that the listed and unlisted subspecies of willow flycatcher are virtually indistinguishable in the field during the migration season. Moreover, he felt that was good evidence that the listed subspecies do migrate through the greater Los Angeles area. Therefore, we have determined that the Southwestern willow flycatcher might have used and could possible in the future use the degraded riparian habitats authorized to be filled by the Corps permit during migration. The sighting of a single flycatcher indicates that the individual was almost certainly a transient and not part of a nesting pair. The permitted project area lacks suitable nesting habitat for the southwestern willow flycatcher. The Service concurs with the Corps determination that the activities permitted by the permit number 90-246 are not likely to adversely affect this listed species. We concur that no further Section 7 consultation is

required by the Service. ”

- 5) The Commission at the time of its action heard opposition to the design, and did have information showing that the willow area was sensitive. This area was identified in biology reports on which the Commission relied in certifying the LUP as “agricultural areas” and as supporting some marsh areas typified by willows (Henrickson, “Vegetation” in “Biota” op cit). The Commission's information indicated that migratory songbirds were found in the willows, but did not nest there. The statistics in the permit for existing habitat merely states that there were 6.5 acres of “state wetland” and does not distinguish between the riparian area and the field. The field supported some saltmarsh vegetation. It was generally described as “agricultural” by the original developer and “degraded wetland” by biologists. In the summer, it typically dried out; in the winter, there were ponds of shallow water that were used as loafing areas by migratory gulls. Most opposition to the project, (Zedler, Henrickson), was aimed at protecting the degraded salt marsh that existed on the field and opposed separating this area from the remainder of the saltmarsh. The opposition letters did not analyze the bird use of the willow scrub.

In summary, the Commission finds that: 1) There is no evidence that the applicant intentionally provided inaccurate or incomplete information about California least terns; 2) the Commission had in its record that there were willows in the footprint of the area impacted by the freshwater marsh; 3) the Southwestern willow flycatcher, cited by the person requesting revocation, was not listed as endangered in 1992; and 4) The person requesting revocation has not provided evidence that the this bird was identified on this site prior to April 1992 by the developer and its biologists, or that inaccurate or incomplete information regarding the presence of this bird was provided to the Commission.

The person requesting revocation has not demonstrated that the applicant intentionally provided inaccurate or incomplete information where the accurate and complete information would have resulted in a different decision on the part of the Commission. The Fish and Wildlife service determined in 1998 that the project would not adversely affect the Southwestern willow flycatcher. In fact, the project will increase the amount of willow habitat appropriate for the species. Therefore, even assuming for the purposes of analysis that the applicant intentionally provided inaccurate or incomplete information about the species, there is no evidence that the commission would have denied the project or imposed different conditions.

C. DUE DILIGENCE

In addition to these three elements, a person requesting revocation needs to have filed the revocation with due diligence. Section 13108(d) establishes that the Commission must deny a revocation request that has not been filed with due diligence. This request was not filed until 2001. Clearly, it may take some months to prepare a request. In this case, the revocation request notes that its author raised the endangered species issues in a 1998

lawsuit against the United States Army Corps of Engineers. The biologists sighted the endangered birds in 1995 and 1997. A 1998 revocation request, which the Commission rejected, raised methane and oil and gas issues. Methane was detected in adjoining area D in 1998. The agreement to transfer the expanded wetlands property to State Lands was made in 1990. However, the person requesting revocation states that this information was unknown to opponents and is in their possession due to the lawsuits that they brought. They state that they could not have brought this request to the Commission's attention earlier. The Commission must determine whether this delay precludes a finding of due diligence.

D. Conclusion

For the reasons set forth above, the Commission finds that the grounds for revocation contained in Section 13105(a) are not satisfied, and as mentioned, the request for revocation does not assert that grounds for revocation of the subject permit exist in Section 13105(b). Therefore, the Commission finds that the revocation request should be denied.

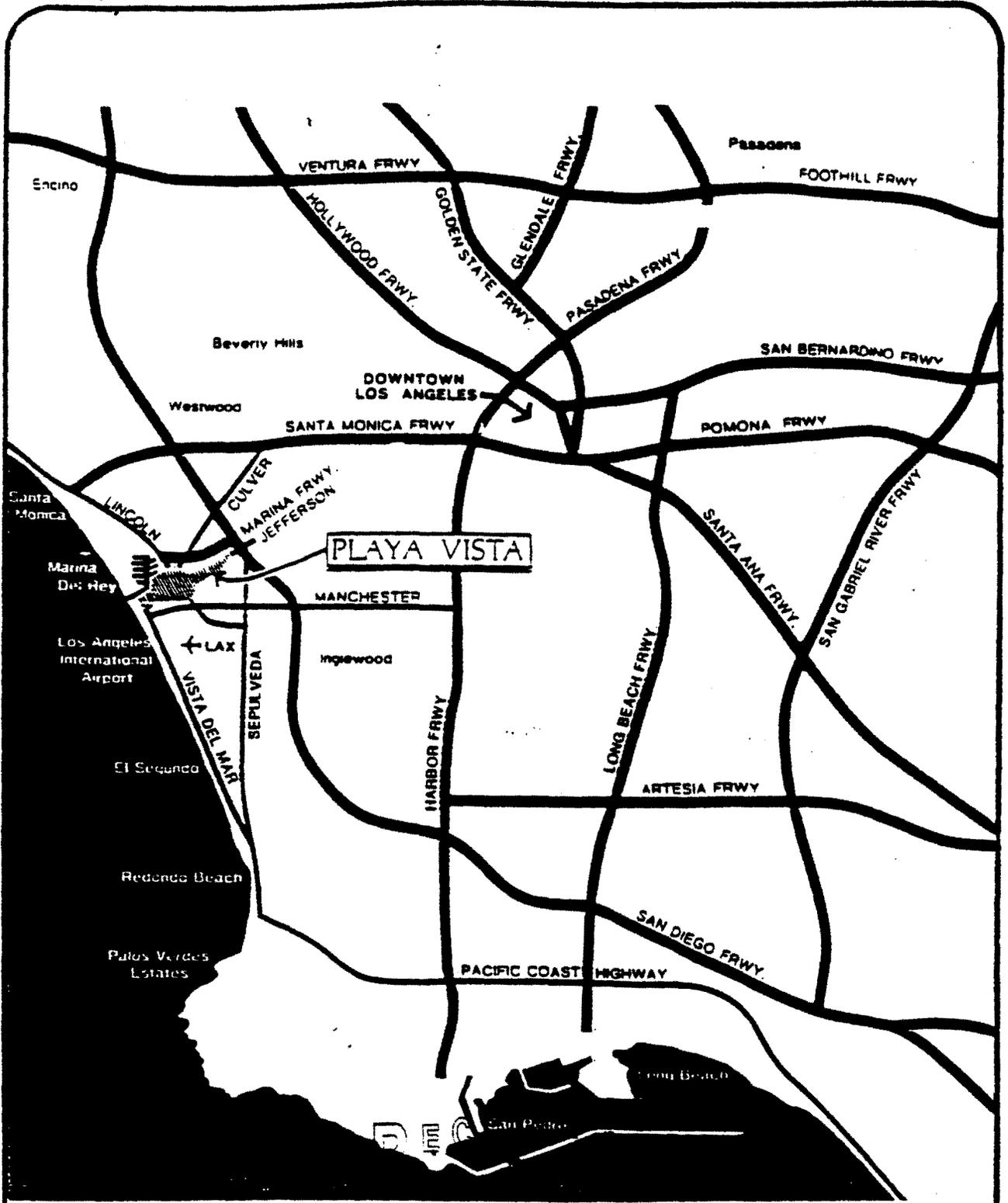
APPENDIX A
SUBSTANTIVE FILE DOCUMENTS:

A: Original Action

1. Certified Marina del Rey/Ballona Land Use Plan, County of Los Angeles, 1984, December 1986.
2. Certified Playa Vista Land Use Plan, City of Los Angeles, December, 1986
3. Agreement for Settlement of Litigation in the 1984 case of Friends of Ballona Wetlands, et.al.v. The California Coastal Commission, et. al., case No. c525-826.
4. Letter to the California Coastal Commission on behalf of the Ballona Wetlands Committee requesting a New Wetlands Delineation in Areas A and C at Playa Vista; Report to the California Coastal Commission on the need for a new delineation of wetlands in Areas A and C at the Ballona LUP, prepared for the Ballona Wetlands Committee by William Want, esq. June, 1991.
5. Extent of Wetlands Jurisdiction under the California Coastal Act, Area A, Playa Vista; Wetlands Research Associates (Dr. Michael Josselyn), June 1991.
6. Biological value of Ballona Freshwater Wetlands System, The Chambers Group (Dr. Noel Davis), June, 1991.
7. Consistency of the Freshwater Wetland System with the Coastal Act.
8. Consistency of the Freshwater Wetland System with the certified Ballona Land Use Plan.
9. Letter of April 11, 1991, from the City of Los Angeles Department of Planning to the California Coastal Commission advising the Commission of the Department's Approval in Concept of the Freshwater Wetland System.
10. Collected Public Comments on the US Army Corps of Engineers Public Notice on the Freshwater Wetland System (Public Notice/Application No. 90-426-EV), including comments from the California Department of Fish and Game, (February 5, 1991 CDFG letter) and the U.S. Fish and Wildlife Service.
11. MTP-PV's Response to Comments, Application to the Corps of Engineers for a permit pursuant to Section 404 of the Clean Water Act for Freshwater Wetlands and Development at Playa Vista, June 1991. Includes response to the comments of CDFG (21-23) and USFWS (pp.12-19).
12. Water Demand: Proposed Ballona Freshwater Wetland System; Sharon Lockhart, et al., June, 1991.
13. Water Balance for the Proposed Freshwater Wetland System, Playa Vista, Camp Dresser and McKee, Inc., June, 1991.
14. Environmental Checklist Form, based on Appendix I from CEQA: the California Environmental Quality Act, Statutes and Guidelines, 1986.
15. Alternatives and Mitigation Analysis for the Coastal Development Permit Application to Develop A Freshwater Marsh in Area B of the Ballona Planning Area.
16. Wetland Acreages in the Playa Vista Project Area and the Freshwater Marsh Area.

B. Referenced in this analysis but not available at the time of the Commission's original action.

1. James Bartel, United States Fish and Wildlife Service, Letter June 19, 1998 to Richard J Schubel, Chief, Regulatory Branch, Corps of Engineers, Los Angeles District. "Playa Vista Phase I Permit (90-426-EV) Endangered Species Act Section 7 considerations"
2. Wetlands Action Network, Ballona Wetlands Land Trust and California Public Interest Research Group v. the United States Army Corps of Engineers.
3. Judge Lew, Federal District Court, June 1996, decision in Wetlands Action Network et al v United States Army Corps of Engineers.
4. Agreement Among U.S. Trust Company of California N. A, Maguire Thomas Partners – Playa Vista Area C, a California limited partnership, and Maguire Thomas Partners-Playa vista, a California limited partnership, September 28, 1990.
5. First Amendment to Agreement among U.S. Trust Company of California N. A, Maguire Thomas Partners – Playa Vista Area C a California limited partnership, and Maguire Thomas Partners-Playa Vista, a California limited partnership, effective May 15, 1994.
6. Second Amendment to Agreement among U.S. Trust Company of California N. A, Maguire Thomas Partners – Playa Vista Area C a California limited partnership, and Maguire Thomas Partners-Playa Vista, a California limited partnership, entered into December 29, 1994.
7. City of Los Angeles City Engineer, Memorandum Public Works review of ETI report titled "Subsurface Geo-chemical Assessment of Methane Gas Occurrences" for the Playa Vista project; file 1996-092; May 10, 2000
8. Victor T. Jones, Rufus J. LeBlanc, Jr., and Patrick N. Agostino, Exploration Technologies, Inc, Subsurface Geotechnical Assessment of Methane Gas Occurrences. Playa Vista First Phase Project. April 17, 2000. [Also referred to as the Jones Report or "the ETI report."]
9. Camp Dresser and McKee 2000, "Soil gas sampling and analysis for portions of Playa Vista Areas A and C near Culver Boulevard Widening Project" 4 page geologic letter report to Maria P Hoyer dated 27 November, 2000 and signed by A. J. Skidmore and M. Zych (RG).
10. Mark Johnsson, Senior Geologist, California Coastal Commission, Memorandum: "Culver Boulevard Widening Project and Potential Soil Methane Hazards"
11. City of Los Angeles Department of Building and Safety, Memorandum of General distribution, #92, Methane Potential Hazard Zones, March 19, 1991.
12. City of Los Angeles, Office of the Chief Legislative Analyst, City Investigation of Potential Issues of Concern for Community Facilities District No 4, Playa Vista Development Project, March, 2001.
13. California Department of Fish and Game, Memorandum: Extent of Wetlands in Playa Vista, December 1991."



VICINITY MAP	EXHIBIT NO. 1	FIGURE 1.1-1
	APPLICATION NO. 5-91-463-A2	
California Coastal Commission		

Exhibit 1

R. 5.91463A2

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March 20, 1992

RECEIVED
MAR 23 1992

CALIFORNIA
COASTAL COMMISSION

15881-0002

VIA HAND DELIVERY

Mr. Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

EXHIBIT NO. 4
APPLICATION NO. 5-91-463-A2
APPLICANT'S SUBMITTA LETTER
 California Coastal Commission

Maguire Thomas Partners-Playa Vista
Application for Amendment
to Permit Issued Under
Permit Application No. 5-91-463

Dear Mr. Douglas:

Maguire Thomas Partners-Playa Vista ("MTP-PV"), which this office represents, obtained approval of the above-referenced permit application by unanimous vote of the Commission at the public hearing held on September 13, 1991. As set forth in the Final Adopted Findings for the Commission's September action, Special Condition D to the permit requires MTP-PV to bring back to the Commission for approval the criteria to be used in assessing whether the freshwater wetland system is sufficiently successful to allow mitigation credits to be released. MTP-PV has been working with Coastal Commission staff and the Ballona Wetlands Committee to develop these criteria.

MTP-PV is now requesting that the Commission consider the proposed criteria for release of mitigation credits in the context of a permit amendment, and to consider other changes to the permit at the same time. These changes are all set forth in the enclosed document entitled "Proposed Amendments to Special Conditions." For your convenience this document is redlined to show all changes to the existing conditions, with added language "computer-redlined" and deleted language printed at the end. A

R 5 91 463 A2
Exh. 6.4 4

Mr: Peter Douglas, Executive Director
California Coastal Commission
March 20, 1992

Page 2

clean copy of the proposed revised Special Conditions also is enclosed. The specific language of the proposed amendments has been approved by MTP-PV and the Friends of Ballona Wetlands, as well as by the State Controller's Office and Councilwoman Ruth Galanter, the other members of the Ballona Wetlands Committee.

The following points are addressed in this application:

1. Criteria for Release of Mitigation Credits

In the proposed language, release of mitigation credits is conditioned upon "establishment" of the various phases of the Freshwater Wetland System, to be determined through fulfillment of specific criteria, including financial assurances to meet biological goals, set forth in the proposed definition. This concept would replace the term "success", definition of which has proven problematical. We do not believe the language substitution would alter the requirements the Commission and staff have intended the applicant to meet prior to release of credits. Accordingly, the enclosed application for an amendment to the permit requests substitution of the term "establishment" for "success" in proposed Special Condition C.2., and incorporation of the proposed definition of "establishment" into that condition. For the sake of consistency, minor language changes are requested in Special Conditions A and B to reflect the phasing concept contained in the proposed criteria for establishment. Finally, it is proposed that Special Condition D, which currently sets forth guidelines for the development of the definition, be merged into Special Condition C.2.

2. Extension of Permit Term

As set forth in the Adopted Findings, Standard Condition No. 2 provides that the permit will expire two years from the date on which the Commission voted on the application. For the reasons offered below, MTP-PV is now requesting that the Commission amend this condition to provide that the permit will expire two years from the date of issuance of the permit.

As you know, the Coastal Commission staff and the Committee held different views as to the extent of the Commission's action in September. This confusion over the nature of the Commission's action led to months of negotiation between staff and the Committee over the findings to be adopted by the Commission. The final findings were not adopted until the February hearing, five months after the Commission action. Moreover, the Commission staff and the Committee were directed to come back before the Commission in April to address an

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P. 2
Exh. 6. + 4b

Mr. Peter Douglas, Executive Director
California Coastal Commission
March 20, 1992

Page 3

outstanding issue relating to full-tidal restoration of the saltmarsh, and discussions on this issue have continued. As a result, the permit approved in September has not yet been issued to MTP-PV, yet seven months of the permit's two year term have expired.

