

**CALIFORNIA COASTAL COMMISSION**

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Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-03-248

**APPLICANT:** California Department of Transportation

**AGENTS:** Stephanie Reeder; Aziz Elattar; Ron Kosinski

**PROJECT LOCATION:** 12980 Culver Boulevard, Route 90 at Coastal Zone boundary, Palms Mar Vista-del Rey District, City of Los Angeles, Los Angeles County.

**PROJECT DESCRIPTION:** Install 0.16 acres of willows and mulefat, and saltbush to mitigate unplanned removal of 0.04 acres mulefat/willow wetland from median strip of approved bridge project in two stages.

**SUBSTANTIVE FILE DOCUMENTS:** See Appendix A.

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**SUMMARY OF STAFF RECOMMENDATION:**

This is a permit to restore an area that was identified as wetland and subsequently weed-whipped. Staff recommends approval of this after-the-act wetland restoration project with conditions to monitor and maintain the restored area, to install the new plantings according to the schedule provided to staff, and to develop procedures to avoid such future miscommunications by notifying Right-of-Way and Maintenance Divisions of any habitat discovered during the coastal development permit process.

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**I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL:**

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

**MOTION:**

"I move that the Commission approve with special conditions Coastal Development Permit 5-03-279 per the staff recommendation as set forth below."

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote which would result in approval of the permit as conditioned and adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

**RESOLUTION TO APPROVE A PERMIT:**

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

**II. 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.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. Implementation of the Habitat Enhancement/restoration Plan

The applicant shall begin habitat enhancement and revegetation required by Special Condition Two (2) within 45 days of issuance of the permit and shall complete final planting during the first rainy season following completion of the highway bridge on the same parcel or the winter of 2007-2008, which ever occurs first, unless the Executive Director grants additional time for good cause.

#### 2. Wetland and Habitat Enhancement Plan.

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall provide, for the review and approval of the Executive Director, a detailed Wetland and Habitat Enhancement Plan for the entire area of the median strip. The plan shall identify the following areas: (a) areas slated for replanting; (b) wetlands as of May, 2002, (c) areas subject to construction activity due bridge construction authorized in CDP 5-01-432. The plan shall show proposed location of the work done in each of the two proposed stages of the project. The Wetland and Habitat Enhancement Plan, as developed in the steps and according to the criteria outlined below, shall reflect the current mixture of native plants, shall leave existing native plants in place, use plant species commonly found in Ballona Wetland and nearby upland habitats, and/or use cuttings and seed stock from native plants found in the Ballona area.

- (1) **Initial assessment.** Shall consist of a brief summary of available information describing the soil type and vegetation now found in the portion of the median formerly occupied by the RV storage facility. The assessment shall include:
  - (a) An evaluation of measures necessary to remove invasive plants and a schedule of removal,
  - (b) Identification of the areas that should be fenced to avoid compaction from construction activity authorized by coastal development permit 5-01-432 and a description of the effect on soils of the proposed grading;
  - (c) Measures that might be necessary to control invasive plants at the beginning of the project and after its completion,
  - (d) Measures necessary to prevent siltation and erosion from the site while plants are establishing, and,
  - (e) Methods for disposing of invasive plants.

- (2) **Habitat Goals.** Prior to preparing the Wetland and Habitat Enhancement Plan, the applicant shall provide a statement of habitat goals prepared by a biologist. The general goal of the plan shall be to provide support habitat for native birds, water dwelling animals and insects found in the area presently or in the past.
- (3) **Conceptual plan.** Based on the habitat goals, the applicant shall submit a conceptual plan and a schedule of installation of plants consistent with these goals and plan specifications for the review and approval of the Executive Director. The Wetland and Habitat Enhancement Plan shall be consistent with the following basic habitat goals:
- (a) Enhancement of existing vegetation found on the site.
  - (b) Preservation of soils during construction of bridge authorized in coastal development permit 5-01-432, including fencing of areas outside of authorized construction zones
  - (c) Reducing the temporal impact of unauthorized clearance activity
  - (d) Maintenance of local genetic stock by the use of local acquired cuttings
  - (e) The measures that might be necessary to control invasive plants at the beginning of the project and after its completion, and
  - (f) Control of aggressive invasive plants identified in the Los Angeles County Department of Agriculture, by the California Native Plant Society, Los Angeles -- Santa Monica Mountains Chapter in their handbook entitled *Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, February 5, 1996*; or listed by the California Exotic Pest Plant Council on any of their watch lists as published in 1999,
  - (g) Timing of formal monitoring.
- (4) **Detailed Plans.** After the Executive Director's approval of the conceptual Wetland and Habitat Enhancement Plan, the applicant shall provide for the review and approval of the Executive Director detailed plans and notes that show the placement and expected sources of cuttings, a schedule of installation and a statement describing the methods necessary to prepare the site and install and maintain the enhanced and planted areas, and the kinds and frequency of maintenance expected to be necessary in the long term. If sources of cuttings or seeds outside the immediate area are used, the applicant shall describe the locations of the sources, the amount used, and the reasons for their use. The Executive Director shall approve use of such sources. The detailed plans shall be consistent with the Habitat Goals and with the approved Conceptual Plans.
- (5) **Monitoring.** Based on the information in the Wetland and Habitat Enhancement Plan and in the initial assessment, the applicant shall prepare a monitoring schedule for the review and approval of the Executive Director,

providing (a) a plan for removal of invasive and non-native plants identified in the initial assessment, or on staff inspections, (b) an initial staff site inspection by a qualified biologist and written report upon completion of initial planting to verify that the plants have been installed according to the approved plan, (c) a staff inspection by a qualified biologist no less than monthly the first three months after initial installation of each stage and then quarterly for the first year after installation of each stage, and then annually until the success criteria are met, (d) no fewer than one documented site inspection in each subsequent year for no less than 5 years. The monitoring report should include photographs from fixed points and the biologist's brief assessment including a brief description of the condition of the plants; an estimate of the degree of coverage and the survival of various plants; as well as recommendations concerning activities necessary to achieve the stated "Habitat Goals" discussed in Section 2 above. Monitoring reports shall contain a brief description of the condition of the plants, and an estimate of the degree of coverage and photographs. If the planting is not consistent with the goals, reports shall suggest measures to remedy the situation. The applicant shall, at the appropriate season, replant to remedy any deficiencies noted in the monitoring reports, and remove any invasive or non-native plants that have established on the site. After the initial five years, the area shall be maintained as required in this coastal development permit according to the normal Caltrans maintenance schedule, but in no event less often than once a year.

(6) **Maintenance.** In addition to the elements noted above, the Wetland and Habitat Enhancement Plan shall include a manual for maintenance methods and a plan for training maintenance employees (and contractors) in the needs of the plants on the plant palette and on the identification of native and invasive plants. Pursuant to this the plan shall include:

- Weeding, hoeing and trapping manually.
- Use of non-toxic, biodegradable, alternative pest control products.
- Use of chemical pesticides shall require an amendment.

(7) **Installation of plants.** Installation of plants shall follow the specific methods described in conceptual and detailed plans. The second stage of installation shall occur during the first rainy season following the completion of construction of the bridge approved on the same parcel (CDP) 5-01-463, except that if the bridge project is abandoned or if the bridge is not complete or under construction by November 1 2007, the applicant shall install the second phase plants during the winter of 2007-2008.

**B. Compliance.** The permittee and any contractors shall undertake development and maintenance of the site (including monitoring, maintenance, and training) in accordance with the final approved plan and with this condition. Any proposed changes to the approved final plans or maintenance methods shall be reported to the Executive Director. No changes to the approved final plans shall

occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**3. Procedures to inform Caltrans Maintenance and Right of Way Divisions of State Laws and actions protecting natural resources.**

A. Within ten (10) days of the Commission action on this coastal development permit Caltrans shall provide an information packet for the review and approval of the Executive Director that includes a map and written summary of the presence and extent of sensitive coastal resources identified during the approval of the coastal development permits applying to this site (CDP's 5-01-432 and CDP 5-01-248) as well as the special conditions applying to the site that are relevant to Caltrans divisions having the responsibility to enter, control or maintain the areas subject to the permit. The information shall include, at a minimum, the location of the resources, a picture of the resource, if applicable, and a clear description of prohibited activities (e.g. storage of equipment, clearance, trimming, discharge of runoff), which could impact the resource, or which are required by or subject to the terms and conditions of the approved coastal development permit.

B. Within five (5) days of the Executive Director's approval of the information packets required in condition 3A above, Caltrans, shall provide them to supervisors in the aforementioned divisions who are responsible for the areas affected by these coastal development permits.

C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**4. Condition Compliance**

Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

**IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

## A. PROJECT DESCRIPTION AND LOCATION

In June 2002, the Commission approved the construction of a bridge at the intersection of Culver Boulevard and Route 90 in Los Angeles (5-01-432). The site is located directly north of and adjacent to Area C Playa Vista, which is owned by the State of California and recently designated for restoration as part of the Ballona Wetlands. Route 90 is located east of Marina del Rey in the Palms Mar Vista Del Rey neighborhood of the City of Los Angeles. One of the most controversial issues in the consideration of the bridge, which would allow travelers on Route 90 to bypass the intersection with Culver Boulevard, was the project's potential impact on wetlands.

There were two wetland areas identified on the project site. One was a riparian area, (part of the "Marina Drain", a long-standing open water area in the Route 90 median strip that supports introduced plants and wetland freshwater marsh vegetation, including cattails and Mulefat. The second, a 1700 square foot wetland area that is subject to this application, is located on a separate fenced area of the parcel. This fenced area had been leased as a recreational vehicle and boat storage yard. There was no open water in this area but there was a small (0.04 acres) patch of arroyo willows and Mulefat that emerged after Caltrans removed the vehicle storage area in preparation of the roadwork. The identified wetland area is located ~570 feet to the east of the streambed parcel. During the permit process for CDP 5-01-432, Caltrans redesigned the bridge project to avoid fill of wetlands and with four exceptions set the road back 25 feet from the wetland areas.

Shortly after the Commission approved coastal development permit 5-01-432, Caltrans Right of Way employees weed whipped the area of the former vehicle storage lot, cutting down the 0.04 acres of mulefat and willows. Caltrans agrees that the activity occurred without a permit, that a permit was needed, but indicates that the work was a mistake. Information concerning wetlands issues had not been conveyed to the Right of Way Division, which responded to citizen complaints about "weeds".

Caltrans now proposes to replace the wetland at a 4:1 ratio in the same site with the same species of plants as were identified during the permit process. Some of the plants will be located in a partially shaded area under the bridge approach, as was approved in CDP 5-01-432. The restoration will take place in two phases – initially during the early winter of 2004, in areas Caltrans does not expect to be disturbed by bridge construction in the median strip. The second phase will occur after completion of the bridge project. During construction of the bridge project, Caltrans will fence off as much of the restoration area as possible to avoid compaction or soil disturbance, although in some areas Caltrans will have to construct falsework or bring equipment close to the area to install pilings for the bridge. The replacement of the vegetation will not result in a change in the design of the bridge or affect the applicant's ability to carry out the road improvement work authorized in coastal development permit 5-01-432. The applicant has requested to submit this permit request as a separate application so that the restoration can begin during the winter of 2003-2004, in the advance of the authorization of construction of the bridge.

**B. WETLANDS AND OTHER SENSITIVE HABITAT AREAS**

The Coastal Act protects of coastal wetlands, stating in part:

**Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients**

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.



(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

**Section 30240 Environmentally sensitive habitat areas; adjacent developments**

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

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

As described below, during its consideration of the bridge permit, CDP 5-01-432, the Commission found that 0.04 acres of the area formerly developed as a vehicle storage yard was a wetland, and should be considered an Environmentally Sensitive Habitat Area. Dr. John Dixon, Senior Ecologist determined that approximately 1700 square feet of willow and mule fat constituted a wetland.

"In April 2002, doing a resurvey of the site, the applicant discovered a 581 sq. ft. of willow wetland and an additional area dominated by sand spurrey (*Spergularia marina*) in the area where the ramps are planned. The applicant's consultant indicated that the willows were wetland. ...

To support its conclusion, the applicant (Caltrans) analyzed 1977 aerial photos of the site, identifying a drainage ditch and a swale "that may have collected runoff from interior portions of the site, directing the flow toward the east bound lanes and ultimately into the aforementioned culvert [on the southern edge of the property]. With regard to vegetation present, the applicant's consultant stated in part:

"The dominant vegetation type on the site is ruderal, meaning that most of the species present are herbaceous and common to open, disturbed upland conditions. Such species include non-natives (e.g. riggut brome, *Bromus dandrus*) as well as natives (e.g. telegraph weed, *Heterotheca grandiflora*).

Certain species predominate at specific locations. These locations are shown on Figure 4. Arroyo willow (*Salix lasiolepis* FACW) and mulefat (*Baccharis salicifolia* –FACW) form a small cluster at the east end of the swale, although small individuals of both species are widely scattered (not dominant) across the site. Sand spurrey (*Spergularia marina* [=*S. salina*] OBL) forms nearly monotypic stands across the north and south sides of the site, parallel to the swale."

...The applicant's consultant stated:

"The only area at the site that supports predominance of hydrophytic vegetation in association with hydric soils, and where these observations are unlikely to be season dependent occurs at the east end of the swale in an

area supporting a sparse canopy of mulefat and arroyo willow and an understory herbaceous layer dominated by facultative species. Soil sampled at two locations in the area (numbers 1 and 4) exhibited contemporary redox features in the form of mottles within the upper 15 inches of the profile this section of the soil profile is underlain by a layer of a sticky clay with fine sand which is probably extensive enough to form an effective aquatard that perches water.

“Based on the association we conclude that the arroyo willow-mulefat association shown on figure 4 at the east end of the swale appears to meet technical criteria as wetland under the California coastal act. Absence of a clearly defined streambed and other hydrologic indicators associated with this feature excludes it from federal, (Corps) and other state (CDFG) jurisdiction.” (Read and Winfield, 2002, see Exhibit 4 for additional excerpts from document.) [Exhibit contained in original document not in this report.]

Senior Ecologist Dr. John Dixon reviewed the report, and requested additional mapping of the areas. He visited the site in the company of the consultants and Caltrans staff on May 13, 2002. His report attached as Exhibit 4, concludes that only the previously identified Marina Drain and the area dominated by willows and mulefat (the area subject to the present application) can be considered a wetland. He indicated that the area dominated by willows and mulefat is larger than originally believed, or about 1700 square feet. For a number of reasons, described in more detail in the letter attached, he determined that he could not say with assurance that additional areas of the site dominated by wetland facultative annuals are wetlands.

“The subject site is currently a difficult site to delineate for at least four reasons. First, the topography has been substantially altered over the years by agriculture and later by fill and grading. Second, it is an atypical situation because it was used for many years as a vehicle storage yard and was covered with asphalt until November 2000. Therefore, all the vegetation is recent and the vegetative characteristics of the site will continue to undergo successional changes for several years. Third, it is a problem situation because November 2001 through April 2002 was a period of extreme drought (3.98 inches of rainfall compared to the long-term average of 11.33 inches<sup>1</sup>). Finally, it is a problem situation because the soil is comprised of fill from elsewhere, so soil color and redoximorphic features<sup>2</sup> are not necessarily reliable indicators of hydric soils. ...”

Doctor Dixon concludes, in part:

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<sup>1</sup> Rainfall data for Los Angeles International Airport from Western Regional Climate Center.

<sup>2</sup> Redoximorphic features, such as “rust”-like concentrations, result from the reduction, translocation, and oxidation of iron and manganese oxides in, at least periodically, saturated soils.

It is clear that no areas on this site would delineate as wetlands under the Corps' regulations due to the absence of hydrology indicators and the general absence of hydric soil indicators. In the above mentioned reports, it is concluded that the area that was dominated by arroyo willow and mulefat in the shrub layer and that had a relatively shallow clay confining layer with redoximorphic features in or near the root zone is a wetland under the Coastal Act. I agree with that conclusion and with the boundaries, as modified during our site visit and shown in the revised map referenced above. The reports also concluded that none of the rest of the site qualified as wetland. I also agree with that conclusion, but in the narrow sense that those areas did not have wetland characteristics in 2002. "

(Source Commission findings: 5-01-432, page 28 ff

Wetland habitat is, in many situations, protected under the Coastal Act as an environmentally sensitive habitat. The wetlands found in the Route 90 median area are remnants of the Ballona wetland complex. In this larger Ballona area, patches of habitat function together to support the birds and animals of the wetlands. Because of the extent of historic disturbance, the system consists of disparate, sometimes unconnected patches of wetland and upland vegetation, which together make up the environmentally sensitive habitat. The Route 90 right-of-way appears to lie adjacent to and outside the area identified as saltmarsh in the mid-1860's. A map drawn in the 1860's shows a line that delineated land that was regarded too swampy to farm from farmland. This line is regarded as the delineation of the historic Ballona wetlands. Later the Pacific Electric Railroad followed this line. Route 90 was constructed directly north and east of the line of the Pacific Electric Railroad. It is reasonable to conclude that the median strip is directly adjacent to a historic wetland, and the stream that crosses the Route 90 median strip and empties into Area A Playa Vista is hydrologically connected to the wetlands that remain in Area A. After channelization of the Ballona Creek, which occurred in the 1930's, the areas later known as the Route 90 median strip and as Area A were used for agriculture, light manufacturing, roads, storage, and landfill.