This effective shortening of the permit term is of extreme concern to MTP-PV. For reasons having to do with other jurisdictional approvals, it is now very unlikely that MTP-PV will be able to begin construction of the Freshwater Wetland System within two years of last September's approval.

Since September, 1991, significant delays were encountered in adoption of a funding mechanism intended to finance City review of the Playa Vista project. Consequently, MTP-PV would not expect to secure a grading permit for Area D and the Freshwater Wetland in Area B within two years of the date of approval of the permit, although it may do so within two years of the date of issuance of the permit.

The fact that confusion over the Commission's action in September has delayed issuance of the permit for several months, along with the unexpected delay in the City's approval process, constitutes new information that the applicant could not have discovered and produced before the permit was granted. Therefore, MTP-PV respectfully requests that the Commission act to restore the full two-year term of the permit as intended in the original action by amending Standard Condition 2 to provide that the term run from actual issuance of the permit. We would anticipate the Commission's issuing the permit in April, 1992.

This tolling of the permit term would allow MTP-PV a reasonable probability of securing the approvals necessary to commence construction of the Freshwater Wetland System prior to expiration of the permit. However, due to the uncertainties inherent in obtaining multi-jurisdictional approvals for complex projects, MTP-PV must respectfully serve notice here that MTP-PV will likely be required to return to the Commission in the future to seek an extension of the permit term to accommodate other jurisdictional approvals. In the absence of changed environmental circumstances as described in the Commission's regulations, MTP-PV would expect to be granted such an extension.

3. Minor Clarifications of Language

MTP-PV proposes certain minor alterations to the language of certain of the existing Special Conditions, all of which are highlighted in the enclosed document. MTP-PV intends

R 591 465A2
Exhibit 4 -
p. 3



PLAYA VISTA

13220 W. JEFFERSON BLVD. # 200
LOS ANGELES, CALIFORNIA 90026TELE 310.827.0074
FAX: 310.827.0428

March 9, 2001

Ms. Deborah Lee
California Coastal Commission
200 Ocean Gate Avenue, 10th Floor
Long Beach, CA 90802

**Re: California Coastal Commission Permit #5-91-463
Notification of Resumption of Construction Activities
Playa Vista, Phase I Project**

Dear Ms. Lee:

Playa Capital Company, LLC, dba Playa Vista, respectfully submits this letter as notification of our intent to resume construction of the freshwater marsh prevented for almost three years by a federal district court injunction over 16.1 acres of federally delineated wetlands in Phase I.

As discussed previously with your staff, work on the freshwater marsh outside of the enjoined area is already underway. Construction of the new Jefferson drain connection to the freshwater marsh began in November of 2000. Construction of the Ballona outlet drain was initiated in January of this year. And in February 2001, work started on the re-abandonment of a "dry hole" oil well drilled in the 1920s.

Initial construction after the dissolution of the injunction will primarily consist of clearing the site of vegetation, initial grading of the basin, exporting of some soils, and importing and placing fill dirt to construct the berm area. Another element of the work will include construction of the central drain connection to the freshwater marsh. All work will be performed in conformance with permit conditions.

Before resuming construction, a number of steps have been taken to ensure compliance with permit conditions and various environmental regulations. Archeologists and Gabrielino Native American monitors have been notified to be available for construction. An erosion control plan to protect the saltwater marsh from construction and stormwater runoff has been developed. Also, arroyo willow clippings have been taken by the Friends of Ballona Wetlands to be rooted and cultivated for replanting in the completed freshwater marsh. Biologists have been surveying the area over the last months to identify any nesting birds or endangered species in the area in order to protect any discovered nests from construction activity. The biologists have not found any endangered or threatened species in the project area despite extensive surveys.

We are excited that the freshwater marsh will soon be a reality, and thank the Commission for their role in bringing such an innovative project to fruition. Please feel free to contact me at 310/448-4676 should you have any question.

Sincerely,

Catherine Tyrell
Environmental Affairs Director

CT/sd

cc: Pam Emerson

R 5 91 463A2
Exh. b. 5

Wetlands Action Network

protecting & restoring wetlands along the Pacific Migratory Pathways

February 23, 2001

Mr. Peter Douglas, Executive Director
California Coastal Commission

sent via facsimile
also sent via facsimile to Pam Emerson: 562-590-5084

re: revocation of Coastal Commission permit - Ballona Wetlands, Los Angeles - Area B - "freshwater marsh"

Dear Peter:

Please consider this letter an official request for revocation of the Coastal Commission-issued permit for the detention basin, euphemistically referred to by Playa Vista Capital as a "freshwater marsh," in Area B at the Ballona Wetlands in Los Angeles.

The reason for this request is that we have reason to believe that Playa Vista and its agents have knowingly withheld information material to the decision to issue a permit extension for this project. Last month State Controller Kathleen Connell convened a public hearing to determine the fate of Area C at the Ballona Wetlands.

At that time, Controller Connell and Paul Thayer of the State Lands Commission revealed that 60 acres of land in Area B had been conveyed to the State Lands Commission years ago. This 60 acres includes the land where the "freshwater marsh" was scheduled to be constructed as a runoff basin for Area D of the Playa Vista development. The transfer of land was required in exchanged for an option extension developers had been granted related to Area C by Gray Davis when he was Controller. It appears that the permit applicant did not only fail to reveal the real owners of the land to the Commission, but also did not have their permission. Certainly Controller Connell's office has not authorized or been made aware of the environmentally destructive work that Playa Vista Capital intends to do on this land that ought to be restored to its primary historical make-up as a functioning saltmarsh.

This information was completely new information that was obviously known by the developers, but not revealed in permit applications or extension applications or any follow-up materials to the Coastal Commission. This issue appears to be sufficient to halt the permit activities, conduct an investigation as to the merits of this revocation request and place this issue on the agenda for the next Coastal Commission meeting.

In addition, the Controller asked the State Lands Commission, which she currently chairs, to undertake an independent study of methane gas and fault concerns on both Areas C & B where the State owns land. At the time of this request made by the Controller, a federal injunction had halted much of the activity in the Commission permit area, due to protections of the federally-delineated wetlands, as order by the Court. That injunction has now been lifted, although our lawyers are preparing a Supreme Court application that would seek another stay. While no injunction is in place, it seems important to preserve all options in this sensitive saltmarsh area and to insure that the study by the State is not severely compromised by Playa Vista Capital's digging up a huge detention basin in the location from where much of the gas seepage areas appear to emanate.

P.O. Box 1145 • Malibu, CA 90265 • 310-456-5604 • fax: 310-456-5612

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Exhibit 6
Request for rev-
cation*

Mr. Peter Douglas, Executive Director
February 23, 2001
Revocation Request - Ballona Wetlands
page 2

A final item that needs to be considered by the Commission is that recent field notes uncovered through litigation show that the biologist's consultants are aware that the state and federally-listed endangered California Least Tern forages in this area now, and the allowing this permit to go forward without required Section 7 consultation and biological opinions being issued about this endangered bird with the proper state and federal authorities may constitute a violation of the Endangered Species Act by the Commission. Given that this is public land, as opposed to private land, as previously thought, the Endangered Species Act laws require significantly more thorough review and compliance.

Another federally and state endangered species that has been observed in the southern edge of the "freshwater marsh" area, where a thicket of Willows exist along the bluff toe, is the Southwestern Willow Flycatcher. The developers' own records show numerous observations of this bird, which led to their chopping down much of the vegetation in October of 1997. As Willows grow quickly, thick Willows are again in abundance in this area, and consultation and biological opinions about this endangered songbird is also required.

Thank you in advance for your review of this matter and consideration of our request.

Sincerely,

Marcia Hanscom
Marcia Hanscom
Executive Director

cc: State Controller Kathleen Connell
State Lands Commission Executive Officer Paul Thayer

R 5 91 463A2
p. 2
Exhibit 6
Request for
revocation



PLAYA VISTA

12888 W. JEFFERSON BLVD. # 200
LOS ANGELES, CALIFORNIA 90008TEL: 310-522-0074
FAX: 310-521-5425

March 16, 2001

Ms. Pam Emerson
Los Angeles Area Supervisor
California Coastal Commission
200 Oceanatiz, 10th Floor
Long Beach, California 90802

Re: February 23, 2001 Request for Freshwater Marsh Permit Revocation from
Wetlands Action Network

We have reviewed the February 23, 2001 letter from Marcia Hanscom of Wetlands Action Network to the Coastal Commission requesting revocation of Playa Vista's coastal development permit. As explained below, Ms. Hanscom's allegations are without merit.

As presented in the package provided to you previously by Mr. David Vena, the first allegation - that the land is not owned by Playa Vista - is simply not true.

Regarding the adequacy of data on methane, on March 6, 2001, the Office of the Chief Legislative Analyst ("CLA") for the City of Los Angeles issued its report regarding methane at the Playa Vista project. The CLA found that "[t]he numerous studies of methane concentrations at the Playa Vista Development Project site has yielded a data set that is more than adequate for the assessment of potential methane hazards and for the design of appropriate mitigation measures. . . . [The proposed] mitigation measures are adequate for the Playa Vista Development site." The report on the analysis was forwarded to you under separate cover.

Ms. Hanscom finally asserts that the coastal development permit should be revoked because field notes allegedly indicate that the endangered California least tern forages in the area of the freshwater marsh and that a southwestern willow flycatcher has been observed on the southern edge of the freshwater marsh. Ms. Hanscom is mistaken.

California least terns depend, for food, on small fish that they capture from nearshore waters, estuaries, and river mouths. Surveys for sensitive bird species and their habitat, including California least tern, have been conducted at Playa Vista since the early 1980s and, on a more frequent basis, since 1995. Field notes and observations do not show any records of California least tern foraging within the freshwater marsh area, nor would any be expected to forage here because there is presently no food for them. In the early 1980s, Arwood and Minsky (1983) identified only two locations in the Playa Vista project area as providing potential foraging habitat: the Ballona Channel, and the tidal channels in the Phase Two portion of Area B that are included within the proposed area for saltmarsh restoration. (Arwood, J.L. and D.E. Minsky, *Least tern foraging ecology at three major California breeding colonies*, *Western Birds* 14:57-72 (1983)). Both of these locations are well outside of the proposed freshwater marsh construction footprint. Surveys for foraging least terns were conducted by Keane Biological Consulting in July of 1995, but none were observed in any portion of the Phase One area, including the construction footprints for the freshwater marsh and riparian corridor. (Keane Biological Consulting 1996). All of Phase One, particularly the proposed freshwater marsh and riparian corridor construction areas as well as all of the federally delineated wetlands, continue to be monitored frequently and, as of March 2001, these monitoring surveys have not revealed any California least terns or other endangered species to be foraging in these areas. (Psomas & Associates 2001). Due to the fact that the Ballona Channel and the tidal channels in Area B remain the only locations that could support the fish that California least terns rely upon for food, it is possible that an occasional tern may be observed

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Exhibit 7
Applicant
Response

Pam Emerson
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Page -2-

flying over the Playa Vista area to access these locations. However there is no evidence, from past and current surveys, that California least terns have ever foraged within the area potentially affected by construction of the freshwater marsh, nor is there any aquatic habitat present that would provide the terns' food supply or otherwise cause them to be dependent on this area.

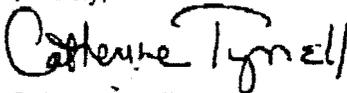
Southwestern willow flycatchers are migratory, appearing in the southern California region for breeding usually around April or May and leaving for South America by late summer. Definitive identification of the southwestern willow flycatcher is often difficult because they lack features that clearly distinguish them from other flycatchers. Flycatchers of unidentified species have been observed occasionally at Playa Vista, but never nesting, and never "numerous". One set of field notes recorded by Mr. Brian Leatherman of Psomas & Associates in 1997 erroneously recorded the presence of a southwestern willow flycatcher. In subsequent submittals, Mr. Leatherman clarified that he had not been able to make a definitive identification because the bird had flown out of the area. In any case, the individual observed was recorded as a migrant, not as nesting. In 1998, intensive surveys conducted by Keane Biological Consulting according to protocols of the US Fish and Wildlife Service were conducted with negative results. (Keane Biological Consulting, *Surveys for Sensitive Avian Species at Playa Vista*, 1998). Recent monitoring surveys, begun in February of 2001, also show no evidence that southwestern willow flycatchers or any other endangered species are present within the footprint of the freshwater marsh, riparian corridor, or federally delineated wetlands. (Psomas & Associates 2001).

Furthermore, during an informal consultation, in June 1998, the U.S. Army Corps of Engineers (the "Corps") determined, and the U.S. Fish and Wildlife Service (the "Service") concurred, that Phase One of the Playa Vista project, including the construction of the freshwater marsh, will have no adverse affect on the southwestern willow flycatcher, and no affect on any other federally listed, endangered or threatened species. Please see the June 11, 1998 letter from the Corps to the Service; the June 19, 1998 letter from the Service to the Corps, and the February 20, 2001 letter from the Corps to the Service, copies of which are attached.

Recent surveys were also conducted by Psomas to identify nesting birds. All areas were walked on foot and visually inspected for the presence of bird nests or nesting behavior. A fifty-foot buffer was flagged around each of the three active nests found in order to protect them from construction activity. No work on the freshwater marsh within these protected areas will be allowed until the biologists have reported the birds have fledged.

We hope that you will find this letter of assistance in your consideration of the most recent issues raised by Ms. Hanscom. If we can be of further assistance, or if you have any questions, please do not hesitate to call me at 310 448-4676.

Sincerely,



Catherine Tyrrell
Environmental Affairs Director

enclosures

R 591463A2
Exhibit 7
p2
applicant's
response

LATHAM & WATKINS

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February 26, 2001

Writer's Direct Dial: (213) 891-8170

Email: david.vena@lw.com

VIA FEDERAL EXPRESS

Pam Emerson
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, California 90802

Re: Playa Vista - Freshwater Marsh

Dear Pam:

I have been informed that you have received a communication from Marcia Hanscomb asserting that it is inappropriate for Playa Capital Company, LLC ("Playa Capital") to construct the freshwater marsh in Area B at Playa Vista because the land on which the marsh is to be constructed is "owned by the State". Catherine Tyrrell at Playa Capital has asked me to write to you regarding the actual facts and to provide you with zone background information and copies of some of the underlying documentation.

As you know, the freshwater marsh project is located within Area B west of Lincoln Boulevard and south of Jefferson Boulevard. The overall construction site consists of approximately 34 acres (the "Freshwater Marsh Parcel"). The Freshwater Marsh Parcel lies within a larger approximately 58-acre parcel which is sometimes referred to as the "Expanded Wetlands Parcel".

The Expanded Wetlands Parcel is zoned for residential development but, pursuant to the Stipulated Judgment in the Friends of Ballona Wetlands litigation, is to be utilized for a freshwater marsh and salt marsh restoration purposes.

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South Coast Region

FEB 27 2001

CALIFORNIA
COASTAL COMMISSION

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Pam Emerson
California Coastal Commission
February 26, 2001
Page 2

As I believe you are further aware, on September 28, 1990, Playa Capital's predecessor-in-interest, "MTP-PV", entered into an agreement with U.S. Trust Company of California (the "Area C Trustee") pursuant to which the MTP-PV was granted an option to purchase Area C and certain other rights with respect to Area C (the "Area C Option Agreement"). Among other consideration for such option, MTP-PV agreed that if it exercised the Area C option, it would in addition to payment of the purchase price for the property deliver to the State title to the Expanded Wetlands Parcel subject to various covenants, conditions, restrictions and easements which would allow MTP-PV and its licensees to utilize the Expanded Wetlands Parcel for freshwater and salt marsh restoration purposes and the construction of certain Playa Vista related infrastructure improvements. On February 15, 1994, the Area C Trustee and MTP-PV entered into a First Amendment to Agreement amending the Area C Option Agreement to provide, among other things, that the Expanded Wetlands Parcel would be conveyed to the State regardless of whether MTP-PV purchased any portion of Area C, provided, however, that such conveyance need not be completed until February 15, 2004.

On December 29, 1994, the Area C Option Agreement was further modified in various respects, but without altering the arrangements regarding the Expanded Wetlands Parcel.