The median strip subject to this application has not recently contained open water. The area was cleared in the early seventies in order to construct a boat and recreational vehicle storage area. The streambed lies about 570 feet to the south of the present wetland restoration project. When Caltrans ordered the lessee of the storage area to vacate to accommodate the bridge project, the lessee removed the boats and asphalt. When the asphalt was removed, the mulefat and willows, as well as sand spurrey, a salt tolerant ground cover, and an assortment of weeds and thistles emerged.

The development that triggered this after-the-fact permit did not include dredging or filling of this area. Instead Caltrans crews weed whipped and cleared vegetation in the former boat storage yard to ground level, including the mapped wetland vegetation. This activity did not result in permanent removal of the plants, but did impact the habitat value that the area provided.

Because the clearance that Caltrans carried out removed wetland vegetation and environmentally sensitive habitat, it would not be permitted under the Coastal Act. Instead of seeking an after-the-fact permit for the work, the applicant proposes to restore the area and to enhance adjacent areas, resulting restoration of four times the area of the original 1700 sq. ft (0.04 acres) with wetland and salt tolerant plants. Cuttings from the immediate area will be used to establish plants. The applicant proposes to install the plants in the winter to allow them to establish. Even without the installation of cuttings, some mulefat emerged in late summer and early fall. Caltrans biologists expect that plants installed from cuttings in the mid winter should establish by spring. The second phase would be installed after Caltrans bridge contractors remove construction falsework.

The applicant contends that restoring the area at four to one will adequately mitigate the interim loss of habitat. They further indicate that most of what is needed is enhancement, noting that a significant amount of mulefat has re-appeared. In the case of such a small patch, they suggest that periodic visits by Caltrans staff professionals would enable Caltrans to monitor the site and replant areas that are failing.

While in a more extensive project the Commission would require a more elaborate monitoring program, this project consists of about 6,800 square feet. The Commission finds that regular site visits by Caltrans staff biologist specialist could be sufficient to monitor the health of the installation during establishment until the project is complete. The Commission requires that during the first year after completion of the installation, that Caltrans monitor the site thoroughly and design necessary corrective measures. Such monitoring is described in special condition 2. Any measure that would change the planting mix would require an amendment of this permit. As noted above, since financial or legal issues could delay construction of the bridge, Caltrans cannot guarantee that it will be able to begin construction of the related project, the bridge, this winter of 2003-2004. Therefore, Caltrans has submitted this as a separate, but related application. If this project were a part of the bridge permit 5-01-432, installation could not begin until the bridge permit issued. Replanting the winter of 2003-2004 would minimize interim loss of habitat value, so the Commission finds that the replanting at least in the first stage should not depend on applicant's ability to begin construction of the bridge. On the other hand, Caltrans plans to delay the second stage of planting until the bridge is complete. If the bridge construction does not begin, this means only half the mitigation planting would be installed. Therefore the Commission imposes a deadline for completion of the installation. If the bridge project were indefinitely delayed, Caltrans would be obliged to plant by the winter of 2000-2008. If the bridge project re-activated after this date, Caltrans would have to remove and replace the habitat areas. Such development would need to be evaluated according to the impacts assessed at the time.

As a willow wetland, this area can support number of plant and animal species that populate the Ballona wetlands. The plants proposed by the applicants (Exhibit 3) are consistent with the plants formerly found in the area. The newly installed plants will provide wetland habitat identical to the kind of habitat that was removed. As proposed and as conditioned, the project will restore the damaged area consistent with Sections 30233 and 30240 of the Coastal Act.

### **C. UNPERMITTED DEVELOPMENT**

Development has occurred on site without benefit of the required coastal development permit, including the removal of wetland vegetation identified in hearings on the related coastal development permit 5-01-432(Caltrans) and that was protected in the special conditions of that coastal development permit. The work that was undertaken constitutes development that requires a coastal development permit, but which because of the restrictions of the Coastal Act could not be approved. Caltrans indicates that the underlying cause of the violation was that the right of way staff is not notified of agreements made in the permit process and was unaware of the identification of the existence of the wetland, responding instead to a citizen complaint concerning "weeds". In order to avoid future occurrences of the same sort, the Commission requires that Caltrans inform its maintenance and right of way divisions of the habitat areas and wetlands, identified on this site and of the special conditions of both coastal development permits that apply to activities on this site. If Caltrans provides maintenance supervisors and right-of-way agents with relevant information and the relevant special conditions of the approved permits, such errors would be less likely to occur.

In order to ensure that the components of this application involving unpermitted development are resolved in a timely manner, Special Condition #1 requires that the applicant undertake planting proposed in this restoration effort within 45 days of issuance of this permit and to complete installation of all plantings by the winter of 2007-2008, unless the Executive Director grants additional time for good cause. In addition, Special Condition # 4 requires the applicant to satisfy all requirements specified in the conditions of this coastal development permit that the applicant is required to satisfy prior to issuance of this permit within 90 days of Commission action.

Consideration of the permit amendment application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

### **D. CERTIFIED LAND USE PLANS.**

This bridge is one of the road-widening projects incorporated into the certified Land Use Plan for Playa Vista, even though it is technically outside of the study area. This restoration is ancillary to the bridge project. In 1984, the Commission approved the Marina del Rey/Ballona LUP. This bridge is adopted as part of the Circulation Element of the plan, even though Los Angeles County prepared the LUP and the roadway is owned by Caltrans and located in the City of Los Angeles. Again in 1987, the Commission approved parallel LUP's for the Marina del Rey and, in the City of Los Angeles, the Playa Vista LUP that showed the identical transportation system measures, including the present

project. The City of Los Angeles amended its Palms Mar Vista Del Rey Community Plan to conform to the land use designations and development standards of the certified Playa Vista LUP. No implementation ordinances have been approved for this plan.

As noted above, the Marina del Rey and Playa Vista LUP's, certified by the Commission in 1987, encourage the reservation of transit corridors and the adoption of shuttle programs. However, they rely on development caps and widened roadways to provide the transportation capacity necessary for the anticipated high-density development. All include high levels of density and multiple traffic impacts and provides for widened roadways. The plans provide for the extension of Admiralty Way to Culver Boulevard, widening Lincoln Boulevard to eight lanes, widening Culver and Jefferson Boulevards, widening other roads, and extending the Marina Freeway. The certified Playa Vista Land Use Plan shows Culver Boulevard as an alternative transportation corridor, and includes policies that provide for widening Culver Boulevard and extending the Marina Freeway. With respect to this project, Policy 4.18 of the Playa Vista LUP states:

*Page 44, Policy 18. Extend the Marina Freeway, just east of Culver Boulevard, with a grade-separated interchange at their intersection.*

Although these permit and LUP approvals seemed to assume that roadways to accommodate the development would be approved, until the local coastal program is fully certified, the standard of review for the roadways themselves is Chapter 3 of the Coastal Act. The Commission, faced with more detailed information about the impacts of the development conceptually approved in the Land Use Plans, is able to reexamine the effects of the development. A Land Use Plan is not binding on the Commission and any development listed in an LUP is subject to review based on the Coastal Act. The Commission has also noted that the standard of review for any amendments to the land use plans would be the policies of Chapter 3. Therefore, in the absence of a fully certified LCP, the Commission's earlier decisions that the "area" could accommodate high-density development does not commit the Commission to approving development that would not otherwise be approvable consistent with the policies of Chapter 3.