Lastly, in contemplation of conveying the Freshwater Marsh Parcel to the State, in 1998 Playa Capital, as successor-in-interest to the MTP-PV, negotiated a form of grant deed with the State Lands Commission (the "Form of Deed"). The Form of Deed contains specific reservations for the benefit of Playa Capital allowing it to construct and maintain the freshwater marsh upon the Freshwater Marsh Parcel in accordance with the permits it holds for the construction of such marsh from the U.S. Army Corps of Engineers, the California Coastal Commission and the City of Los Angeles. (See paragraph D of the enclosed Form of Deed.) In December 1998, the State Lands Commission voted to accept conveyance of title to the Freshwater Marsh Parcel pursuant to the Form of Deed. Although so approved, the property has not yet been conveyed to the State Lands Commission pending completion of construction of the freshwater marsh, at which time such conveyance will take place.

Enclosed for your records are photocopies of the Area C Option Agreement together with Exhibit M thereto, the First Amendment to Agreement, the Second Amendment to Agreement and the Form of Deed approved by the State Lands Commission.

The rights and responsibilities of the parties regarding the Expanded Wetlands Parcel are principally set forth in Article 9 of the Area C Option Agreement and Exhibit M thereto, and in revised Paragraph 1.1 of Article 9 set forth in Section 4 of the First Amendment to Agreement. For your convenience, I have tabbed each of the relevant provisions.

In summary, the Freshwater Marsh Parcel is owned by Playa Capital and will be retained by Playa Capital until the earlier to occur of construction of the freshwater marsh or February 15, 2004, at which time it will be conveyed to the State Lands Commission, and Playa

LATHAM & WATKINS

Pam Emerson
California Coastal Commission
February 26, 2001
Page 3

Capital, at the time of such conveyance, will retain all rights necessary to enter upon the Freshwater Marsh Parcel to construct the freshwater marsh, or, if already constructed, to maintain or remediate the site as necessary to satisfy the conditions to the U.S. Army Corps of Engineers, California Coastal Commission and City of Los Angeles permits providing for the construction of the freshwater marsh and its ancillary facilities.

Please call me if you have any questions concerning the foregoing or any of the enclosures to this letter.

Sincerely,



David H. Vena
of LATHAM & WATKINS

Enclosures

cc: Ms. Catherine Tyrrell (w/encls.)

R 591 463 A2
Exh. bit 8 p3
Applicant response
Legal

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200

TU 14



Filed:	March 26, 1992
49th Day:	May 14, 1992
180th Day:	September 12, 1992
Staff:	JRR-SF
Staff Report:	April 23, 1992
Hearing Date:	May 12, 1992
Commission Action:	April 8, 1992

PROPOSED FINDINGS:PERMIT AMENDMENT

APPLICATION NO.: 5-91-463-A2

APPLICANT: Maguire Thomas Partners -- Playa Vista AGENT: Richard Hammond

PROJECT LOCATION: Ballona Wetlands, City and County of Los Angeles (Exhibit 1)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:

- 1) develop a 26.1-acre freshwater marsh restoration project; (Exhibit 2)
- 2) to have Coastal Commission accept proposed freshwater marsh restoration and proposed riparian corridor restoration (which is outside of the coastal zone) as mitigation for future development proposals in other areas of Ballona Wetlands;
- 3) to have Coastal Commission adopt a recent delineation of wetland habitat in Area A of Ballona Wetlands.

DESCRIPTION OF AMENDMENT: The proposed permit amendment contains the following requests:

- 1) Request to delete condition D, definition for successful completion of the wetland restoration project, and replace condition C.2 with new language requiring establishment of freshwater wetland system, one year of monitoring, and additional assurances for longterm management before release of mitigation credits;
- 2) Change the expiration date from two years of approval of the permit to two years after issuance of the permit;
- 3) Other minor modifications to the permit conditions.

LOCAL APPROVALS RECEIVED: Waived

R 591463A-
 Exhibit 9
 Commission action

SUBSTANTIVE FILE DOCUMENTS:

1. Permit No 5-91-463 (Maguire Thomas Partners -- Playa Vista)

STAFF SUMMARY:

The Commission approved, with conditions, the permit amendment application 5-91-463-A2.

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

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

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

I. STAFF RECOMMENDATION.

The staff recommends that the Commission adopt the following resolutions:

A. APPROVAL WITH CONDITIONS:

The Commission hereby approves the permit amendment 5-91-463-A2, subject to the conditions below on the grounds that the amendment will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

A 5 91 463 A2
Exhibit 9 p2
Commission
Action

2. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
5. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
6. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS.

1. Timing for Mitigation. The phased approach to the restoration of the Freshwater Wetland System will not change the requirements of Special Condition C.2 of 5-91-463 and amendments 6 and 8 (as described in the Amendment Description section below). The applicant is required to demonstrate that, at least, the number of Freshwater Wetland System acres in each phase that has been established (as defined in this amendment and conditions 2 - 8 below) is at least equivalent to the number of wetland acres affected by the respective phase of the mixed-use development prior to the Commission release of the mitigation credits for that phase of the mixed use development.
2. Commission Review of Establishment. Release of the mitigation credits for each phase of the Freshwater Wetland System shall not occur unless the Commission has determined that that phase has been established, as defined by this amendment and conditions 3 - 8 below.
3. Remediation. Prior to the release of mitigation credits, the applicant shall implement all remedial measures that have been found by the Commission to be necessary to achieve the minimum biological values for the Freshwater Wetland System, described in Special Condition 5, below, and the Freshwater Wetland System shall have been determined by the Commission to have achieved such minimum biological values.

R 591463 A2
Exhibit 9 B
Commission
action

4. Habitat Criteria. The Habitat Criteria developed pursuant to the definition of establishment, criteria 2.j.i -- 2.j.ii, shall be reviewed and approved by the Commission before they are used to evaluate the habitat values of the Freshwater Wetland System.

5. Minimum Biological Values. The subject phase of the Freshwater Wetland System shall be deemed by the Commission to have achieved the minimum biological values upon demonstration that the functional biological values of such phase of the Freshwater Wetland System exceed those of the Existing Degraded Wetlands to be filled, as set forth in the Environmental Baseline Study. In addition, there shall be no substantial evidence that these functional biological values are deteriorating in such a way that they cannot be maintained and enhanced due to any of the following:

- A. Major topographic degradation (such as excessive erosion or sedimentation) as compared to the approved grading plan for the Freshwater Wetland System;
- B. Insufficient quality of freshwater entering the wetland system to protect and maintain the biological resources of the wetland system;
- C. Insufficient quantity of freshwater entering the wetland system to protect and maintain the biological resources of the wetland system;
- D. Significant reduction in vegetated area from the area indicated in the revegetation plan;
- E. Invasion by a significant amount of exotic vegetation.

In evaluating whether a phase of the Freshwater Wetland System has achieved the minimum biological values, the Commission shall utilize the habitat criteria and standards developed pursuant to Paragraphs 2.j.i and 2.j.ii of the applicant's definition of establishment, taking into account that the subject phase has been completed only for one year and that the Freshwater Wetland System is not intended to duplicate all of the functional biological values of the Existing Degraded Wetlands to be filled.

6. Remediation Obligation. The applicant shall have the right to seek relief from its obligation to remediate a substantial failure or degradation of the Freshwater Wetland System if such degradation or failure is attributable to a force majeure, catastrophic event, or unlawful act or acts of another (as defined by section 2.j.v. of the applicant's definition of establishment and conditions 7-8 below.) Such relief may be granted by the Commission if the Commission finds that an event meeting one of these definitions was the cause of the substantial failure or degradation of the Freshwater Wetland System. Notwithstanding the above, the Commission may deny relief or grant only partial relief to the extent the Commission finds that the applicant failed to implement and utilize reasonable measures and actions that would have prevented or reduced the impacts from the force majeure, catastrophic event, or unlawful act or acts of another or on the basis of other equitable factors that the Commission determines are appropriate.

R-591 463A2
Exh. b. t 9 p 4

If the Commission denies relief in whole or in part based on these factors, the remediation required of the applicant shall not exceed feasible onsite measures that are consistent both with the original scope and cost of the failed or degraded portion of the Freshwater Wetland System being remediated, and with the habitat, stormwater management, and flood control functions of the system.

If the Commission grants relief in whole or in part, and if wetland habitat values are reestablished in the Freshwater Wetland System, or in a portion of the Freshwater Wetland System, whether naturally or by third-party remediation, the fact that the Commission granted relief to applicant for remediation of the damage caused by the force majeure, catastrophic event, or unlawful act or acts of another, shall not excuse applicant from its ongoing maintenance and routine remediation obligation, as described in Section C.2.11 of the applicant's definition of establishment, except to the extent, as determined by the Commission, that the event of force majeure, catastrophic event, or unlawful act or acts of another, has significantly increased the scope or magnitude of such obligation.

7. Force Majeure. The definition of force majeure shall be amended by the following:
- A. A riot or civil disorder shall result in an event of force majeure only if the event has broad regional impacts and is not endemic to the Freshwater Wetland System an its immediate locale.
 - B. A flood shall result in an event of force majeure only if it is greater than a 100-year flood, where "flood" refers to a runoff event.
 - C. An earthquake shall constitute an event of force majeure only if the ground motion it generates at Playa Vista is greater than that expected from an earthquake with a return period of 475 years.
 - D. Governmental restrictions, failure by any governmental agency to issue any requisite permit or authority, and any injunction or other enforceable order of any court ^{of} competent jurisdiction shall not result in an event of force majeure unless there is no other feasible means of remediation.
8. Unlawful Activities. The definition for unlawful activity or activities of another as described in section 2.j.v. of the applicant's definition of establishment shall be modified by the following:
- A. The normal residential activities exemption to definition of unlawful activities shall include, but not be limited to, any accidental or intentional disposal, spillage, or release into the atmosphere of chemicals, compounds, or other materials of a type and in a quantity normally used by residential consumers.

- B. The normal use of public or private roadways exemption to definition of unlawful activities shall include, but not be limited to, any vehicle code violation that does not otherwise meet the definition of force majeure, catastrophic event, or unlawful act or acts of another, or the accidental or intentional disposal or spilling of any toxic or hazardous substance in quantities commonly used in the operation of motor vehicles (e.g., oil, gasoline, brake fluid, and antifreeze.)

9. Permit Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the amendment application, 5-91-463-A2. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

IV. AMENDMENT DESCRIPTION.

The Applicant request the following changes to the Conditions attached to the Commission's approval of permit application number 5-91-463.

1. Standard Condition 2, Expiration, page 3, change the permit condition as follows:

If development has not commenced, the permit will expire two years from the date ~~on which the Commission voted on the application~~ of issuance of the permit. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

2. Condition A, Revised Monitoring Plan, Page 4, change the permit condition as follows:

Prior to the issuance of the coastal development permit, the applicant shall submit, for the Executive Director's review and approval, a revised monitoring plan. The plan shall provide for monitoring both the freshwater marsh and riparian corridor. Monitoring of a phase of the Freshwater Wetland System shall begin immediately after completion of construction of the Freshwater Wetland System of such phase and the plan shall include, at a minimum, all of the elements already described in the applicant's current plan and the following additional elements:

3. Condition B, Wetlands Mitigation Credits, page 6, change the permit condition as follows:

Subject to conditions C, D, and E, below, the restored freshwater wetland system shall provide on a phased basis (as described in Special Condition C), 44.2 acres of wetland mitigation for development activities on Areas A, B, and C of the Ballona wetlands. Additionally, the Commission will consider the enhancement of existing freshwater marsh habitat on Area B to be used for mitigation elsewhere within Ballona. The amount and type of mitigation

R 5 91 463 A2
Exh. 4 p 6

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200

Page 1 of 7
 Date: August 7, 1992
 Permit No. 5-91-463

COASTAL DEVELOPMENT PERMIT

On September 13, 1991, the California Coastal Commission granted to
MAGUIRE THOMAS PARTNERS - PLAYA VISTA

this permit subject to the attached Standard and Special conditions, for
 development consisting of

construction of Freshwater Wetland System,

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at
Playa Vista

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
 Executive Director

James P. Raives

By: JAMES R. RAIVES

Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide
 by all terms and conditions thereof, as amended by the Commission on April 8, 1992.

The undersigned permittee acknowledges that Government Code Section 818.4 which
 states in pertinent part; that: "A public entity is not liable for injury caused
 by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH
 THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal.
 Admin. Code Section 13158(a).

May 21, 1993

Date

James P. Raives
 Signature of Permittee

A6: 4/88
 3484p

R592-463 P2
 Exh. b/d 10

AGREEMENT

THIS AGREEMENT is entered into by and among U.S. Trust Company of California, N.A. ("Trustee"), as trustee of the trust created by that certain Declaration of Trust dated August 29, 1983, between First Nationwide Savings (predecessor to Trustee) and Summa Corporation, as amended to date (the "Declaration of Trust"), Maguire Thomas Partners - Playa Vista Area C, a California limited partnership ("Buyer") and Maguire Thomas Partners - Playa Vista, a California limited partnership ("MTP-PV").

R E C I T A L S:

A. MTP-PV is the owner of certain real property located in the City of Los Angeles, County of Los Angeles, State of California, which real property is commonly known as Areas A, B and D of Playa Vista.

B. As part of the settlement of the Estate of Howard Hughes, Jr., the Controller of the State of California, by Kenneth Cory, predecessor to Gray Davis, as Controller and on behalf of the State of California ("Controller") was granted beneficial title to certain real property which is held in trust by the Trustee and which is located in the City of Los Angeles, County of Los Angeles, State of California. Such real property is adjacent to the real property owned by MTP-PV and is commonly known as Area C of Playa Vista.

C. Areas A, B and C of Playa Vista are the subject of that certain litigation brought by the Friends of Ballona Wetlands, inter alia, (Superior Court of the State of California, County of Los Angeles, Case No. C525 826) (the "Friends Litigation"). Certain parties to the Friends Litigation contemplate entering into a Complete Stipulation for Entry of Judgment with all parties to the Friends Litigation (the "Complete Stipulation") in settlement of such litigation.

D. In conjunction with and in order to facilitate settlement of the Friends Litigation, Buyer, an affiliate of MTP-PV, desires to acquire the exclusive right to purchase Area C of Playa Vista, without becoming obligated to do so, and if Buyer exercises such right, MTP-PV has agreed, subject to the terms hereof, to convey to the State Lands Commission (or, if the State Lands Commission declines, to the City of Los Angeles) the portion of Area B which is located east of the presently designated wetlands and south of Jefferson Boulevard (the "Expanded Wetlands"). The form of Complete Stipulation attached to the Settlement Agreement contains certain restrictions on the use of the Expanded Wetlands.

R 5.91463 A2
Exhibit 12
excerpt
Agreement

E. As a material inducement to Buyer's entry into this Agreement, Controller has agreed to enter into an Agreement of even date herewith by and among Controller, Buyer and MTP-PV (the "Controller's Agreement").

IN CONSIDERATION of the recitals set forth above and the covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE 1 - Definitions

- 1.1 Purpose: This Article 1 sets forth certain definitions for purposes of this Agreement.
- 1.2 Applicable Percentage: See Section 7.3(b).
- 1.3 Buyer: Maguire Thomas Partners - Playa Vista Area C, a California limited partnership.
- 1.4 Buyer's Credit Amount: See Section 2.6(a).
- 1.5 Cash Closing Payment: See Section 2.6(b).
- 1.6 Closing Date: Each date on which the Property, or any portion of the Property, is conveyed to Buyer pursuant to this Agreement.
- 1.7 Complete Stipulation: See Section 3.1.
- 1.8 Controller's Agreement: The Agreement entered into among the Controller, Buyer and MTP-PV of even date herewith.
- 1.9 Conveyance Parcel: See Section 7.3(a).
- 1.10 Date of this Agreement: September 28, 1990.
- 1.11 Declaration of Trust: That certain Declaration of Trust dated August 29, 1983, between First Nationwide Savings (predecessor to Trustee) and Summa Corporation, as amended to date.
- 1.12 Deed of Trust: See Section 2.6(c).
- 1.13 Expanded Wetlands: The portion of Area B of Playa Vista which is located east of the presently designated wetlands and south of Jefferson Boulevard, as more specifically described on Exhibit A.
- 1.14 Final Closing Date: See Section 7.1.