## **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission considered allowing natural re-growth but without designating and protection in the area during construction of the bridge project. However, if the applicant

took no action, compaction and other possible effects of construction could delay the resurgence of the mulefat and willow wetland. The Commission considered requiring the use of container plants instead of cuttings, the installation of irrigation and more frequent monitoring. Due to the financial constraints of such a project, replanting would not be able to begin before construction begins on the bridge, resulting in an additional year of before replacement could occur.

There are no additional feasible alternatives or mitigation measures available that could substantially lessen any remaining significant adverse impact the activity may have on the environment. Therefore, the proposed project is consistent with CEQA and the policies of the Coastal Act.

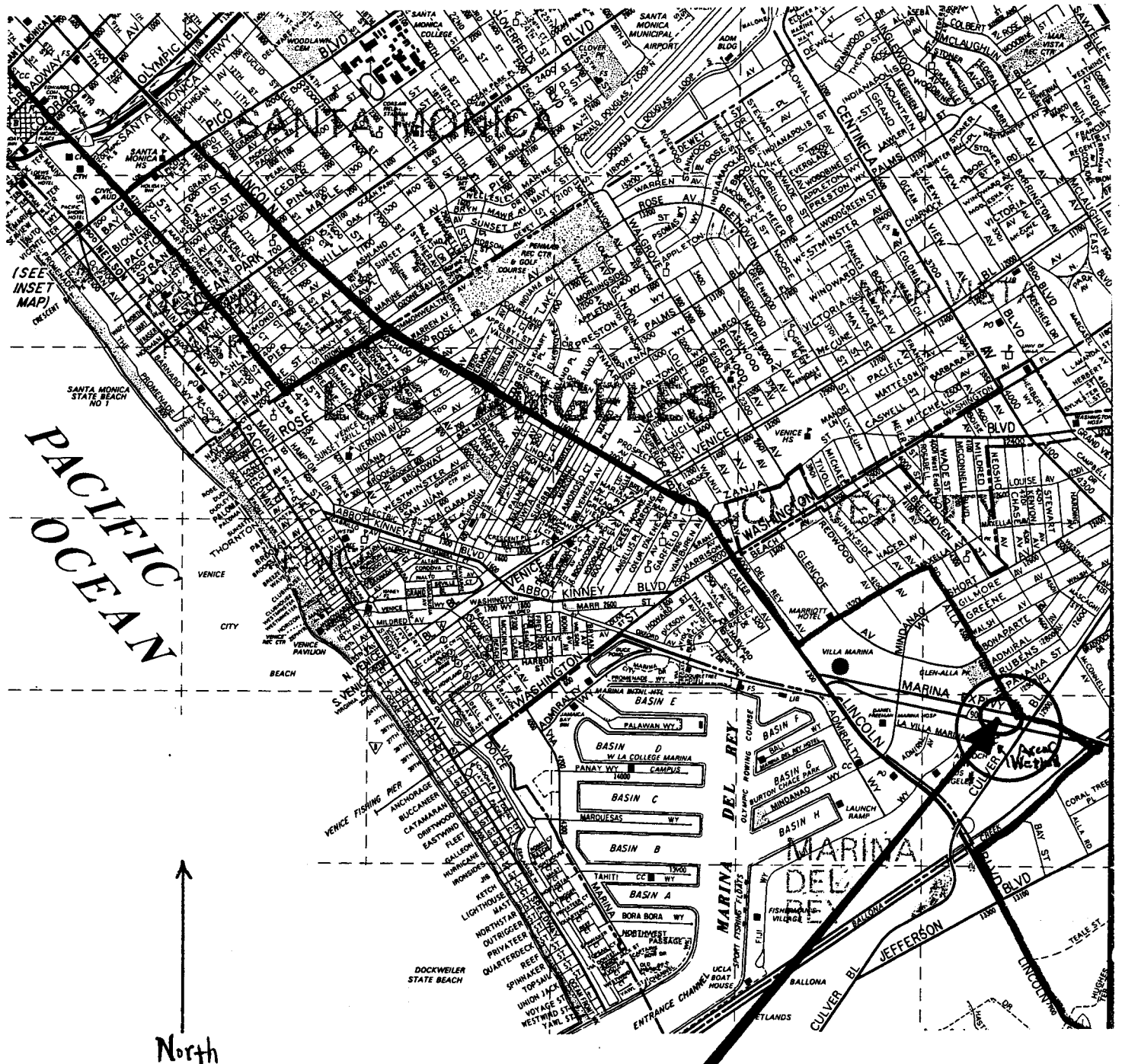


**SUBSTANTIVE FILE DOCUMENTS**

1. Coastal Development Permits and Appeals: 5-01-432; A-5-PLV-01-281/5-01-223; A-5-PV-00-417/5-01-382; 5-98-164; 5-98-164A; CDP 5-01-432 and associated documents
2. City of Los Angeles Mitigation Monitoring and Reporting Program Exhibit "C" "As Amended To Include Condition of Approval No. 96 as Required by Condition of Approval NO. 12 of Vesting Tentative Tract no. 49104 (Exhibit "B") and Condition of Approval No.'s 141, 141, 144, 145, 150, and 151 as Required by the Modification to VTTM 49104 Approved by the City Council on December 8, 1995 Exhibit "A".
3. Playa Vista Entertainment Media and Technology District, Mitigated Negative Declaration, Playa Vista Plant Site (Addendum to Environmental Impact Report First Phase Project for Playa Vista), August 1995.
4. Los Angeles County, Marina del Rey/Ballona LUP, Certified 1984.
5. Los Angeles County, Marina del Rey LUP, Certified 1987.
6. City of Los Angeles, Playa Vista LUP, Certified 1987.
7. Bolsa Chica Land Trust v. Superior Ct. (1999) 71 Cal. App. 4<sup>th</sup> 493.
8. Psomas Associates, State Route 90/Cullver Flyover: Jurisdictional Wetlands, Streambeds and Waters of the United States, December 1995.
9. Edith Read and Ted Winfield, "Jurisdiction Evaluation of Vacated Vehicle Storage Yard Site, in the Median Between LA-90 Eastbound and Westbound west of Culver Boulevard in Marina del Rey (Coastal Development Permit Application No. 5-01-432)," April 18, 2002 (marked "Draft")
10. Edith Read, and Ted Winfield, Psomas Associates, "Addendum to Jurisdictional evaluation of vacated vehicle storage yard site in the median between LA-90 eastbound and westbound, west of Culver Boulevard in Marina del Rey coastal Development Permit Application No. 5-01-432," May 8, 2002.
11. Dixon, John, PhD. Memorandum: Wetland Delineation for LA-90 Project, May 24, 2002",
12. Caltrans: Alternatives analysis (1) and (2) regarding the Route 90 bridge.
13. Jerry B. Baxter, District Director, Caltrans District 7, letter to Con Howe, Director of Planning, City of Los Angeles, re Playa Vista Traffic Mitigation Measures, September 10, 1993.
14. Robert Goodell, Chief, Advance Planning Branch, Caltrans District 7; Memorandum to Tom Loftus, State Clearinghouse, re DEIR Playa Vista Phase I 90-0200 SUB (C) (CUZ) (CUB), March 22, 1993.
15. City of Los Angeles Bureau of Engineering Staff Report, No. 95-03 --August 2, 1995
16. LADOT Inter-departmental correspondence --Amendment of Initial Traffic Assessment and Mitigation Letter dated September 16, 1992 --Revised May 24, 1993.
17. Law, Crandall Inc., "Report of Phase I Environmental Assessment, Playa Vista STIP; State Route 90, (Marina Freeway), from Lincoln Boulevard to Centinela

- Avenue, Playa Vista Project;" prepared for Maguire Thomas Partners, Los Angeles, California, February 23, 1996.
18. California Department of Fish and Game, Memorandum: Extent of Wetlands in Playa Vista, December 1991."

# VENICE, CA



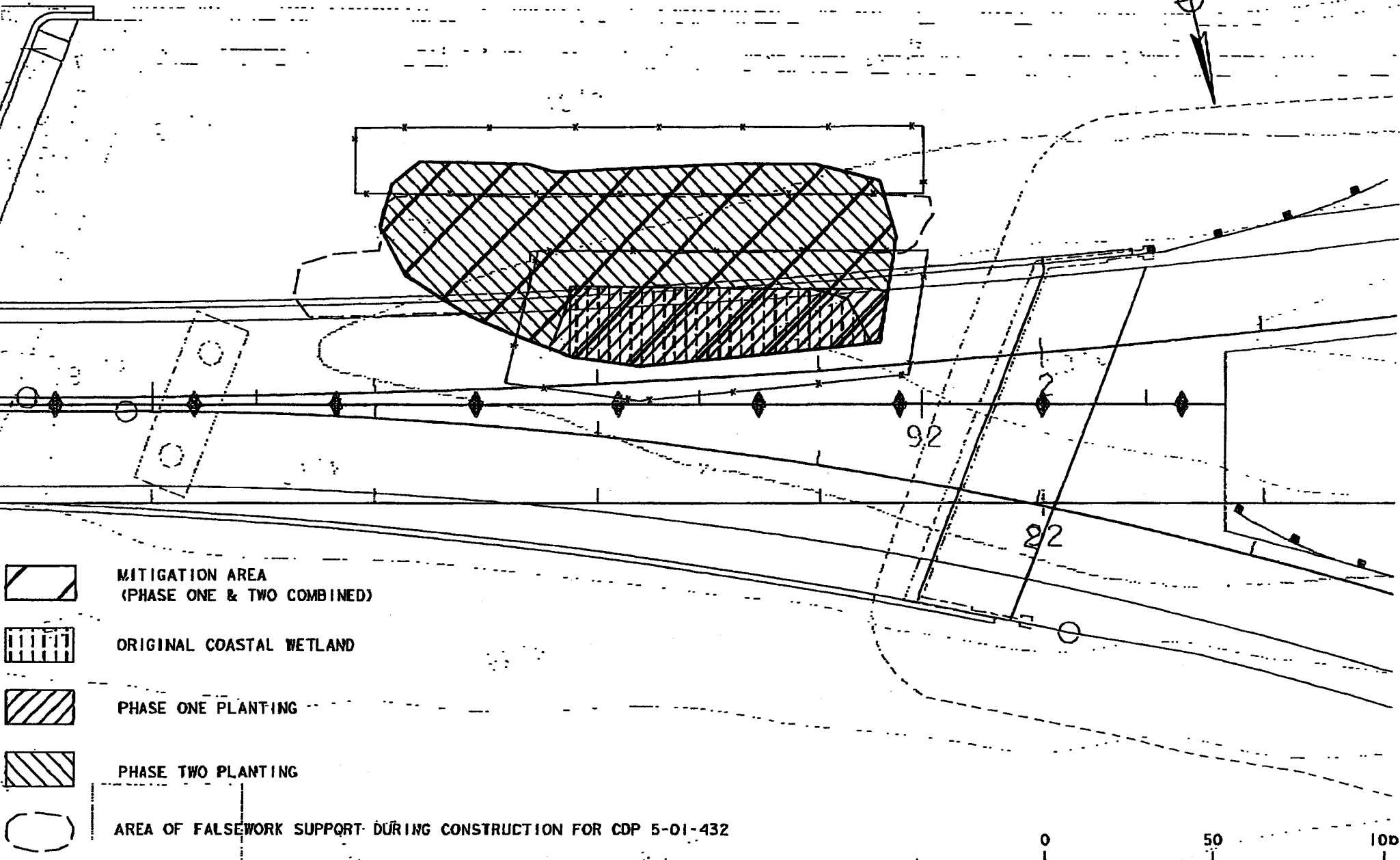
Site  
12979 Culver Blvd.

COASTAL COMMISSION  
5-03-248

EXHIBIT # 1  
PAGE 1 OF 1

AMX 7 7/8 2017

4



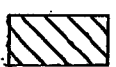
MITIGATION AREA  
(PHASE ONE & TWO COMBINED)



ORIGINAL COASTAL WETLAND



PHASE ONE PLANTING



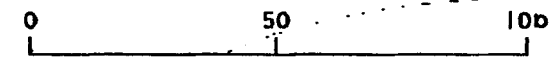
PHASE TWO PLANTING



AREA OF FALSEWORK SUPPORT DURING CONSTRUCTION FOR CDP 5-01-432



ENVIRONMENTALLY SENSITIVE AREA FENCE DURING CONSTRUCTION FOR CDP 5-01-432



SCALE (FT)

5-03-248

EXHIBIT # 2  
PAGE 1 OF 1

OCTOBER 15, 2003

**DEPARTMENT OF TRANSPORTATION**  
 DIVISION OF ENVIRONMENTAL PLANNING  
 120 SOUTH SPRING STREET  
 LOS ANGELES, CA 90012  
 PHONE (213) 897-0686  
 FAX (213) 897-2593



*Flex your power!  
 Be energy efficient!*

September 24, 2003

Mr. Charles Posner  
 California Coastal Commission  
 South Coast District  
 200 Oceangate, Suite 1000  
 Long Beach, CA 90802-4302

RECEIVED  
 SOUTH COAST REGION

SEP 24 2003

STATE OF CALIFORNIA  
 COASTAL COMMISSION

RE: LA-90 Wetland Mitigation Project, 12979 Culver Blvd., Los Angeles, CA (CDP No. 5-03-248)

Dear Mr. Posner,

A "Status Letter" was received for the above-referenced project. Unfortunately, the wrong address was written on the coastal permit application, the correct address is 12979 Culver Boulevard, please correct this in the file. Included in this submittal are the responses to the nine items that you requested additional information for.

1. Please submit 2 sets of detailed project plans prepared in conformance with the attached document entitled "Requirements for Submittal of a Habitat Mitigation Plan" including a detailed grading plan, plant list and long-term monitoring plan.

Two sets of project plans are included, which are in conformance with Caltrans standards. A plant establishment period of six months will ensure the hardiness of the plants.

2. Please submit a wetland delineation for the project site, along with photographs that depict the existing site conditions.

The wetland delineation completed for this site is included. Photographs taken on September 15, 2003 are also included.

3. Please describe the current use of the project site, all known prior uses, and any future plans for the site.

The project site is currently vacant. The Department purchased the site from Santa Monica Dairy Company, and the deed was recorded in March 1971. The site was used as recreational vehicle parking and boat storage facility from 1978 to 1999 and has been vacant since late 1999. The future plans for the site involve construction of an elevated roadway system over the area.

4. Please submit proof of the applicant's legal interest in the project site.

Included in this submittal is a copy of the Right-of-Way map for the project location.

**COASTAL COMMISSION**  
**5-03-248**

EXHIBIT # 3  
 PAGE 1 OF 3

5. Please submit all written correspondence that Caltrans has solicited for the proposed project from the California Department of Fish and Game and the United States Fish and Wildlife Services.

When the "original coastal wetland area" was delineated for the adjacent project (CDP 5-01-432, approved in June 2002), discussions were held with the California Department of Fish and Game (CDFG). CDFG did not take jurisdiction at that time, and since nothing significant has changed, that jurisdiction determination still stands. During a previous design of the adjacent project, a meeting (~2000) was held with the United States Fish and Wildlife Service (USFWS), and they did not take jurisdiction at that time. There is no reason to re-contact the USFWS, since there are no listed species in the project area, and therefore, coordination is not needed.

6. Please submit a copy of the permit for the proposed development issued by the California Regional Water Quality Control Board.

The California Regional Water Quality Control Board does not have jurisdiction over this "coastal wetland", and therefore, no permit was issued.

7. Will the proposed project necessitate the use of any heavy machinery? If so, please describe how, when and where the heavy machinery is proposed to be used.

The project will not need any heavy machinery, only hand labor will be used.

8. Will any fill material be transported into or out of the project site? Please identify location where exported materials will be disposed of.


No grading will occur on this project, and therefore no fill material will be transported in or out of the project site.

9. Please describe where the construction staging area is proposed to be located, and what methods would be implemented to control run-off and prevent siltation.

The construction staging area will be adjacent to the enhanced wetland area (i.e. the mitigated wetland area). During the plant establishment period, hand watering will be used due to the project size, and therefore the amount of water that will be introduced to the site is negligible, and siltation is not expected.

Caltrans believes that this information completes the "file" for this project. Your expeditious review is greatly appreciated so that our project will be heard ASAP at the Coastal Commission meeting. To take advantage of planting this winter, we would need to be heard at the November 2003 Coastal Commission meeting. If you have any questions or require additional information, please contact Stephanie Sapper, District 7 Coastal Commission Liaison, at (213) 897-5446.