- 1.15 Friends Litigation: That certain litigation brought by the Friends of Ballona Wetlands, inter alia, in the Superior Court of the State of California, County of Los Angeles, Case No. C525 826.
- 1.16 Grant Deed: See Section 7.2(b)(i).
- 1.17 Infrastructure Systems: As defined in the Settlement Agreement.
- 1.18 Initial Option Payment: See Section 2.5(a).
- 1.19 Initial Payment Date: See Section 2.5(a).
- 1.20 MTP-PV: Maguire Thomas Partners - Playa Vista, a California limited partnership.
- 1.21 Partial Closing Date: See Section 7.1.
- 1.22 Playa Vista: The Property together with the real property commonly known as Areas A, B and D of Playa Vista.
- 1.23 Post-Conveyance Property: See Section 7.3(b).
- 1.24 Post-Conveyance Property Loan-to-Value Ratio: See Section 7.3(b).
- 1.25 Pre-Conveyance Property: See Section 7.3(b).
- 1.26 Promissory Note: See Section 2.6(c).
- 1.27 Property: See Section 2.1.
- 1.28 Purchase Price: The consideration paid for a conveyance of the Property, or a portion thereof, on a Closing Date.
- 1.29 Regulatory Approvals: As defined in the Settlement Agreement.
- 1.30 Required Settlement Parties. See Section 3.1.
- 1.31 Revised Playa Vista Plan: The Revised Playa Vista Plan set forth in or developed pursuant to the Complete Stipulation, provided that if no Complete Stipulation exists or if such is rescinded or otherwise rendered void: (a) "Revised Playa Vista Plan" shall mean (i) any plan proposed or approved by Buyer or MTP-PV for the development of the portions of Playa Vista other than the Property (an "MTP-PV Plan"), together with (ii) any plan proposed or approved by Buyer or MTP-PV for the development of the Property (an "Area C Plan"), which plans have been approved by all applicable governmental

authorities, provided that, without the prior approval of the Trustee, neither Buyer nor MTP-PV shall finalize any Area C Plan proposal which includes provisions regarding permitted development on the Property to the extent that such provisions (i) would reduce the density of development on the Property from that set forth in the Revised Playa Vista Plan attached to the Settlement Agreement (the Trustee acknowledges that it approves the Revised Playa Vista Plan attached to the Settlement Agreement) or (ii) would result in a material reduction of the fair market value of the Property from the fair market value of the Property under the Revised Playa Vista Plan attached to the Settlement Agreement, unless any such provisions are required by any applicable governmental authority as a condition to the development of the Property; and (b) until the first Closing Date, neither Buyer nor MTP-PV shall make any filings with respect to the Property with any applicable governmental authorities without prior consultation with the Trustee, provided that such right to prior consultation shall not give the Trustee any approval rights in addition to those set forth in Section 1:31(a).

1.32 Scheduled Closing Date: See Section 2.3.

1.33 Scheduled Closing Purchase Price: See Section 2.4.

1.34 Security Agreement: That certain Security Agreement dated August 29, 1984, by and between the Controller and Summa Corporation, as amended by amendments dated June 16, 1986, February 26, 1988 and August 31, 1990. Certain rights and obligations of Summa Corporation under the Security Agreement have been assigned to and assumed by MTP-PV.

1.35 Settlement Agreement: See Section 3.1.

1.36 Stipulated Judgment: The Judgment entered pursuant to the Complete Stipulation, it being understood that a Judgment entered pursuant to a Stipulation for Entry of Judgment which is not a Complete Stipulation shall not be deemed to be a Stipulated Judgment for purposes of this Agreement.

1.37 Title Company: Stewart Title Insurance Company.

1.38 Trustee: U.S. Trust Company of California, N.A.

1.39 Wetlands Restoration Costs: See Section 9.5(a).

1.40 Wetlands Restoration Plan: The Restoration Plan set forth in or developed pursuant to the Complete Stipulation, provided that if no Complete Stipulation

ARTICLE 9 - Expanded Wetlands

9.1 Conveyance of the Expanded Wetlands. MTP-PV will convey the Expanded Wetlands to the State Lands Commission (or, if the State Lands Commission declines, to the City of Los Angeles) conditioned upon and concurrently with the last to occur of (a) the conveyance pursuant to this Agreement of all of the Property (or all remaining portions thereof) on the Final Closing Date, and (b) the execution, acknowledgement and recordation of the covenants, conditions, restrictions and easements contemplated by Section 9.2; provided, however, that such date of conveyance may, at MTP-PV's sole election, be postponed until all mitigation credits (both fresh water and salt water) pertaining to the wetlands restoration project have been obtained and all Regulatory Approvals necessary for the implementation of the Revised Playa Vista Plan and development of the Infrastructure Systems have been obtained and fully vested; provided, however, the conveyance of the Expanded Wetlands shall in no event be postponed beyond 10 years after the Initial Payment Date. The Trustee shall cooperate with MTP-PV and Buyer in connection with the following actions to be taken by MTP-PV and Buyer with respect to all or any portion of Playa Vista: (a) the adoption of a final Wetlands Restoration Plan, (b) the obtaining of all Section 404 permits and other Regulatory Approvals, and (c) the obtaining and sale of mitigation credits.

9.2 Restrictions Affecting the Expanded Wetlands. Immediately prior to or concurrent with its conveyance to the State Lands Commission or the City of Los Angeles (or, if the State Lands Commission or the City of Los Angeles, as applicable, elects not to take title to the Expanded Wetlands, upon the later to occur of such election or the date as of which MTP-PV would have been obligated to convey the Expanded Wetlands pursuant to Section 9.1), the Expanded Wetlands shall be subject to recorded covenants, conditions, restrictions and easements. Such recorded covenants, conditions, restrictions and easements shall be in the form attached hereto as Exhibit M, provided that: (a) prior to the recording thereof, MTP-PV may from time to time amend such form of covenants, conditions, restrictions and easements with the prior written consent of the Trustee, which consent shall not be unreasonably withheld, so long as such amendment does not affect the ultimate utilization of the Expanded Wetlands for wetlands as contemplated by the Wetlands Restoration Plan and the Revised Playa Vista Plan; and (b) in order to ensure the enforceability of such covenants, conditions, restrictions or easements, Buyer may elect to incorporate such covenants, conditions, restrictions and easements into the deed pursuant to which MTP-PV conveys title to the Expanded Wetlands to the State Lands Commission or the City of Los Angeles.

R 5. 91463 A3
Exhibit 13
Conveyance Original
Agreement
Signed & sealed

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT is entered into by and among U.S. Trust Company of California, N.A. ("Trustee"), as trustee of the trust created by that certain Declaration of Trust dated August 29, 1983, between First Nationwide Savings (predecessor to Trustee) and Summa Corporation, as amended to date (the "Declaration of Trust"), Maguire Thomas Partners - Playa Vista Area C, a California limited partnership ("Buyer") and Maguire Thomas Partners - Playa Vista, a California limited partnership ("MTP-PV").

RECITALS:

A. On September 28, 1990, Trustee entered into an agreement (the "Agreement") with Buyer and MTP-PV pursuant to which Trustee granted Buyer an option to purchase that certain real property commonly known as Playa Vista Area C and referred to therein as the "Property" and MTP-PV agreed, subject to Buyer's exercise of its option to purchase the Property and other conditions, to convey to the State Lands Commission that certain real property located in Playa Vista Area B and referred to therein as the "Expanded Wetlands".

B. Due to unanticipated delays in obtaining Regulatory Approvals for development of the Playa Vista project, there has been a delay in the date by which it is anticipated that Buyer will be able to commence development of the Property. As a result, in order to coordinate the timing of Buyer's purchase of the Property under the Agreement with future development of the overall Playa Vista project, Trustee and Buyer have determined that it may be in their best interests to restructure several aspects of the Agreement and various ancillary documents.

C. Pending full and adequate review of the Agreement in light of such delays, Buyer has requested postponement of the February 15, 1994 Option Payment and Earnest Money Deposit due date under Section 2.5(b) of the Agreement.

D. Trustee desires to assure the conveyance of the Expanded Wetlands to the State Lands Commission at the earliest practicable date and to eliminate as a condition to such conveyance the requirement that Buyer shall have exercised its option under the Agreement to purchase the Property, and to assure the continued availability of little league baseball recreational facilities on the Property following its development.

E. In consideration of MTP-PV's agreement herein to eliminate Buyer's purchase of the Property as a condition to its obligation to convey the Expanded Wetlands to the State Lands Commission and its undertaking to provide for relocation of the

little league baseball recreational facilities presently located on the Property in conjunction with obtaining Regulatory Approvals for the development of Playa Vista, Trustee has agreed as provided herein to postpone the February 15, 1994 Option Payment and Earnest Money Deposit due date.

A G R E E M E N T:

1. Definitions. All initially capitalized words and phrases used herein shall have the same meanings as ascribed to them in the Agreement or as specifically set forth in this First Amendment to Agreement.

2. Postponement of Option Payment. The \$3,000,000 Option Payment and Earnest Money Deposit which is payable to Trustee by Buyer on February 15, 1994 pursuant to Section 2.5(b) of the Agreement is hereby postponed until December 31, 1994. The due dates of all other payments pursuant to Section 2.5(b) of the Agreement shall remain unchanged.

3. Amendment to Article 8. Article 8 of the Agreement is hereby amended in its entirety as follows:

"ARTICLE 8 - Termination Prior to Partial Closing Date

IF BUYER SHALL DEFAULT IN ITS OBLIGATIONS AS SET FORTH HEREIN PRIOR TO THE FIRST CONVEYANCE HEREUNDER TO BUYER OF ANY PORTION OF THE PROPERTY, THE TRUSTEE'S SOLE REMEDY, EXCEPT AS PROVIDED BELOW WITH RESPECT TO THE PROVISIONS OF ARTICLE 9, SHALL BE FOR THE TRUSTEE TO RETAIN THE OPTION PAYMENTS PAID BY BUYER PURSUANT TO SECTION 2.5 PRIOR TO SUCH DEFAULT, TOGETHER WITH ANY ACTUAL EARNINGS THEREON. IN CONSIDERATION FOR BUYER'S AGREEMENT TO FORFEIT SUCH OPTION PAYMENTS, THE TRUSTEE, EXCEPT AS PROVIDED BELOW WITH RESPECT TO THE PROVISIONS OF ARTICLE 9, HEREBY WAIVES ALL OTHER CLAIMS FOR DAMAGES AND FOR SPECIFIC PERFORMANCE AGAINST BUYER AND MTP-PV, INCLUDING, WITHOUT LIMITATION, ANY RIGHTS THAT THE TRUSTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTIONS 1680 AND 3389. AFTER BUYER'S PURCHASE OF ANY PORTION OF THE PROPERTY, THE PROVISIONS OF THIS ARTICLE SHALL NOT BE APPLICABLE AND THE TRUSTEE SHALL BE ENTITLED TO ANY LEGAL OR EQUITABLE REMEDIES THEN AVAILABLE TO THE TRUSTEE (INCLUDING WITHOUT LIMITATION, ANY RIGHT THE TRUSTEE MAY HAVE TO SPECIFIC PERFORMANCE OF BUYER'S OR MTP-PV'S OBLIGATIONS UNDER THIS AGREEMENT). NOTHING CONTAINED IN THIS ARTICLE SHALL IN ANY WAY LIMIT TRUSTEE'S RIGHTS OR REMEDIES FOR ANY BREACH BY MTP-PV, INCLUDING, WITHOUT LIMITATION, TRUSTEE'S RIGHT TO SEEK SPECIFIC PERFORMANCE, OF MTP-PV'S OBLIGATIONS UNDER ARTICLE 9.

TRUSTEE: [Signature] BUYER: JAT MTP-PV JAT "

4. Conveyance of Expanded Wetlands. Section 9.1 of the Agreement is hereby amended in its entirety as follows:

25-91465A2
Exh. b. + 14
amended agreement
DZ

"9.1 Conveyance of the Expanded Wetlands. MTP-PV will, upon demand from the Trustee, convey the Expanded Wetlands to the State Lands Commission (or, if the State Lands Commission declines, to the City of Los Angeles) conditioned upon (a) final approval without further right of administrative or judicial review or appeal of City of Los Angeles Vesting Tentative Tract No. 49104, and (b) the prior or concurrent execution, acknowledgement and recordation of the covenants, conditions, restrictions and easements contemplated by Section 9.2; provided, however, that such date of conveyance may, at MTP-PV's sole election and upon written notice of such election to Trustee, be postponed until all mitigation credits (both fresh water and salt water) pertaining to the wetlands restoration project have been obtained and all Regulatory Approvals necessary for the implementation of the Revised Playa Vista Plan and development of the Infrastructure Systems have been obtained and fully vested; provided, however, the conveyance of the Expanded Wetlands shall in no event be postponed beyond February 15, 2004. The Trustee shall cooperate with MTP-PV and Buyer in connection with the following actions to be taken by MTP-PV and Buyer with respect to all or any portion of Playa Vista: (a) the adoption of a final Wetlands Restoration Plan, (b) the obtaining of all Section 404 permits and other Regulatory Approvals, and (c) at no net cost to Trustee, the obtaining and sale of mitigation credits. MTP-PV's obligation to convey the Expanded Wetlands pursuant to this Article shall survive any termination of this Agreement other than termination by reason of Trustee's breach of its obligations hereunder."

5. Deletion of Article 10. Article 10 of the Agreement is hereby deleted in its entirety.

6. Amendment to Section 15.1. Section 15.1 of the Agreement is hereby amended in its entirety as follows:

"15.1. Baseball Fields. Conditioned upon final approval without further right of administrative or judicial review or appeal of City of Los Angeles, Vesting Tentative Tract No. 49104, MTP-PV shall cause, at no cost to Trustee, the little league baseball fields presently located on the Property to be relocated to the site identified below at such time as Bay Street is extended northerly to Culver Boulevard and Culver Boulevard is reconfigured in conformance with the requirements of Conditions of Approval Nos. 118 and 127 to Vesting Tentative Tract No. 49104. The site to which the baseball fields shall be relocated shall be an approximately seven-acre parcel within the portion of the Property designated as Community/Recreational Space on Figure III-C-3 to the Draft Program Environmental Impact Report prepared for the Master Plan Project for Playa Vista (City of Los Angeles EIR No. 90-0200-SUB(C)(CUZ)(CUB)) and Trustee shall, at no cost to itself, perform all acts and

R-5-91-463 A-2
Exhibit 14

execute such documents as may be reasonably necessary to make such area available for such use."

7. Good Faith Discussions. Trustee and MTP-PV have agreed to enter into good faith discussions regarding a possible restructuring of the Agreement in light of the change in circumstances described in Recital B to this First Amendment to Agreement. In consideration of Trustee's entry into this First Amendment to Agreement and its agreement to enter into the discussions described above, MTP-PV hereby agrees to reimburse Trustee for all reasonable costs incurred by it or by the Controller of the State of California in retaining attorneys and other consultants for the purposes of negotiating and entering into this First Amendment to Agreement and negotiating and, if applicable, entering into any further amendments to the Agreement pursuant to the discussions described above.

8. Effective Date. This First Amendment to Agreement shall become effective upon execution and delivery by all of the parties hereto, subject to the condition subsequent that the Superior Court of Los Angeles County enter an order in Case No. C 525 826 on or before May 15, 1994 approving this agreement as being consistent with and in furtherance of the pending settlement negotiations in that action. If such an order has not been entered in such action on or before May 15, 1994, this First Amendment to Agreement, other than MTP-PV's obligation under Section 7, above, to reimburse Trustee for attorneys' and consultants' costs incurred through such date, shall be null and void and the postponed February 15, 1994 \$3,000,000 Option Payment and Earnest Money Deposit shall be payable on May 15, 1994.

9. Effect of Amendment. Except as specifically modified by the terms of this First Amendment to Agreement, the Agreement shall continue in full force and effect.

TRUSTEE:

U.S. TRUST COMPANY OF CALIFORNIA, N.A.

By: _____

Its Vice President

Exhibit 14
RS 914163A
amended
amendment p 4

SECOND AMENDMENT

TO

AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT (the "Second Amendment") is entered into as of December 29, 1994 by and among U.S. Trust Company of California, N.A. ("Trustee"), as trustee of the trust created by that certain Declaration of Trust dated August 29, 1983, between First Nationwide Savings (predecessor to Trustee) and Summa Corporation, as amended to date (the "Declaration of Trust"), Maguire Thomas Partners - Playa Vista Area C, a California limited partnership ("Buyer") and Maguire Thomas Partners - Playa Vista, a California limited partnership ("MTP-PV").

RECITALS

A. On September 28, 1990, Trustee entered into an agreement (the "Original Agreement") with Buyer and MTP-PV pursuant to which Trustee granted Buyer an option to purchase that certain real property commonly known as Playa Vista Area C and referred to therein as the "Property".

B. On or about February 15, 1994, the First Amendment to Agreement (the "First Amendment") was executed by the parties to postpone payment of the February 15, 1994 option payment and earnest money deposit due date under Section 2.5(b) of the Agreement and, inter alia, to provide for the conveyance of the Expanded Wetlands to the State Lands Commission. The Original Agreement, as so amended, is hereinafter referred to as the "Agreement".