Sincerely,

  
Aziz Elattar, Office Chief  
Coastal Area Projects / Maintenance Biological Services  
Division of Environmental Planning

*"Caltrans improves mobility across California"*

COASTAL COMMISSION  
5-03-248  
EXHIBIT # 3  
PAGE 2 OF 3

**ABBREVIATIONS**

AMEND — amendment  
 B & B — baled and burlapped  
 DIA — diameter  
 EA — each  
 GR — gram  
 KG — kilogram  
 M — meter  
 M<sup>2</sup> — square meter  
 MAX — maximum  
 MM — minimum  
 MM — millimeter  
 NO — number  
 PKT — packet  
 PLT — plant establishment  
 P/MT — pavement  
 R/W — right of way  
 SF — state furnished  
 TRVD — traveled

**APPLICABLE WHEN CIRCLED:**

- ① - Quantities shown are "per plant" unless shown as m<sup>2</sup> application rates.
- ② - Sufficient to receive root ball.
- 3 - Does not apply to mulch areas.
- 4 - As shown on plans.
- 5 - Unless otherwise shown on plans.
- ⑥ - See detail.
- ⑦ - See Special Provisions.

**NOTE:**  
 Underlined portions of botanized name indicate abbreviations used on Planting Plans.



DIST	COUNTY	ROUTE	KILOMETER TOTAL PROJECT	POST NO.	SHEET NO.	TOTAL SHEETS

LICENSED LANDSCAPE ARCHITECT

PLANS APPROVAL DATE

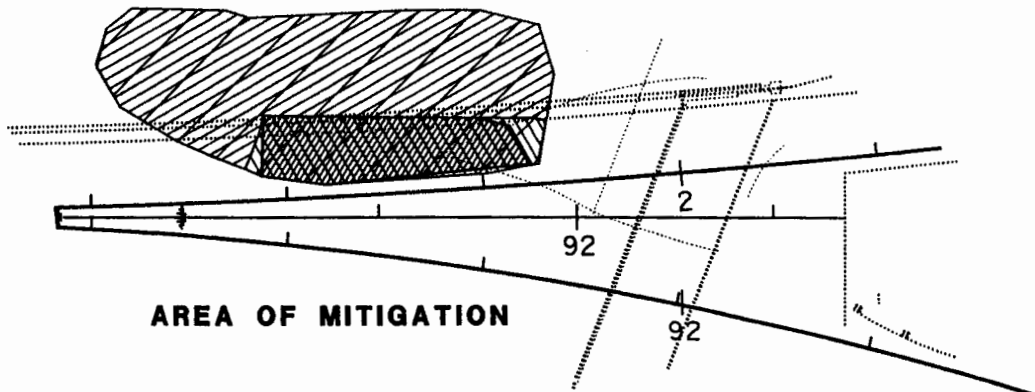
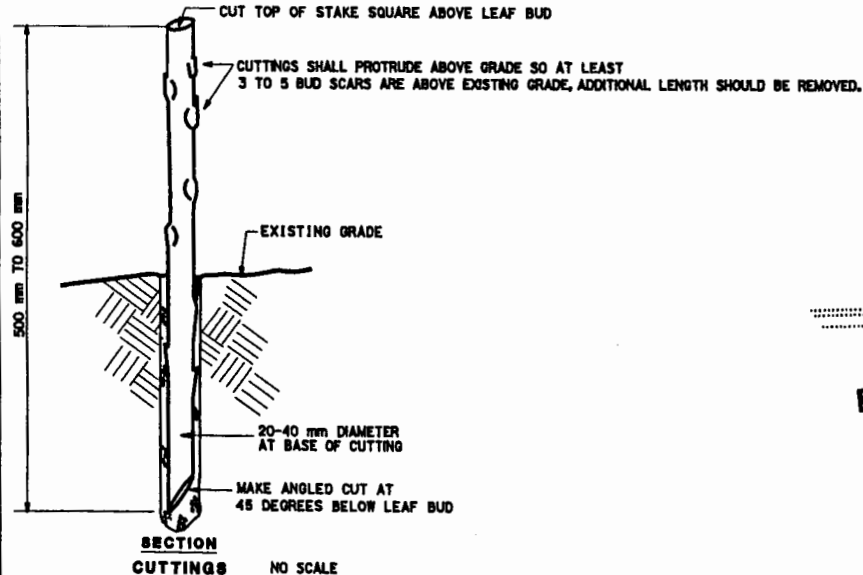
The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan sheet.

Caltrans now has a web site. To get to the web site, go to: <http://www.dot.ca.gov>

**PLANT LIST AND PLANTING SPECIFICATIONS**

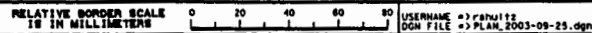
PLANT GROUP	PLANT No	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QUANTITY EACH	HOLE SIZE (mm)		BASIN TYPE	IRON SULFATE ①	SOIL AMEND ①	COMMERCIAL FERTILIZER ①		BASIN MULCH	STAKING	PLANTING LIMITS					REMARKS	
							DIA	DEPTH				PLANTING	PLT ESTB			MINIMUM DISTANCE (m) FROM	W/ VAY	P/MT	FENCE WALL	PLAIED PLANT/ W/CH		W/CH
A	1	—	ATRPLEX LENTIFORMIS	SALTBUSH	No 1	70	②	②	I	—	—	①	—	.04 m <sup>3</sup>	—	—	—	—	—	—	—	①
W	2	—	BACCHARIS GLUTINOSA	MULEFAT	CUTTING	70	—	—	—	—	—	①	—	—	—	—	—	—	—	—	—	⑥⑦
	3	—	SALIX LASIOLEPIS	ARROYO WILLOW	CUTTING	70	—	—	—	—	—	①	—	—	—	—	—	—	—	—	—	—

- NOTE:**
- ALL PLANT MATERIAL SHALL BE PLANTED IN A RANDOM FASHION 3.3 m<sup>2</sup>
  - PLANT MATERIAL SHALL RECEIVE ECTO-ENDO MYCORRHIZAL INOCULUM MYCO PAKS AND BIOSTIMULANT FERTILIZER PAKS.
  - BACCHARIS AND WILLOW SHALL BE PLANTED WITHIN THE MITIGATION AREA AND SALTBUSH PLANTED ON THE PERIMETER OF THOSE PLANTINGS.
  - PHASE TWO PLANTING SHALL BE PLANTED AFTER FALSEWORK HAS BEEN REMOVED FOR CONTRACT 07-1693C4.



- NOTE:**
- CUTTINGS SHALL HAVE LEAVES AND BRANCHES TRIMMED OFF FLUSH WITH THE STEM.
  - CUTTINGS SHALL BE PLANTED WITH APPROXIMATELY HALF OF THEIR LENGTH BENEATH FINISHED GRADE.
  - PAINT AND SEAL THE TOP SQUARE CUT BY DIPPING THE TOP 25-50 mm INTO A 50-50 MIX OF LIGHT COLORED LATEX PAINT AND WATER.
  - PLANTING HOLES SHALL BE MADE PERPENDICULAR TO THE GROUND LINE AND SHALL BE FORMED WITH A STEEL BAR OR EXCAVATED BY USE OF AN AUGER, POST HOLE DIGGER OR SIMILAR TOOLS.

**PLANT LIST AND PLANTING PLAN**  
 HP-1



CU 00000 EA 000000

5-03-248  
 EXHIBIT # 3  
 PAGE 3 OF 3

REVISIONS: REVISOR, DATE, REVISION  
 PROJECT: LANDSCAPE ARCHITECTURE  
 DESIGNED BY: [Name]  
 CHECKED BY: [Name]  
 CALCULATED BY: [Name]  
 DATE: [Date]  
 STATE OF CALIFORNIA - DEPARTMENT OF WATER RESOURCES  
 LANDSCAPE ARCHITECTURE

DATE PLOTTED: 25-SEP-2003  
 TIME PLOTTED: 11:19 AM  
 00-00-001

## CALIFORNIA COASTAL COMMISSION

CONTRACT SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 TDD (415) 904-5200  
 T 904-5400



## MEMORANDUM

FROM: John Dixon, Ph.D.  
 TO: Pam Emerson & Alex Helperin  
 SUBJECT: Wetland Delineation for LA-90 project  
 DATE: May 24, 2002

Site information considered for this memo:

Read, E. & T. Winfield. Jurisdictional evaluation of vacated vehicle storage yard site, in the median between LA-90 eastbound and westbound, west of Culver Boulevard in Marine Del Rey (Coastal development permit application No. 5-01-432). A draft document prepared for Caltrans dated April 18, 2002.