C. Trustee and Buyer have now determined to restructure certain aspects of the Agreement as set forth below.

AGREEMENT

1. Definitions. All initially capitalized words and phrases used herein shall have the meanings specifically set forth in this Second Amendment, or, if not herein defined, as ascribed to them in the Original Agreement and First Amendment.

2. Suspension of Option Payments. All option payments and earnest money deposits required under Section 2.5(b) due on or after February 15, 1994 ("Option Payments") are suspended and waived until December 31, 1995, unless the Area C Entitlements (as hereinafter defined) have not been obtained, in which case such Option Payments are suspended and waived until such time as the Area C Entitlements are obtained.

Exhibit 15
R 5-91463 A2
2nd amendment

Recording Requested By:

MAGUIRE THOMAS PARTNERS - PLAYA VISTA

[EXPANDED
WETLANDS
CC&R's]

When Recorded Return To:

MAGUIRE THOMAS PARTNERS - PLAYA VISTA
c/o Maguire Thomas Partners
1299 Ocean Avenue, Suite 1000
Santa Monica, California 90401
Attention: Craig A. Smith, Esq.

AGREEMENT OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS

BY AND BETWEEN

MAGUIRE THOMAS PARTNERS - PLAYA VISTA,
a California limited partnership

AND

MAGUIRE THOMAS PARTNERS - PLAYA VISTA AREA C,
a California limited partnership

P 5 91463A2
Exh. 1, 2, 16
more agreements

and thereafter, each reference to Primary Benefited Owner herein shall mean only the Primary Benefited Owner which has the right to enforce the specified rights of Primary Benefited Owner, unless otherwise stated. It is understood that there may be more than one Primary Benefited Owner hereunder at any one time, but there shall be only one entity at any one time which may enforce a particular right of Primary Benefited Owner hereunder.

6. "Restoration Requirements" shall mean the requirements of the Restoration Plan attached hereto as Exhibit C. [Prior to the execution of this Agreement, a Restoration Plan shall be attached hereto as Exhibit C. If a Stipulation exists and has not been rescinded or otherwise rendered void, the Restoration Plan which shall be attached hereto as Exhibit C shall be the Restoration Plan set forth in or developed pursuant to the Stipulation. If a Stipulation does not exist or has been rescinded or otherwise rendered void, the Restoration Plan which shall be attached hereto as Exhibit C shall be the Restoration Plan approved pursuant to Article 10 of the Trustee's Agreement.]

7. "Revised Playa Vista Plan" shall mean the Revised Playa Vista Plan set forth in or developed pursuant to the Stipulation; provided that if no Stipulation exists or if the Stipulation is rescinded or otherwise rendered void, "Revised Playa Vista Plan" shall mean any plan for the development of Playa Vista which is proposed by Primary Benefited Owner and approved by all applicable governmental authorities.

5. 91 463A2
Exh. b. t 16 p 2
Reference to "Restoration
& revised Playa Vista
Plan

MINUTE ITEM

This Calendar Item No. C115 was approved as Minute Item No. 115 by the California State Lands Commission by a vote of 3 to 4 at its 12/16/98 meeting. **RECEIVED**
South Coast Region

**CALENDAR ITEM
C115**

MAR 20 2001

CALIFORNIA
COASTAL COMMISSION

A 53
S 28

12/16/98
W 25505
AD 363
L. Kiley

**CONSIDER AUTHORIZATION TO RECORD DEED
TO CERTAIN LAND SITUATED NEAR THE INTERSECTION OF
JEFFERSON AND LINCOLN BOULEVARDS, LOS ANGELES COUNTY**

PARTY:

California State Lands Commission
100 Howe Avenue
Sacramento, California 95825

LOCATION:

34 acres, more or less, located in Marina del Rey, Los Angeles County

BACKGROUND:

The subject property consists of approximately 34 acres of undeveloped land in Marina del Rey near the intersection of Jefferson and Lincoln Boulevards in Los Angeles County. The transfer of title is proposed under agreements entered into by the Controller for settlement of the Howard Hughes estate in 1984 and thereafter.

Playa Capital Company, LLC, the current owner of the Playa Vista property, is required to convey an approximately 60-acre parcel of land to the State Lands Commission for preservation and restoration as wetlands. The subject parcel, which is a portion of the larger 60-acre parcel, is to be restored to freshwater wetlands status and would, if accepted by the Commission, be administered as public trust land.

Following conveyance of the parcel to the State Lands Commission, Playa Capital will, pursuant to retained easements and subject to obtaining, and complying with the requirements of, all required local, state and federal permits, restore and thereafter provide for the management and maintenance of the parcel as freshwater wetlands.

Staff recommends that the Commission accept title to the subject parcel. The acceptance of the parcel will continue the Commission's role as a restorer and protector of scarce wetlands resources in Southern California.

*State lands
1998 action* *1591463A2
Exhib. 6 17*

CALENDAR PAGE 537

MINUTE PAGE

CALENDAR ITEM NO. C115 (CONT'D)

PERMIT STREAMLINING ACT DEADLINE

N/A

OTHER PERTINENT INFORMATION:

- 1 Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), find that acceptance of title is exempt from the requirements of the CEQA because the activity is not a project as defined by Public Resources Code Section 21065 and Title 14, California Code of Regulations, Section 15378.
2. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. but will not affect those significant lands.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT ACCEPTANCE OF TITLE IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE ACCEPTANCE OF TITLE IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. FIND THAT THE PROPOSED TRANSFER IS IN THE BEST INTEREST OF THE STATE AND AUTHORIZE THE ACCEPTANCE AND RECORDATION OF A DEED UPON RECEIPT BY THE CALIFORNIA STATE LANDS COMMISSION OF ALL DOCUMENTS NECESSARY FOR THE TRANSFER OF THE PARCEL OF REAL PROPERTY MORE PARTICULARLY DESCRIBED IN THE FILES OF THE CALIFORNIA STATE LANDS COMMISSION. TITLE IS TO BE HELD SUBJECT TO THE PUBLIC TRUST.
3. AUTHORIZE THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS WHICH MAY BE REASONABLY NECESSARY AND CONVENIENT TO IMPLEMENT THE TRANSACTION DESCRIBED ABOVE, INCLUDING, BUT NOT LIMITED TO, EXECUTION OF DOCUMENTS OF TITLE AND RECORDATION.

*State Lands action
5 91463A2
Exhibit 17
p2*

CALENDAR PAGE 538

MINUTE PAGE

RECORDING REQUESTED BY:

WHEN RECORDED, PLEASE MAIL TO:

State Lands Commission
1000 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202

Attention: Robert C. Hight

(Space Above This Line For Recorder's Use Only)

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES:

This document is recorded at the request of and for the benefit of the State of California, and therefore is exempt from the payment of a recording fee pursuant to California Government Code § 27383 and from payment of documentary transfer tax pursuant to California Revenue and Taxation Code § 11922.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

PLAYA CAPITAL COMPANY, LLC, a Delaware limited liability company ("PCC" or "Grantor")

hereby GRANTS TO

THE STATE LANDS COMMISSION, an agency of the State of California ("Grantee"), that certain real property in the County of Los Angeles (the "County"), State of California (the "State"), more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

RESERVING UNTO GRANTOR, together with the right to grant and transfer all or a portion of the same:

A. Water Rights. Any and all water, water rights or interests therein appurtenant or relating to the Property or owned or used by Grantor in connection with or with respect to the Property (no matter how acquired by Grantor), whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the right and power to explore, drill, redrill, remove and store the same from or in the Property or to divert or otherwise utilize such water, rights or interests on any other property owned or leased by Grantor to the extent reasonably necessary to implement the Wetlands Restoration Plan (as hereinafter defined); but without, however, any right to enter upon

the surface of the Property in the exercise of such rights. Exercise of the rights reserved pursuant to this Paragraph A shall be subject to Grantee's prior approval, which approval shall not be unreasonably withheld or delayed.

B. Wetland Fill Mitigation Credits. Any and all credits, offsets or other rights now or hereafter generated by or appurtenant or relating to the Property or its development, or owned or used by Grantor in connection with the Property (no matter how acquired by Grantor), for the mitigation under local, state or federal regulatory programs of wetland fill on lands outside of the Property ("Mitigation Credits"), subject to the rights granted to the U.S. Trust Company of California, N.A. ("Trustee") pursuant to Article 17 of that certain Agreement between Trustee and Grantor, dated September 28, 1990, as amended on or about February 15, 1994, and as amended as of December 29, 1994.

C. Lincoln Boulevard Improvements and Utility Easements. Perpetual, irrevocable, non-exclusive easements in gross, over and the right at any time to enter upon, pass over and along, and otherwise use, alter and improve: (1) all or any portion of the Lincoln Boulevard Improvements Area and adjacent portions of the Property to the extent reasonably necessary for purposes of planning and processing entitlements for the Lincoln Boulevard Improvements (as hereinafter defined) and for the purposes of the planning, processing, construction, installation, repair, maintenance and use of each of the Lincoln Boulevard Improvements, including, without limitation, for purposes of using adjacent portions of the Property temporarily for roadways and storing of equipment and materials so long as such temporary uses do not materially impair the implementation of the Wetlands Restoration Plan; provided, however, that such uses of adjacent portions of the Property shall be subject to Grantee's prior approval, which approval shall not be unreasonably withheld or delayed; and (2) all or any portion of the Lincoln Boulevard Improvements Area for the purposes of installation, emplacement and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage facilities or any other utilities, as well as installation, emplacement and maintenance of bypass facilities, retention and detention basins, drainage lines and other flood control improvements (collectively, "Utility Easements"), including, without limitation, the right to (i) deposit and use tools, implements, and other materials and equipment, over and along portions of the Lincoln Boulevard Improvements Area in connection with such purposes, and (ii) grade, excavate, construct, reconstruct, maintain, repair, inspect and relocate such utilities and flood control improvements, all as reasonably necessary for the development, construction, improvement, maintenance and/or operation of the project commonly known as Playa Vista, together with an easement for ingress and egress over and across such portions of the Lincoln Boulevard Improvements Area as may be required for the purposes of servicing, maintaining, repairing, reconstructing, relocating and replacing any such lines, facilities and/or flood control improvements.

The easements reserved pursuant to this Paragraph C shall be subject to the following conditions:

- (i) With respect to the easements described in Paragraph C(1), after construction of the Lincoln Boulevard Improvements is completed, Grantor and Grantee shall execute, acknowledge and record against the Property an amended Exhibit B, which shall reduce the Lincoln Boulevard Improvements Area to encompass only such portions

of the Property on which the Lincoln Boulevard Improvements are located. Moreover, each of the easements described in Paragraph C(1) shall automatically terminate with respect to the applicable component of the Lincoln Boulevard Improvements upon the dedication of such component of the Lincoln Boulevard Improvements to any entity described in Covenant 2, provided that to the extent any component of the Lincoln Boulevard Improvements is dedicated but any landscaping or other improvements incidental thereto are not, Grantor shall continue to have perpetual, irrevocable, non-exclusive easements in gross, with the right to grant and transfer the same pursuant to the terms hereof, over and the right at any time to enter upon and pass over and along the Lincoln Boulevard Improvements Area and adjacent portions of the Property, all to the extent reasonably necessary for purposes of the replacement, restoration, repair and maintenance of such incidental landscaping and other improvements and all at the expense of Grantor.

(ii) With respect to the easements described in Paragraph C(2), any Utility Easement which is not located at least two (2) feet underground and any aboveground Utility Easement other than utility vaults and manholes shall be subject to the prior approval of Grantee, which approval shall not be unreasonably withheld or delayed. Additionally, Grantor shall use reasonable efforts to locate Utility Easements in a manner which minimizes any adverse impact upon then existing uses of the Lincoln Boulevard Improvements Area, and, with respect to any Utility Easement conveyed to a third party, the following shall apply: (a) Grantee shall have a reasonable opportunity to review the form of the conveyance document, which document shall require any facilities installed to be maintained in good and safe repair at no expense to Grantee; (b) the conveyance instrument shall require that any portion of the Lincoln Boulevard Improvements Area which is disturbed by the installation or construction of an underground utility shall be restored as close as reasonably possible to the condition which existed prior to such installation or construction; and (c) the conveyance instrument shall provide that Grantee shall have the right to use the surface area of underground Utility Easements (specifically excluding construction of any improvements of any nature thereon) provided such use is consistent with the use of the Utility Easements. Exercise of the rights reserved pursuant to this subparagraph shall be subject to Grantee's prior approval, which approval shall not be unreasonably withheld or delayed.

D. Section 404 Permit and Other Regulatory Approval Easements. Perpetual, irrevocable, non-exclusive easements in gross, over and the right at any time to enter upon, pass over and along, and otherwise alter, improve, use, repair and maintain all or any portion of the Property, all to the extent reasonably necessary to plan, construct, maintain and remediate the freshwater marsh (as defined by existing or future permits or amendments thereto) and the saltwater marsh (as described in concept in the Stipulated Judgment and as will be defined by future permits or amendments thereto) (together the "Wetlands Restoration Plan") and for the purposes of complying with any of the following permits or regulatory requirements, currently existing or subsequently granted to or imposed upon Grantor or any other person or entity in connection with the construction and/or implementation of the Wetlands Restoration Plan: (1) by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, as amended (33 U.S.C. § 1344) ("Section 404 Permits") or Section 10 of the Rivers and Harbors

Act of 1899 (33 U.S.C. § 403) ("Section 10 Permits"), including, but not limited to, permit conditions imposed pursuant to Permit No. 90-426-EV, (2) by the California Coastal Commission ("California Coastal Permits"), including, but not limited to, conditions imposed pursuant to California Coastal Commission Permit No. 5-91-463, (3) by the City of Los Angeles ("City Permits"), including, but not limited to, conditions imposed pursuant to City of Los Angeles Vesting Tentative Tract Map No. 49104, and/or conditions imposed in connection with any City-required coastal development permit ("City Coastal Permits"), (4) by the State Regional Water Quality Control Board pursuant to Section 401 of the Clean Water Act ("Section 401 Permits"), (5) by the Stipulated Judgment or (6) pursuant to other permits or conditions imposed by the aforementioned or other cognizant regulatory authorities ("Other Permits"). Conditions imposed pursuant to the Section 404 Permits, Section 10 Permits, California Coastal Permits, City Permits, City Coastal Permits, Section 401 Permits, the Stipulated Judgment or Other Permits are collectively referred to herein as "Regulatory Permit Conditions," and approvals, permits or licenses pursuant to which such conditions are imposed by the cognizant federal, state or local agency are collectively referred to herein as "Regulatory Approvals."

E. General Easements. Perpetual, irrevocable, non-exclusive easements in gross, over and the right at any time to enter upon, pass over and along, and otherwise alter, improve, use, repair and maintain all or any portion of the Property, excluding those portions of the Property which are subject to the Wetlands Restoration Plan, all to the extent reasonably necessary for purposes of planning, processing, installing, maintaining, repairing, restoring and replacing perimeter landscaping, pathways, fencing, and all storm drainage and ancillary facilities on the Property and for any or all other purposes which are consistent with the purposes and objectives of the Wetlands Restoration Plan, whether or not specifically set forth therein or expressly contemplated thereby, as Grantor may reasonably require, whether in connection with the development of all or any portion of the Playa Vista Property or otherwise.

F. Easement Appurtenant. Perpetual, irrevocable, non-exclusive appurtenant easements for the benefit of the Playa Vista Property in favor of the Benefited Owners over and the right to enter upon and pass over and along the Lincoln Boulevard Improvements Area at any time after the construction of the Lincoln Boulevard Improvements has been completed, for vehicular access, ingress and egress to and from and for the use of the Lincoln Boulevard Improvements.

G. Conditions to Use of Easements Described in Paragraphs C, D and E. Grantor shall indemnify Grantee for any and all losses, expenses, damages, demands, liabilities, payments, causes of action, or other claims (including, without limitation, costs and expenses of litigation and reasonable attorneys' fees) to the extent arising from, based upon or relating to, Grantor's or its authorized agents' use of the Easements set forth in Paragraphs C, D and E. Following completion of the Wetlands Restoration Plan or the Lincoln Boulevard Improvements by Grantor, Grantor (a) shall leave the Property free of liens and encumbrances arising from the use of such Easements by Grantor or its authorized agents in connection with the Wetlands Restoration Plan or Lincoln Boulevard Improvements, or (b) shall promptly bond against or contest (and if any such contest is unsuccessful, shall remove before the enforcement thereof against the Property) any such existing lien or encumbrance arising from such use. All operations of Grantor and its authorized agents on the Property pursuant to this Grant Deed shall be performed in accordance with Covenant 1 (as defined below) and shall be diligently

prosecuted to completion so as to cause the least practicable interference with the use of the Property by Grantee.

FURTHER SUBJECT TO the covenants and restrictions hereinafter set forth (collectively, the "Covenants"), which Covenants are hereby declared and agreed to be part of a general plan for the following purposes: (1) to preserve the value of the Playa Vista Property, (2) to ensure that the Property is used and developed only in a manner which is consistent with the Wetlands Restoration Plan, and (3) upon the conditions set forth below, to permit improvements to and activities upon the Property by Grantor only in a manner which is consistent with the Wetlands Restoration Plan, in connection with Grantor's development of all or any portion of the Playa Vista Property or otherwise. The Covenants shall run with the Property and be binding upon any person or entity who acquires any right, title or interest in or to any portion of the Property, for the benefit of and appurtenant to the Playa Vista Property as it presently exists or as it may be developed and used in the future, including, without limitation, each parcel or lot into which the Playa Vista Property may be divided or subdivided. Notwithstanding the foregoing, the Covenants shall be enforceable only by Grantor except to the extent such Covenants benefit Grantee, in which case such Covenants shall be enforceable by Grantee. It is intended that the dominant tenement shall be all of the Playa Vista Property, and that the servient tenement shall be all of the Property. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to be bound by every covenant contained herein, for the benefit of the Playa Vista Property whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in such Property. None of the Covenants shall apply to (i) any of the exceptions, reservations, easements and/or other rights contained herein in favor of Grantor and (ii) the use or other exercise of such rights by Grantor and its successors in interest to such rights.

1. The Covenants are as follows:

a. Covenant 1: Use of Property. The Property shall be used and developed only in a manner which is consistent with the purposes and objectives of the Wetlands Restoration Plan, whether or not specifically set forth therein or expressly contemplated thereby. Grantee shall have no obligation under this Grant Deed to restore the Property or to install or maintain any improvements or undertake any other actions on the Property, however, any actions taken by Grantee on the Property shall be subject to the provisions of this Covenant 1. Grantee shall not perform any work in furtherance of the development of the Property consistent with the terms hereof without Grantor's prior written consent prior to February 15, 2004. Notwithstanding the foregoing, all work in furtherance of the development of the Property shall be performed (1) in a good, professional and workmanlike manner in accordance with prevailing industry standards with respect to such work, (2) in full compliance with all laws, ordinances and regulations applicable to the Property, and (3) (a) in full compliance with any and all Section 404 Permit Conditions imposed upon the Property, Grantor, Grantee or any Benefited Owner or (b) in full compliance with any other Regulatory Permit Conditions imposed upon the Property, Grantor, Grantee or any Benefited Owner.

b. Covenant 2: Public Dedication. Upon the request of Grantor, Grantee shall join with Grantor in any irrevocable offer to dedicate to the City of Los Angeles or

other appropriate governmental or public agency, any public or private utility, any community association, any quasi-public organization or any mutual benefit corporation, their interest in any component of the Lincoln Boulevard Improvements and/or Lincoln Boulevard Improvements Area (including, without limitation, all rights-of-way therefor), provided that: (1) the City of Los Angeles or such other entity, upon acceptance of such dedication, undertakes to maintain (unless such maintenance is otherwise provided for) and operate such component of the Lincoln Boulevard Improvements as a public street and roadway; and (2) such dedication shall be subject to all matters then appearing of record. Upon the completion of the construction and dedication of any component of the Lincoln Boulevard Improvements by any person or entity, Grantor and Grantee shall execute, acknowledge and record against the Property an agreement which terminates all Easements granted pursuant to Paragraph C with respect to such component, except to the extent otherwise provided therein.

c. Covenant 3: Cooperation of Grantee. Grantee acknowledges that upon conveyance of the Property from Grantor to Grantee pursuant to this Grant Deed, Grantor has reserved, as set forth in Paragraphs A through F above, all easements and other rights reasonably necessary for the adoption and implementation of a final Wetlands Restoration Plan, the construction of the Lincoln Boulevard Improvements, the obtaining of all Section 404 Permits, Section 10 Permits and other Regulatory Approvals, and, at no net cost to Grantee and subject to Grantee's rights as set forth above, the obtaining and use of Mitigation Credits. Grantee further acknowledges that Grantor cannot establish at this time a comprehensive and exhaustive list of all specific easements and rights reasonably necessary for the attainment of such purposes. Consequently, Grantee hereby covenants and agrees to cooperate with Grantor, and upon reasonable request by Grantor, to convey to Grantor or its designee within 45 days after each such request such additional specific easements and rights consistent with the provisions of this Grant Deed and the Wetlands Restoration Plan as may be reasonably necessary therefore.

d. Covenant 4: Cooperation of Grantee. Grantee understands that certain improvements constructed or to be constructed on the Property, the Lincoln Boulevard Improvements, and certain other public improvements related to the Property (collectively, the "Improvements") may be financed through the use of the Mello-Roos Community Facilities Act of 1982, as amended, by the City of Los Angeles and/or through other public financing mechanisms. Grantee agrees, at the sole expense of Grantor, to cooperate with Grantor and the City of Los Angeles to facilitate the use of such public financing mechanisms for such Improvements, including without limitation, entering into a joint community facilities agreement regarding such Improvements, provided however that Grantee shall not be responsible for the formation or administration of any public financing district or the issuance or repayment of any bonds or other public financing mechanism and the Property shall not be subject to any Mello-Roos special tax or assessment to support such public financing mechanisms or construct such Improvements.

2. Matters Related to Covenants.

a. Amendment. The Covenants may be amended only by mutual written agreement of Grantor and Grantee. Any amendment must be recorded in the Recorder's Office, County of Los Angeles, California.

R. 5-91 463 A2
Exh. bit 18
p 6

b. Term. Unless (i) a Covenant automatically terminates pursuant to the express terms of this Grant Deed, or (ii) Grantor records a declaration terminating one or more of the Covenants (which are not expressly for the benefit of Grantee), the Covenants shall be binding absolutely and perpetually upon Grantee, and its successors and assigns.

c. Rights of Representatives. Whenever a Covenant grants a right to Grantor, it also may be exercised by the authorized representatives, agents, employees, contractors and invitees of such Grantor upon the terms set forth herein.

d. Waiver. Neither a waiver by either Grantor or Grantee of a breach of any of the Covenants, nor a delay or failure by Grantor or Grantee to enforce any of the Covenants, shall (i) be construed to be a waiver of any earlier or later breach of the same or any other provision of the Covenants, or (ii) be implied from any inaction or omission by such party to take any action on account of such breach or failure. No express waiver by Grantor or Grantee shall affect any breach or failure other than as specified in said waiver. The consent or approval by either party to or of any act by the other party requiring such party's consent or approval shall not be deemed to waive or render unnecessary such party's consent or approval to or of any subsequent similar acts by the other party. Grantor shall not be liable for any damage, loss or prejudice suffered or claimed by Grantee or any licensee or other occupant of the Property or by the Playa Vista Property on account of the enforcement of, or failure to enforce, any of the Grantee Covenants.

e. Default by Grantee; Remedies. The breach, violation or failure by Grantee, or its successors and assigns, to perform or to satisfy any Covenant shall constitute an event of default hereunder only if such default continues for a period of thirty (30) days after written notice (the "Default Notice") thereof from Grantor to Grantee; provided, however, that if such default is of a type which for reasons other than reasons within the reasonable control of Grantee is not susceptible of cure within such thirty (30) day period, but is susceptible of cure within a reasonable period of time, then no event of default shall occur hereunder unless Grantee shall fail to promptly, continuously and diligently pursue the cure of such default to completion within a reasonable period of time thereafter, which reasonable period shall in no event exceed sixty (60) days after written notice of such condition. Upon an event of default by Grantee hereunder, in addition to all other remedies set forth herein, Grantor at its sole option may enforce any one or more of the following remedies or any other rights or remedies to which Grantor may be entitled by law or equity, whether or not set forth herein. To the maximum extent permitted by law, all remedies provided herein or by law or equity shall be cumulative and not exclusive.

(1) Damages/Equity. Each Benefited Owner (subject to the limitations set forth in Paragraph 7 below) and Grantor has and retains all rights at law and at equity necessary and appropriate to enforce the terms of this Grant Deed and to carry out the intentions of the parties hereto. Grantee and Benefited Owner agree that the benefit to the Playa Vista Property and to the public of the development of the Property in a manner which is consistent with the purposes and objectives of the Wetlands Restoration Plan, renders it unlikely that money damages would be either ascertainable or a feasible remedy in the event of a breach of the Covenants contained herein. It is recognized, therefore, that a violation by Grantee of the Covenants shall cause Benefited

Owners to suffer material injury or damage not compensable in money and that any Benefited Owner shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with this Grant Deed or an injunction to enjoin the continuance of any such breach or violation thereof and that such equitable relief shall be the preferred remedy for such breach.

(2) Declaratory Relief. Grantor may bring a suit for declaratory relief to determine the enforceability of any of the Covenants.

f. Default by Grantor; Remedies. The breach, violation or failure by Grantor to perform or satisfy any Covenant which is expressly for the benefit of Grantee shall constitute an event of default by Grantor hereunder subject to the notice and cure provisions set forth in Paragraph 2.e. above. Upon an event of default by Grantor hereunder, Grantee shall have the right to enforce any remedy to which Grantee may be entitled at law or in equity.

3. Definitions.

a. "Benefited Owner(s)" shall mean each and every owner, from time to time, of the Playa Vista Property, or any portion thereof or interest therein, during the term of its ownership.

b. "Lincoln Boulevard Improvements" shall mean all improvements to Lincoln Boulevard together with any ancillary use or support areas on the Property which are reasonably required by Grantor in connection with the development of the Playa Vista Property or in connection with any government mandated improvements together with any such ancillary use or support areas at the intersection of Lincoln Boulevard and Jefferson Boulevard; provided, however, that any such improvements at the intersection of Lincoln Boulevard and Jefferson Boulevard shall occur within that portion of the Property described on Exhibit B.

c. "Lincoln Boulevard Improvements Area" shall mean that portion of the Property described in the attached Exhibits B.

d. "Playa Vista Property" shall mean the real property described on Exhibit C.

e. "Stipulated Judgment" shall mean that certain Stipulation for Entry of Judgment and Judgment dated June 9, 1994, as hereafter amended, modified or supplemented, respecting that certain litigation brought by Friends of Ballona Wetlands, inter alia, in the Superior Court of the State of California, County of Los Angeles, Case No. C525 826.

f. "Wetlands Restoration Plan" shall have the meaning set forth in Paragraph D.

4. Definition of Grantor. "Grantor" initially shall mean PCC, provided that pursuant to the provisions of Paragraph 6, another entity hereafter may assume any or all of the rights of Grantor; thereafter, each reference to Grantor herein shall mean only the assignee of the such specified rights of Grantor, unless otherwise stated.

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Exh. b. t 16pt

5. Definition of Grantee. "Grantee" shall mean each and every owner, from time to time, of the Property, or any portion thereof or interest therein, during the term of its ownership.

6. Assignment of Grantor's Rights. Grantor may assign, including, without limitation, collaterally assign, any and all rights then held by Grantor hereunder to another entity, including, without limitation, any appropriate governmental authority, any public or private utility, or one or more associations formed by Grantor; provided, however, that there shall be only one entity which may enforce a particular right of Grantor under Paragraphs A, B, C, D and E hereof at any one time (such enforcing entity need not own any portion of the Benefited Property). Each instrument creating an assignment of any rights by Grantor hereunder shall specify when and under what circumstances the assignor or assignee shall be entitled to exercise the rights of Grantor assigned thereby. No assignment of any rights of Grantor under this Paragraph 6 shall grant the assignee any rights to enforce the provisions of this Grant Deed unless and until such time that (a) the instrument creating such assignment provides that the assignee shall be entitled to exercise such rights, and (b) the assignee assumes in writing the corresponding duties hereunder of Grantor (subject to the limitations set forth in this Grant Deed, including, without limitation, Paragraph 7 below). Upon any effective assignment and assumption of the rights of Grantor as described herein, (a) such assignee shall have the rights assigned by assignor and shall be deemed Grantor hereunder with respect to such rights, all to the extent provided in the instrument creating such assignment, and (b) such assignor shall be released from all obligations and liabilities associated therewith, except to the extent such obligations and liabilities arise as a result of actions taken by such assignor prior to such assignment.

7. Enforcement of Rights/Liability. Only Grantor shall have the right to enforce any of the obligations of Grantee under this Grant Deed, except that (a) Benefited Owners shall have the right to enforce the obligations of Grantee with respect to the rights of Benefited Owners to use the easements reserved pursuant to Paragraph F, and, (b) Grantor, in its sole discretion, may commence any legal action or arbitration to enforce any of the obligations of Grantee hereunder. No Grantor who does not commence any action or arbitration shall be responsible for any costs associated therewith, except (a) to the extent otherwise provided herein, or (b) if any such Grantor receives any monetary award pursuant to any such action or arbitration, such Grantor shall pay (up to the amount of the monetary award received by such Grantor) its Proportion of the costs of such action or arbitration. The term "Proportion" shall mean the proportion that the amount of the monetary award received by such Grantor bears to the total monetary award granted pursuant to the related action or arbitration. Only Grantor, and no Benefited Owners, may have any liability to Grantee hereunder.

8. Environmental Indemnity. Grantor shall indemnify, defend, protect, save, hold harmless, and reimburse Grantee for, from and against any and all costs, losses, liabilities, damages, assessments, lawsuits, deficiencies, demands, claims and expenses (collectively, "Environmental Costs") (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on Grantee) in connection with, arising out of, resulting from or incident to, directly or indirectly (i) the production, use, generation, storage, treatment, transporting, disposal, discharge, release or other handling or disposition prior to the date of this Grant of any Hazardous Substances from, in, on or about the

Property (collectively, "Handling"), including the effects of such Handling of any Hazardous Substances on any person or property within or outside the boundaries of the Property, (ii) the presence at the date of this Grant of any Hazardous Substances in, on, under or about the Property and (iii) the violation prior to the date of this Grant of any law. "Environmental Costs" include interest, costs of response, removal, remedial action, containment, cleanup, investigation, design, engineering and construction, damages (including actual, consequential and punitive damages) for personal injuries and for injury to, destruction of or loss of property or natural resources, relocation or replacement costs, penalties, fines, charges or expenses, attorney's fees, expert fees, consultation fees, and court costs, and all amounts paid in investigating, defending or settling any of the foregoing.

Without limiting the scope or generality of the foregoing, Grantor expressly agrees to reimburse Grantee for any and all costs and expenses incurred by Grantee:

- (a) In investigating any and all matters relating to the Handling of any such Hazardous Substances, in, on, from or under the Property;
- (b) In bringing the Property into compliance with all laws by reason of any such violation; and
- (c) Removing, treating, storing, transporting, cleaning up and/or disposing of any such Hazardous Substances used, stored, generated, released or disposed of in, on, from or under the Property.

9. Right of Entry to Inspect, Maintain and Repair. Grantor may from time to time, at any reasonable hour or hours upon reasonable prior notification to the fee owner of any portion of the Property, enter upon and inspect such portion of the Property to ascertain compliance with the Covenants. In addition, Grantor, upon reasonable prior notification of the fee owner of any portion of the Property (which notification shall set forth in reasonable detail the work that is contemplated by Grantor and afford the Grantee the opportunity to comment thereon, provided that no Grantee shall be entitled to prohibit such work unless such work is not performed in accordance with the provisions of the Covenants), shall have the right to enter such portion of the Property in order to maintain or repair any improvements to the Property in a manner consistent with the purposes and objectives of the Wetlands Restoration Plan, whether or not specifically set forth therein or expressly contemplated thereby, and the cost thereof shall be borne by Grantor; provided, however, nothing set forth herein shall derogate Grantor's rights under Paragraph 7 of this Grant Deed.