Read, E. & T. Winfield. Addendum to Jurisdictional evaluation of vacated vehicle storage yard site, in the median between LA-90 eastbound and westbound, west of Culver Boulevard in Marine Del Rey (Coastal development permit application No. 5-01-432). A draft document prepared for Caltrans dated May 8, 2002.

PSOMAS. Revised map entitled "Vegetation and Soil Sample Locations" dated May 14, 2002, with a modified delineation of wetlands based on the May 13, 2002 site visit.

Site visit on Monday, May 13, 2002 with Drs. Read and Winfield and Caltrans representatives.

The Coastal Act defines wetlands as "...lands within the coastal zone which may be covered periodically or permanently with shallow water...." The definition adopted by the Commission and codified in Section 13577(b)(1) of Title 14 of the California Code of Regulations defines wetland as, "...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...." In discussing boundary determinations, the same section of the Regulations specifies that wetlands have a "predominance" of hydrophytic cover or a "predominance" of hydric soils. Although the definition is based on inundation or shallow saturation long enough for anaerobic reducing conditions to develop within the root zone<sup>1</sup>, in practice hydrology is the most difficult wetland indicator to demonstrate. In California, a predominance of hydrophytes or a predominance of hydric soils is taken as evidence that the land was "wet enough long enough" to develop wetland characteristics. How is such "predominance" demonstrated?

No delineation methods or protocols are included in California law. Given this void, delineators rely on methods developed in the context of various Federal laws, including the Clean Water Act

<sup>1</sup> As demonstrated by the definitions of hydric soils and hydrophytes: "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." National technical committee for hydric soils, October 18, 1994; A hydrophyte is, "Any macrophyte that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content...." Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. U.S. Army Corps of Engineers, Washington, D.C.

Corps of  
**COASTAL COMMISSION**

5-03-248

EXHIBIT # 4

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and the Food Security Act, and on other pertinent scientific works<sup>2</sup>. The Army Corps of Engineers (Corps), the Environmental Protection Agency, and the Natural Resources Conservation Service have developed generally science-based delineation protocols within the context of their governing laws and regulations. These federal procedures generally require positive evidence of all three wetland criteria: wetland hydrology, hydric soils, and a "prevalence"<sup>3</sup> of hydrophytes. The indicators of wetland hydrology and hydric soils are conceptually straightforward and generally independent of the other two factors. This is not always the case for indicators of the presence of hydrophytic vegetation.

There are two elements necessary for demonstrating that a community is comprised predominantly of wetland vegetation. First, one must identify those species that are growing as hydrophytes. Second, one must demonstrate that those hydrophytic species make up a predominance (>50%) of the dominant plant species in the community. The latter is generally a simple exercise following the protocols in the 1987 Corps Manual. Identifying hydrophytes is less standard<sup>4</sup>, but under federal regulations also is generally a matter of following written protocols, although professional judgement is sometimes required. Most protocols make use of plant lists produced by federal agencies. The U.S. Fish and Wildlife Service in cooperation with other federal agencies, developed lists of plant species that occur in wetlands<sup>5</sup>. Based on descriptions in state and regional floras and the opinions of regional ecologists, plant species known to occur in wetlands in at least some areas were assigned to one of five categories, depending on the estimated probability of occurring in a wetland<sup>6</sup>. Under federal procedures, species listed as OBL, FACW, or FAC are defined as "hydrophytes," despite the fact that for any individual species the percent of occurrences in upland will actually be between <1% and 66%. However, this causes no conflict because even those FAC species that commonly occur in uplands, can be assumed to be growing as "hydrophytes" where the presence of hydric soils and indicators of hydrology provide independent evidence of wetness<sup>7</sup>. Under the Coastal Act, OBL, FACW, and FAC species are also presumptively "hydrophytic" and, in general, a preponderance of those species is presumptive evidence of a wetland. The strength of this test

<sup>2</sup> For example: Tiner, R.W. 1999. Wetland indicators. A guide to wetland identification, delineation, classification, and mapping. Lewis Publishers, Boca Raton, FL. 392 pages; Richardson, J.L. and M.J. Vepraskas. 2001. Wetland soils. Genesis, hydrology, landscapes, and classification. Lewis Publishers, Boca Raton, FL. 417 pages; Cronk, J.K. and M. S. Fennessy. 2001. Wetland plants. Biology and ecology. Lewis Publishers, Boca Raton, FL. 462 pages; National Research Council. 1995. Wetlands. Characteristics and boundaries. National Academy Press, Washington, D.C. 308 pages.

<sup>3</sup> "Prevalence" and "predominance" are equivalent. According to the 1987 Corp of Engineers Delineation Manual, the "prevalent vegetation" has the character of the majority of the dominant plant species in the community and "Dominant species" are those that define the character of the community because of their high relative ground cover, basal area, or other measure of standing stock.

<sup>4</sup> "Interpretation of plants as wetland indicators vary (sic) according to the approach taken for wetland delineation." Tiner, 1999, op. cit., page 78.

<sup>5</sup> Reed, P.B. Jr. 1988. National list of plant species that occur in wetlands: California (Region 0). U.S. Fish and Wildlife Service Biological Report 88 (26.10). 135 pages.

<sup>6</sup> "Obligate Wetland (OBL) - > 99% of occurrences in wetlands under natural conditions; Facultative Wetland (FACW) - 67-99% of occurrences in wetlands; Facultative (FAC) - 34-66% of occurrences in wetlands; Facultative Upland - 1-33% of occurrences in wetlands; Obligate Upland (UPL) - > 99% of occurrences in uplands under natural conditions within the region, but occurs in wetlands elsewhere.

<sup>7</sup> The distinction between being included in a list of species that occur in wetlands or being defined by the Corps as a "hydrophyte" for methodological purposes and actually growing as a hydrophyte is an important one. This is clear in the following discussion of wetland indicator plants (Tiner, 1999, op. cit., page 80): "FACU species (plants that are typically found in nonwetlands) are more contentious as wetland species, since by definition they occur more in uplands than in wetlands. The national list of wetland plant species includes about 1400 FACU species (21% of the list)(Tiner, 1991). Some species are quite common in wetlands and when growing under such conditions are hydrophytic." The reverse situation may occur with species that are typically found in wetlands, and a finding that they are not growing as "hydrophytes" is similarly contentious but nevertheless sometimes justifiable.

is greater where most dominant wetland indicator species are classed as OBL or FACW<sup>8</sup>. However, where the wetland character of a site is demonstrably ambiguous because of the presence of substantial upland features, characterizing a species as "hydrophytic" requires professional judgment<sup>9</sup> in addition to a demonstration that the species is included on a list of plant species that occur in wetlands. In such situations, rote application of the Corps' protocol for identifying hydrophytic vegetation outside the context of the 3-parameter test for which it was developed could potentially result in wrongly categorizing some "uplands" as "wetlands," especially where FAC species comprise a significant portion of the vegetation<sup>10</sup>. The subject site presents such a situation based on the substantial evidence presented in the applicant's reports.

The proposed project site is currently a difficult site to delineate for at least four reasons. First, the topography has been substantially altered over the years by agriculture and later by fill and grading. Second, it is an atypical situation because it was used for many years as a vehicle storage yard and was covered with asphalt until November 2000. Therefore, all the vegetation is recent and the vegetative characteristics of the site will continue to undergo successional changes for several years. Third, it is a problem situation because November 2001 through April 2002 was a period of extreme drought (3.98 inches of rainfall compared to the long-term average of 11.33 inches<sup>11</sup>). Finally, it is a problem situation because the soil is comprised of fill from elsewhere, so soil color and redoximorphic features<sup>12</sup> are not necessarily reliable indicators of hydric soils.

With one exception, the narrative descriptions in the reports and the depictions in the data sheets matched what we observed on the ground<sup>13</sup>. The site has been graded to create a east-west swale in the middle portion of the median strip. The swale slopes down to the west (with about a 4-foot fall) and delivers water to a man-made catchment that drains off the property to the south. The site may receive some freeway runoff at the western half of the property. There, the roadway abuts a broad mowed strip that slopes onto the site. The eastern half of the

<sup>8</sup> "While both OBL and FACW species are universally recognized as useful indicators of wetlands, FAC and FACU are not reliable wetland indicators and their use in wetland delineation has been contentious (see 56 Federal Register 40446-40480, August 14, 1991). Since they occur in wetlands with some frequency and may even dominate certain types, they have the potential to be hydrophytes...." Tiner, 1999, op. cit., page 78.