10. Notices. All notices required or permitted by this Grant Deed shall be in writing and may be delivered in person (by hand delivery or professional messenger service) to any party or may be sent by registered or certified mail, with postage prepaid, return receipt requested or delivered by Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid, or may be transmitted by facsimile transmission and addressed as follows:

To Grantor at:

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Exh. b. 1 19 p. 10

Playa Capital Company, LLC
12555 West Jefferson Boulevard
Los Angeles, California 90066
Attention: Robert Miller
Telecopy Number: 310-306-2194

With a copy to:

Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, California 900071
Attention: David H. Vena, Esq.
Telecopy Number: 213-891-8763

To Grantee at:

The State Lands Commission
1000 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202
Attention: Robert C. Hight, Executive Officer
Telecopy Number: 916-574-1810

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after same is so addressed and mailed in Los Angeles County with postage prepaid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof. Any party may change its address for purposes of this Paragraph 10 by giving notice to the other parties as herein provided.

11. Section Headings. Section headings are inserted for convenience only and are not intended to be a part of this Grant Deed or in any way to define, limit or describe the scope and intent of the particular Sections to which they refer.

12. Effect of Invalidation. If any provision of this Grant Deed is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

13. Further Assurances. Each party in good faith shall take such actions, grant such further easements and rights of way and execute, acknowledge, record and deliver such documents as may be reasonably necessary to effectuate the terms and intent of this Grant Deed.

14. No Third Party Beneficiary. This Grant Deed has been entered into by the parties for the sole benefit and protection of themselves, their respective successors and assigns, and, except as expressly provided herein, no other person or entity shall have any rights or interest hereunder.

R 5 91463A2
Exhibit 29 p 11

15. Governing Law. This Grant Deed shall be governed by and construed in accordance with the laws of the State of California.

16. No Partnership or Joint Venture. Neither anything contained in this Grant Deed or any amendment hereto, nor any act of any party hereto shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between or among Grantee, Grantor and/or Benefited Owner or any other party.

17. Number and Gender. When the context in which the words are used herein indicates that such is the intent, words in the singular number shall include the plural and vice versa. All pronouns and any variations thereof shall be deemed to refer to all genders.

AND FURTHER SUBJECT TO:

- (1) Current taxes and assessments; and
- (2) All other covenants, conditions, restrictions, reservations, rights, rights-of-way, easements, dedications, offers of dedication and other matters of record and/or apparent.

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U.S. Fish & Wildlife Service

Species Profile as of 3/7/2001

Common Name: Southwestern willow flycatcher

Scientific Name: *Empidonax traillii extimus*

Family: Tyrannidae

Group: Birds

Historic Range: U.S.A. (AZ, CA, CO, NM, TX, UT), Mexico

[Learn More about this species](#)

Listing Information:

Population To Which Status Applies: Entire Range

Current Status: Endangered

Date First Listed: February 27, 1995

Critical Habitat: 17.95(b)

Special Rules: NA

Lead Region: Southwest Region (2)

Current Range of Species or Population: AZ, CA, CO, NM, TX, UT; Mexico



Date of Listing

Federal Register Documents (Note: Data completeness and veracity are under review. Report errors to [Michael Franz@fws.gov](mailto:Michael_Franz@fws.gov))

07/22/1997: 62 FR 39129 39147 -- Final Critical Habitat, Critical habitat--birds. ([PDF](#))

02/27/1995: 60 FR 10693 10715 -- Final Listing, Endangered. ([PDF](#))

07/23/1993: 58 FR 39495 39522 -- Proposed Critical Habitat, Critical habitat--birds.

[Search for this species on the FWS web site](#)

Search for this species in

Email species or other data-related questions or comments to FW9_FWE_DTEBIM@fws.gov



Comment on Species Status Summary Design and Function

Go to the [U.S. Fish and Wildlife Service Endangered Species Home Page](#)

Go to the [U.S. Fish and Wildlife Service Home Page](#)

This page last updated on Monday, March 05, 2001 11:30:12 AM.

*R 591463A2
Exh. h.t 20
P1*

increases the likelihood of damaging floods in southwestern willow flycatcher nesting habitat.

Finally, the willow flycatcher (all subspecies) is listed among neotropical migratory birds that may be impacted by alteration of wintering habitat, as through tropical deforestation (Finch 1991, Sherry and Holmes 1993).

Population Trends for Each State Are Discussed Briefly Below

California. All three resident subspecies of the willow flycatcher (*E. t. extimus*, *E. t. brewsteri*, and *E. t. adastus*) were once considered widely distributed and common in California, wherever suitable habitat existed (Wheelock 1912, Willett 1912, Grinnell and Miller 1944). The historic range of *E. t. extimus* in California apparently included all lowland riparian areas of the southern third of the State. Unitt (1984, 1987) concluded that it was once fairly common in the Los Angeles basin, the San Bernardino/Riverside area, and San Diego County. Willett (1912, 1933) considered the bird to be a common breeder in coastal southern California. Nest and egg collections indicate the bird was a common breeder along the lower Colorado River near Yuma in 1902 (T. Huels, University of Arizona in litt., transcripts of H. Brown's field notes).

All three willow flycatcher subspecies breeding in California have declined, with declines most critical in *E. t. extimus*, which remains only in small, disjunct nesting groups (Unitt 1984 and 1987, Gaines 1988, Schlorff 1990, Service unpubl. data). Only two nesting groups have been stable or increasing in recent years. One is on private land where habitat impacts from livestock grazing have been virtually eliminated (Harris et al. 1987, Whitfield 1990). This group on the South Fork of the Kern River experienced numerical declines in 1991 and 1992, but increases in nesting success were realized in 1992 and 1993, attributed to shaking (killing) or removing cowbird eggs or nestlings found in flycatcher nests, and trapping cowbirds (Whitfield and Laymon, Kern River Research Center, in litt. 1993). The other apparently stable nesting group is along the Santa Margarita River on Marine Corps Base Camp Pendleton, where cowbird numbers have also been reduced by trapping (Griffith and Griffith 1993). Approximately eight other nesting groups are known in southern California, all of which consisted of six or fewer nesting pairs in recent years (Unitt 1987, Schlorff 1990, Service, unpubl. data). Using the most recent information for all areas, approximately 70 pairs and 8 single southwestern willow flycatchers are known to exist in California. Where information on population trends since the mid-1980's is available, most areas show declines. Three recent status reviews considered extirpation from California to be possible, even likely, in the foreseeable future (Garrett and Dunn 1981, Harris et al. 1986, Schlorff 1990). The State of California classifies the willow flycatcher as endangered [California Department of Fish and Game (CDFG) 1992].

Arizona. Records indicate that the former range of the southwestern willow flycatcher in Arizona included portions of all major watersheds (Colorado, Salt, Verde, Gila, Santa Cruz, and San Pedro). Historical records exist from the Colorado River near Lee's Ferry and near the Little Colorado River confluence (Phillips, pers. comm., cited in Unitt 1987), and along the Arizona-California border (Phillips 1948, Unitt 1987), the Santa Cruz River near Tucson (Swarth 1914, Phillips 1948), the Verde River at Camp Verde (Phillips 1948), the Gila River at Fort Thomas (W.C. Hunter, pers. comm., cited in Unitt 1987), the White River at Whiteriver, the upper and lower San Pedro River (Willard 1912, Phillips 1948), and the Little Colorado River headwaters area (Phillips 1948).

The southwestern willow flycatcher has declined throughout Arizona. The subspecies was apparently abundant on the lower Colorado River in 1902 (T. Huels in litt., transcripts of H. Brown's field notes), but only four to five territories were located in 1993 (Muiznieks et al.

R 59143A
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USFWS Backlog

also underway at several National Wildlife Refuges in the breeding range of *E. t. extimus*, which are managed by the Service. The Nature Conservancy manages one of the largest remaining flycatcher populations, as well as several other areas with high recovery potential. The U.S. Marines have maintained a cowbird control program near the Santa Margarita River to benefit the least Bell's vireo. This program has benefitted nesting southwestern willow flycatchers there. Grand Canyon National Park has instituted a seasonal recreation closure at the remaining site with nesting willow flycatchers in the Grand Canyon, and has begun a cowbird monitoring program.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following are examples of actions that will not result in a violation of section 9:

(1) Dispersed recreational activities near willow flycatcher breeding areas that do not disrupt normal flycatcher breeding activities and behavior, attract avian and mammalian predators, nor result in the trampling or destruction of riparian breeding habitat;

(2) Federally-approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.)--when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act; and

(3) Livestock grazing that does not attract the brood parasitic brown-headed cowbird or result in the destruction of riparian habitat or the disturbance of breeding flycatchers.

Activities that the Service believes could potentially harm the southwestern willow flycatcher and result in "take," include, but are not limited to:

(1) Unauthorized handling or collecting of the species;
 (2) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.);

(3) Livestock grazing that results in direct or indirect destruction of riparian habitat;

(4) Activities such as continued presence of cattle and fragmentation of flycatcher habitat that facilitate brood parasitism by the brown-headed cowbird; and

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Flycatcher
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Exhib. 22*

* * * * *
Flycatcher, southwestern Empidonax traillii, U.S.A. (AZ, CA, CO, NM, Entir
willow. extimus. NV, TX, UT).
* * * * *

Dated: February 16, 1995.
Mollie H. Beattie,
Director, Fish and Wildlife Service.
[FR Doc. 95-4531 Filed 2-24-95; 8:45 am]
BILLING CODE 4310-55-P

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Exh. bud 22
p. 2
Background



DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF:

June 11, 1998

Office of the Chief
Regulatory Branch

Ken Berg
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

Dear Mr. Berg:

In July 1992, the United States Army Corps of Engineers, Los Angeles District (Corps) issued a Section 404 permit to Maguire Thomas Partners (Permit No. 90-426-EV) which authorized the discharge of dredged and fill material into 16 acres of degraded wetlands as part of their Playa Vista Phase I project. During the permit evaluation process leading up to the permit decision, the Corps had determined that the proposed permit would not affect any federally listed endangered or threatened ("listed") species. Construction under Permit No. 90-426-EV did not begin until March of 1996. In late 1997, Playa Capital Corporation took over as the successor in interest to Maguire Thomas Partners. On August 20, 1997 several environmental groups sent a 60-day Notice of Intent to Sue pursuant to the Endangered Species Act to the Corps and the U.S. Fish and Wildlife Service (Service) and others, alleging violations of the Endangered Species Act (ESA), including jeopardizing nineteen federally listed threatened or endangered (listed) species. In January 1998, several of the signatories to the 60-day Notice of Intent to sue, and the California Brown Pelican, filed an ESA complaint against the Corps, the Service, and the permittee, Playa Capital, in federal court.

Since the issuance of Permit No. 90-426-EV, several Habitat Mitigation and Monitoring Plan documents were generated to comply with the special conditions of the permit. Additionally, as a result of related NEPA, CWA and ESA litigation, the Corps has received numerous other environmental documents, some of which have information regarding the use, and the potential use by listed species of the "permit area" as well as the larger Playa Vista property. Finally, additional species have been listed since the permit decision was made. Given the amount of information generated since the permit issuance, most of which was brought to the Corps' attention in the last 8 months, the Corps decided, pursuant to its continuing obligations under the ESA, to formally review the new information in order to determine whether the 1992 "no effect" determination was still valid.

The Corps reviewed this new information in the context of the direct, indirect and cumulative impacts caused by the discharge of

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Exhibit 23
P1

-2-

fill and/or dredged material authorized under permit No. 90-426-EV. This permit authorized work only in degraded freshwater wetlands within areas B, C, and D. We are not addressing potential impacts from any future section 404 or section 10 Rivers and Harbors Act permit, as no such permit applications have been officially submitted to the Corps.

With the exception of the Southwestern willow flycatcher, the Corps has determined that this new information continues to evidence an absence of suitable habitat for listed species. In addition, despite repeated surveys by qualified biologists, there continues to be no confirmed sightings of listed species on the ground within the Phase I area. Accordingly, and with the exception of the Southwestern willow flycatcher, the Corps reiterates its 1992 finding that permit No. 90-426-EV will have no effect on listed species.

Although none of the listed species covered by this "no effect" determination have been documented as inhabiting the Phase I area, four species have been observed on occasion within the greater Playa Vista property (the entire 1,004 acre site). These four species are the American peregrine falcon, California brown pelican, California least tern, and the El Segundo blue butterfly, and will be discussed in more detail below.

Concerning the peregrine falcon, although this species has been occasionally observed flying over a portion of the Playa Vista property, the species forages over large areas. A single bird may cover many miles in a single day, and its hunting is not limited to a single stand of vegetation. Additionally, there is no suitable nesting habitat located anywhere on Playa Capital's property. In sum, there is simply no new information indicating that the peregrine falcon utilizes the permit area or even the greater Phase I project area.

Concerning the California brown pelican, this species has only been observed utilizing tidal areas of Playa Capital's property, including the remnant salt marsh and the Ballona Channel. Brown pelicans are frequently observed using coastal areas throughout southern California. They roost very near marine habitats and forage almost exclusively in tidal areas. Their breeding habitat is located on the Channel Islands or islands off the coast of Mexico. Thus, all of the current biological information on this species indicates that it does not utilize the existing freshwater wetlands within the permit area, and will not use the freshwater wetland to be constructed. In fact, there is no information that the brown pelican inhabits the greater Phase I project area at all.

Historically, California least terns were known to nest within the saltmarsh on Playa Capital's property. However, the last known nesting occurred in 1961. There was an observation of a California least tern flying over the Centinela Creek in June 1995 as reported by Kathleen Keane. The Corps discussed the 1995 sighting with Ms. Keane and concluded that her observation of the California least tern is

R. 5 91.463.A2
Exhibit 23
p. 2

-3-

insufficient to support a "may effect" determination. The Centinela creek is a degraded watercourse which does not provide suitable foraging or nesting habitat for the terns. Flow in this creek is ephemeral, and the reported observation appears to have been unusual in that it occurred during an atypically wet year. Moreover, the species was not seen diving for prey during her single reported observation. Ms. Keane also informed us that following this June 1995 sighting, her team undertook a more formally structured foraging survey on 7 separate days in July 1995. However, no least terns were sighted during any of these follow-up surveys. Additionally, Ms. Keane has relayed that no California least terns have been observed in the Phase I project area during 1998 surveys. Thus, new information continues to evidence a lack of use of the freshwater wetlands within the Phase I area by the California least terns.

The last sighting of the El Segundo blue butterfly was in 1985 on the sand dunes at the far western end of planning area B. According to Chris Nagano, until recently the invertebrate biologist from your office, only a single male butterfly was observed in that year. The Corps' decision document for permit No. 90-426-EV (Admin. Record, Vol. 8 Page 3773-4) addressed concerns expressed about this species during the public notice process. This species is very closely associated with sand dunes. Despite recent restoration efforts (removal of exotic plants and revegetation with native dune plant species) focused on the sand dunes a mile to the west, no El Segundo blue butterflies have been found. Even if the El Segundo blue butterfly had recolonized those dunes, that habitat area is not within the Phase I permit area, and therefore was not and will not be affected by the Corps' permit decision.

However, the Corps has determined that permit No. 90-426-EV "may affect" the Southwestern willow flycatcher. This species was listed after the 1992 issuance of the permit. In recent years there have been reported sightings within the greater Playa Vista property of "willow" and/or "southwestern willow" flycatchers. Although the 1995 sighting appeared to occur outside the permit area (in the remnant saltmarsh in area B), there was a more recent sighting in September 1997, by Mr. Brian Leatherman, in the degraded willow riparian stand located in the southern part of the footprint of the freshwater marsh. We recently discussed the September 1997 sighting with Mr. Leatherman. He confirmed that (contrary to his declaration and portions of his October 1997 report) he could not verify that he had observed the federally listed southwestern willow flycatcher. However, he also stated that the listed and unlisted subspecies of willow flycatcher are virtually indistinguishable in the field during the migration season. Moreover, he felt there was good evidence that the listed subspecies do migrate through the greater Los Angeles area. Therefore, we have determined that the Southwestern willow flycatcher might have used and could possibly in the future use the degraded riparian habitats (authorized to be filled by the Corps permit) during migration. This is amplified by the fact that other suitable habitat has become scarce within the urbanized Los Angeles basin area, and the few remaining areas, even when degraded, could serve as useful habitat

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Exhibit 22
P 3

for the species.

Although we have cautiously determined that the Southwestern willow flycatcher may be affected by the permitted activities, we are convinced that once all the activities authorized by permit No. 90-426-EV are completed (including construction of the 51 acre freshwater wetlands system), habitat for migrating Southwestern willow flycatchers, to the extent they do utilize habitat within the permit area, will be improved compared to pre-project conditions. As you know, permit No. 90-426-EV authorized the filling of 16 acres of highly degraded scattered wetland areas as well as the construction of a 51 acre freshwater wetland system composed of a 25 acre riparian corridor and a 25 acre freshwater marsh. Therefore, we have determined that Corps permit No. 90-426-EV is not likely to adversely affect the Southwestern willow flycatcher. We would appreciate your written concurrence on this "no adverse affect" determination.

If you have any questions, or wish to discuss any of these matters in more detail, please contact David Castanon of my staff at (805) 641-3730. Please refer to this letter and file No. 90-426-EV in your reply. I encourage you to provide any other information you may have regarding the use or occupancy of listed species within the Phase I permit area.

Sincerely,

Richard J. Schubel
Chief, Regulatory Branch

SCHUBEL
CESPL-CO-R

GLEASON
CESPL-OC

9/11
CASTANON
CESPL-CO-RN

ALLEN
CESPL-CO-RN

CPRE Copy (Yellow) -90-00426-ADA
Clipboard Copy -Los Angeles

RE-91-463A2
Exh. b. + 23
r 4



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2711

February 20, 2001

REPLY TO
ATTENTION OF:
Office of the Chief
Regulatory Branch

U.S. Fish and Wildlife Service
Attn: Jack Fancher
2730 Loker Avenue West
Carlsbad, California 92008-6603

Dear Mr. Fancher:

Reference is made to our letter dated June 11, 1998 in which the Corps indicated that Phase 1 of the Playa Vista project (Permit No. 90-00426-EV) would not adversely affect the Southwestern willow flycatcher and would not affect any other federally-listed endangered or threatened species in the project area near Marina del Rey, Los Angeles County, California (enclosure).

Although we realize that you have already concurred with the above determinations for endangered species, enclosed you will find updated biological information for the Phase 1 project area including a *Sensitive Species Assessment and Surveys for Playa Vista, Phase One* (Psomas 2001) and a *Habitat Assessment for the Federally Listed as Endangered Riverside Fairy Shrimp Associated with the Playa Vista Project, Los Angeles, California* (Glenn Lukos Associates 2000). In addition, we have provided a copy of the most recent survey information for bird species in the Playa Vista Phase 1 project area (Keene 1998). We feel that the results from all of the above reports corroborate our original determinations for Phase 1 of the Playa Vista project and, as a result, Permit No. 90-00426-EV is in full compliance with the Endangered Species Act of 1973, as amended.

If you have any questions, please contact Dr. Aaron O. Allen of my staff at (213) 452-3413.

Sincerely,

MU 2/20/01
SUDOL
CESEPL-CO

LI 2/20/01
CASTANON
CESEPL-CO-R

Mark F. Sudol, D.Env.
Chief, Regulatory Branch

ALLEN (P) 2-20-2001
CESEPL-CO-R

Enclosures

- 1. FILE COPY 90-00426-EV
- 2. CLIPBOARD-LA

Q 5-9) 463 A2
Exh. bit 24

June 12, 1998

MEMORANDUM FOR THE RECORD

SUBJECT: PRESENCE OF VERNAL POOLS ON THE PLAYA VISTA PROPERTY

1. During recent endangered species litigation, plaintiffs in the suit have alleged that vernal pools are present on the Playa Vista property. To address the possible presence of vernal pools on the Playa Vista property, I reviewed the existing biological information for the property including the Botanical Resources of Playa Vista report (1991) by James Henrickson and the Habitat Mitigation and Monitoring Plan for Ballona Wetlands (1995). As part of my review, I looked for any reference to the colorful annual forb species typical of historical vernal pools in Los Angeles County including meadowfoam (*Limnanthes dianthiflorus*), goldfields (*Lasthenia glabrata*), checker mallow (*Sidalcea malvaeflora* ssp. *malvaeflora*), California plantain (*Plantago erecta*) and coastal dunes milk-vetch (*Astragalus tener* var. *titi*). All of the above species were present in the coastal vernal pools located near the Los Angeles Airport prior to 1988. Based on my review of the recent biological studies for the Playa Vista property, none of the above plant species have been observed on the above property.
2. On June 2, 1998, I went to Areas B, C and D on the Playa Vista property to identify any potential vernal pool areas. During my site visit, I observed some small ponded areas. My inspection of the ponded areas revealed that, although wetland species were present, none of the pools supported any of the typical vernal pool plant species.
3. On June 9, 1998, James Henrickson, who completed some of the recent botanical surveys for the property, was contacted to confirm the results of his surveys. He affirmed that during his field surveys, no vernal pool species were observed on the Playa Vista property. He indicated that small ponded areas do occur on the property, but are dominated by wetland species or are unvegetated saline pools.
4. Based on the above, I have determined that the Playa Vista property does not contain vernal pools.



Aaron Allen
Project Manager

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Exhibit 25



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
2730 Loker Avenue West
Carlsbad, California 92008

RECEIVED
AUG 20 1998

CALIFORNIA
COASTAL COMMISSION

JUN 19 1998

Richard J. Schubel
Chief, Regulatory Branch
Corps of Engineers, Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Re: Playa Vista Phase I Permit (90-426-EV) Endangered Species Act Section 7 Considerations

Dear Mr. Schubel:

This letter is in response to your letter of June 11, 1998, to the U.S. Fish and Wildlife Service (Service) on the subject permit and related Endangered Species Act of 1973 (Act), as amended, issue. Permit 90-426-EV, issued in 1992, authorizes the filling of 16 acres of highly degraded, scattered wetland areas on a portion (areas B, C, and D) of the property known as Playa Vista, which is adjacent to the Ballona Creek Channel and Ballona Wetlands in the City of Los Angeles. The permit required the construction of a 25-acre freshwater marsh and 26-acre riparian corridor as mitigation. Construction was initiated in 1997. You indicated that the U.S. Army Corps of Engineers (Corps) has reviewed information on listed endangered or threatened species obtained since permit issuance, and the Corps reassessed whether the permitted activities may affect listed species. Except for the endangered southwestern willow flycatcher (*Empidonax trailii extimus*), your letter reaffirms the Corps 1992 determination that the activities authorized by permit "90-426-EV will have no effect on listed species." Although in your letter you "cautiously determined that the Southwestern willow flycatcher may be affected by the permitted activities," you noted that habitat within the permit area will be improved when compared to pre-project conditions. As a result, you concluded that permit 90-426-EV is not likely to adversely affect the endangered southwestern willow flycatcher.

The Service has reviewed all available information, including the results of surveys carried out by the project proponent. Based on our familiarity with the project area and our knowledge of the federal listed species that occur or potentially occur in the general vicinity of the permit area, the Service agrees with the Corps' "no effect" determination as to all listed species other than the southwestern willow flycatcher.

With respect to the southwestern willow flycatcher, the Service notes that survey data indicate occasional sightings of individual willow flycatchers of uncertain subspecies identification (June 1995 in Area A, September 1997 in Area B). No willow flycatcher breeding activity has been reported in the very limited extent of suitable habitat in the permit area and individuals seen

R 5-91 463 A2
Exhibit 26

during the migratory time periods are certainly migrants. The observed birds could not be confirmed as a member of the listed subspecies. Further, the sighting of a single flycatcher indicates that the individual was almost certainly a transient and not part of a nesting pair. The permitted project area lacks suitable nesting habitat for the southwestern willow flycatcher. The Service therefore concurs with the Corps' determination that the activities permitted by permit number 90-246 are not likely to adversely affect this listed species.

In conclusion, we concur that the activities authorized by the subject permit will not adversely affect the flycatcher or any other endangered or threatened species. Therefore, no further section 7 consultation pursuant to the Act is required by the Service. Should additional information on listed or proposed species become available, this determination may be reconsidered. If you have any questions regarding this letter, please call Jack Fancher or me at (760) 431-9440.

Sincerely,



Jim A. Bartel
Assistant Field Supervisor

R 5.01 463 A2.
Exh. h. t 26 p2

July 1, 1992

Aug 11 1992

Office of the Chief
Regulatory Branch

Maguire Thomas Partners-Playa Vista
13250 Jefferson Boulevard
Los Angeles, CA 90094

Gentlemen:

In response to your application 90-426-EV dated August 16, 1990, there are enclosed two copies of a draft permit (ENG FORM 1721) authorizing you to construct the mixed-use development in Areas D, C and a portion B and construct a retention basin/freshwater marsh in Area B which will impact wetlands on the Playa Vista property, Los Angeles, California.

THIS PERMIT WILL NOT BECOME VALID UNTIL YOU HAVE TAKEN ALL OF THE FOLLOWING STEPS:

1. The owner or authorized responsible official must sign and date all copies of the permit indicating that he/she agrees to the work as described and agrees to comply with any and all conditions stated in the permit.
2. The signer's name and title, if any, must be typed or printed below the signature.
3. One of the signed permits must be returned to the Corps of Engineers (a pre-addressed envelope is enclosed for your convenience).
4. When returning the signed permit, include a check for the processing fee of \$100.00, payable to the Finance and Accounting Officer USAED LA.

If we do not receive one of the signed permits along with the proper fee within 30 days from the date of this letter, your request for the proposed work will be withdrawn.

Also enclosed are pre-addressed postcards for you to notify this office regarding the dates for beginning and completing the authorized activity.

Sincerely,

Charles S. Thomas
Colonel, Corps of Engineers
District Engineer

CF: FILE COPY
CLIPBOARD-LA

Enclosures

R 5-91 463192
Eh. h. 27

THOMAS
SPL-DE

ENSON
SPL-CC

AMOLY
SPL-CC

GILL
SPL-CC

CASTAN
SPL-IC

VARNHA
SPL-CC

1990

JOINT CONSOLIDATED ANNUAL TAX BILL

CITY, COUNTY, SCHOOLS AND ALL OTHER TAXING AGENCIES IN LOS ANGELES COUNTY
SECURED PROPERTY TAX FOR FISCAL YEAR JULY 1, 1990 TO JUNE 30, 1991
SANDRA M. DAVIS TREASURER AND TAX COLLECTOR

R 5-91463A
Exhibit 1946
28
Root of
purchase
at time of
application

19

OWNER OF RECORD AS OF MARCH 1, 1990
SAME AS BELOW

COUNTY OF LOS ANGELES

4211 014 013
PLAYA VISTA LAND PARTNERSHIP L P
13250 JEFFERSON BLVD
LOS ANGELES CA 90094

PROPERTY LOCATION AND PROPERTY DESCRIPTION
MR 3-204-209 THAT POR IN TRA 1502 OF
RAMONA S. DE MACHADO 341.85095 ACS

APPLICABLE	PROPERTY	TRA	ASSessor's ID AND	TRA					
				Year	Seq. No.	Map Book	Page	Parcel	
10343	23918	25	8550R	21	000	4211	014	013	01502

DETAIL OF TAXES DUE		AMOUNT	PERCENT
GENERAL TAX LEVY ALL AGENCIES		1 000000	15439.46
VOTED INDEBTEDNESS			
CITY-LOS ANGELES COUNTY		010871	167.84
UNIFIED SCHOOLS		002104	32.49
FLOOD CONTROL		008339	128.75
METRO WATER DIST		005786	89.33
		009700	149.76
DIRECT ASSESSMENTS			
LA CO HAZ ABMT			23.83
FLOOD CONTROL			383.48
MOSQUITO ABATE			2.40
CITY FIRE & PMDI			2.93
CITY STORMWATER			32.64
FIRST INSTALLMENT TAXES DUE			8226.46
SECOND INSTALLMENT TAXES DUE			8226.45
TOTAL TAXES DUE			16452.91

YEAR	CURRENT ASSESSED VALUE	TAXABLE VALUE
20-21	1543946	1543946
		1543946
		1543946
		NET TAXABLE VALUE
		1543946

**BEFORE CALLING TAX COLLECTOR
SEE REVERSE SIDE FOR
IMPORTANT TAXPAYER INFORMATION**

KEEP THIS COPIE FOR YOUR RECORDS

YOUR COPY BELONGS TO YOU - YOUR RECEIPT

PLEASE SEND WITH YOUR COPY

ANNUAL
PLAYA VISTA LAND PARTNERSHIP L P
13250 JEFFERSON BLVD
LOS ANGELES CA 90094

FIRST INSTALLMENT
DUE FEB. 1 19 91
SECOND INSTALLMENT
DUE APR. 10, 19 91

MAKE CHECKS PAYABLE TO:

DATE: 04-10-91

AMOUNT: 832.64

9059-09

LOS ANGELES COUNTY TAX COLLECTOR
P.O. BOX 54018
LOS ANGELES, CA 90054-0018

Year	Seq. No.	Map Book	Page	Parcel	Pay. No.
90	000	4211	014	013	2
2ND INSTALLMENT					8226.45

91490001421101401300082264500164529136220410

2

DETACH AND MAIL THIS STUB WITH PAYMENT

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

JUN 17 1991

RECEIVED

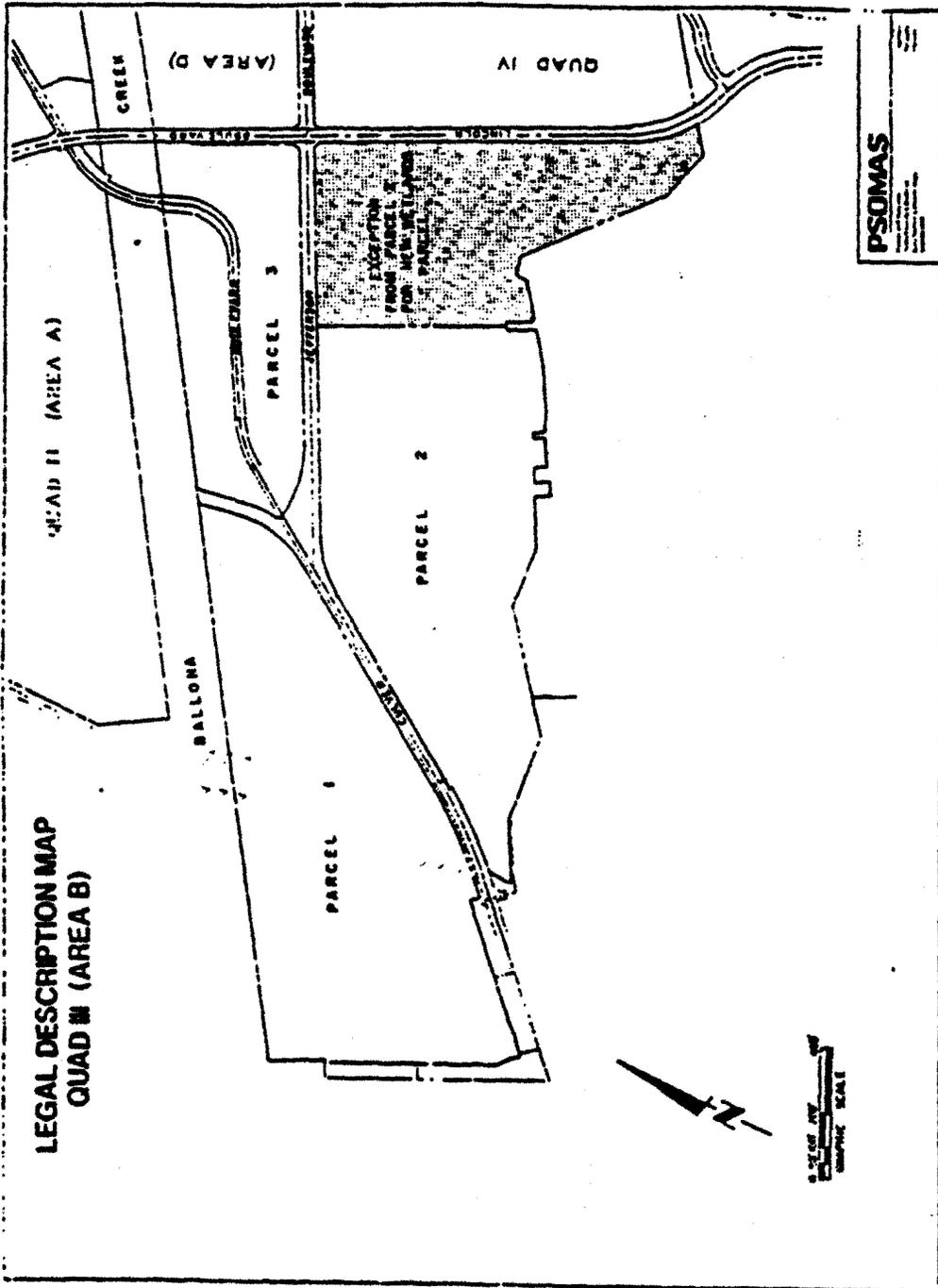
EXHIBIT C

LEGAL DESCRIPTION OF EXPANDED WETLANDS

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C-1

R 91 463 A2
Exhibit 29
e'



R 591463A
Exhibit 3
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