<sup>9</sup> Professional judgement takes into account such factors as recent rainfall patterns, topography, drainage patterns, soil characteristics, technical indicators of hydrology or hydric soils, adjacency to obvious wetland areas, number of associated FACW or OBL species, and presence of facultative adaptations to inundation such as adventitious roots. However, despite the importance of considering factors related to hydrology and soil characteristics in this process of assessing whether a species is growing as a "hydrophyte," demonstrating the presence of hydric soils or wetland hydrology according to the Corps' rules is not required, i.e., such judgement does not convert the one parameter requirement into a two or three parameter requirement.

<sup>10</sup> In this context, it is worth pointing out that there is no perfect wetland definition or delineation method. For example, the Corps approach risks underestimating the extent of seasonal wetlands in Mediterranean or arid climates because hydrology indicators and vegetation indicators may be seasonally absent. On the other hand, the California approach risks overestimating the extent of seasonal wetlands because of the environmental plasticity of some wetland indicator plants. Professional judgement is usually required.

<sup>11</sup> Rainfall data for Los Angeles International Airport from Western Regional Climate Center.

<sup>12</sup> Redoximorphic features, such as "rust"-like concentrations, result from the reduction, translocation, and oxidation of iron and manganese oxides in, at least periodically, saturated soils.

<sup>13</sup> An exception was sample site P-21. Mulefat was an unrecorded dominant in the shrub layer and the soil had redoximorphic characteristics in the root zone that had not previously been noted. Dr. Winfield dug a series of soil pits west from P-21. Based on the additional data from these pits and the continued presence of mulefat, we agreed that the western boundary of the wetland area characterized in the reports as "Arroyo willow - mulefat association" should be moved west along the swale approximately 20 m. The boundary was subsequently re-surveyed by PSOMAS.

property appears to be slightly higher than the adjacent roadways<sup>14</sup>. The land adjacent to the roadways on the north and south is lower and there is a ditch along the southern roadway, so much of the freeway runoff appears to be directed offsite. The primary source of water is probably direct precipitation. There were no standard Corps indicators of wetland hydrology at any of the sample stations. However, there were patchy areas in the swale where there apparently was a higher clay content in the surface soils and the soils had cracked and curled forming concave surfaces. These characteristic mud cracks are caused by drying and shrinkage of wet soil, indicating previous ponding or surface saturation.

The texture of the soil in the upper 12 inches was generally a fine sandy loam or coarser material, which one would expect to be highly permeable. At half the sample sites (in no particular spatial pattern) there was a deeper layer of clay loam or clay, generally between 12 and 24 inches below the surface. This will act as a confining layer and tend to perch water. The remaining soil pits had coarse materials from the surface to the depth of the hole, which was generally 18 inches. It is possible that these locations also had a deeper clay layer at unknown depth<sup>15</sup>. The confining layer may roughly follow the surface contours, in which case water would tend to move horizontally toward the swale at the depth of the confining layer. Only one of the 28 widely scattered sample sites had evidence of hydric soils according to the Corps' protocols<sup>16</sup>. Generally, any redoximorphic characteristics were too deep to be diagnostic of hydric soils. In this regard, it should be noted that hydric features present now, with the possible exception of oxidized root channels, would have developed during the period prior to the asphalt being laid on the site. Without detailed knowledge of the land-altering activities that took place subsequent to agricultural usage, it is very difficult to interpret the current soil conditions. In addition, there has been insufficient time since the asphalt was removed for the soil to reflect the new existing conditions; therefore, the soil features present are useful for the wetland delineator only to the extent that current conditions reflect the conditions present prior to the addition of the asphalt pavement.

The pattern of the herbaceous vegetation is confusing and bears little relationship to the topography of the site. Throughout the site, many areas are dominated by species that are designated as OBL, FACW, or FAC in the list of plant species that occur in wetlands. Of the 8 dominant herbaceous species present in the samples, 6 are FAC or drier. However, the remaining two are *Spergularia maritima* (OBL), an annual herb and *Polypogon monspeliensis* (FACW+), an annual grass. *Spergularia* occurs throughout the site and probably has the greatest ground cover of any species, but particularly dominates the higher, apparently drier areas. The swale, which one would expect to be wetter, is dominated by FAC herbaceous species. *Polypogon* occurs in single clumps or small patches throughout the site. A portion of the swale also supports arroyo willow (FACW) and mulefat (FACW), which are dominants in the shrub layer. Except in patches of nearly 100% *Spergularia*, the wetland indicator species are intermixed with 30 species of mostly weedy, upland plants, all but two of which occur only as subdominants.

The vegetation is also puzzling because of the rainfall pattern. Given the extremely low rainfall, the highly permeable nature of the surface soils, and the depth of the confining layers, it seems very unlikely that these soils were saturated long enough to develop anaerobic reducing conditions within the root zone at anytime during the winter of 2001-2002. Nevertheless, the annual plants *Spergularia* (OBL) and *Polypogon* (FACW+) germinated and grew to become dominant species during that time. Notwithstanding these observations, I think that *Polypogon*, and probably *Spergularia*, are properly classified for the region. This presents the paradox that

<sup>14</sup> Based on the elevations on the map entitled "Draft Vegetation and Soil Sample Locations" dated 5/8/02 and contained in the Addendum cited above.

<sup>15</sup> Two of 5 deeper holes, with no confining layer in the upper 18 inches, had a deeper confining layer.

<sup>16</sup> Chroma of 1 was not considered a reliable indicator because the soils are fill and low chroma color may be an artifact of previous conditions elsewhere.

an OBL and FACW+ species were apparently not growing as hydrophytes at this site during this last winter season. I hypothesize that, in the absence of competition<sup>17</sup>, these species are capable of growing under a greater variety of environmental conditions than suggested by their observed distribution under natural conditions. In fact, many wetland species do not require saturated soil conditions, but rather have evolved adaptations that enable them to tolerate such conditions. This provides them with a spatial refuge from upland species which are unable to survive under conditions of saturation and oxygen deficit. The occasional presence of such wetland indicator species in an upland situation would not be surprising.

The winter of 2000-2001 was a very different situation. That was a wet winter (Nov-Apr rainfall of 14.37 inches compared to the 11.33 inch average). It is much more likely that the soil saturated in various areas and perhaps ponded in the swale during that time. Based on their height distribution, that was the year when the arroyo willow and mulefat must have recruited. We have no knowledge of the annual herbaceous vegetation prior to this year.

It is clear that no areas on this site would delineate as wetlands under the Corps' regulations due to the absence of hydrology indicators and the general absence of hydric soil indicators. However, the preponderance of dominant species throughout most of the site were OBL, FACW, and FAC wetland indicator species, which meets the Corps' vegetation criterion. However, since there was also substantial evidence of upland environmental conditions, it was necessary to assess whether the predominant species were growing as hydrophytes and were therefore indicative of a wetland. In the above mentioned reports, it is concluded that the area that was dominated by arroyo willow and mulefat in the shrub layer and that had a relatively shallow clay confining layer with redoximorphic features in or near the root zone is a wetland under the Coastal Act. I agree with that conclusion and with the boundaries as modified during our site visit and shown in the revised map referenced above. The reports also concluded that none of the rest of the site qualified as wetland. I also agree with that conclusion, but in the narrow sense that those areas did not have wetland characteristics in 2002.

Such a caveat is unusual in a recommendation. In a natural area under normal circumstances during a drought year, one would use professional judgement to adjust for the shortage of rainfall and make a wetland determination that would try to capture the wetland boundaries under usual conditions. Even in the case of seasonal wetlands, there would be evidence of prior conditions in the soils and the perennial vegetation present. One might also be able to examine aerial and ground level photographs from recent years with more normal rainfall and talk to local residents with knowledge of the site. With the return of normal weather conditions, the site would tend to return to its average mix of wetland and upland hydrology and vegetation. At the subject site, this approach is not possible because the usual condition has been that of an asphalt-covered parking lot. One can only look at the current condition, during an extreme drought, and perhaps guess at the community trajectory. If the soil characteristics of the upper north and south slopes are similar to those immediately west of the fence that defines the western edge of the previously paved area, then one would expect that the vegetation would eventually take on similar upland shrub characteristics. On the other hand, the presence of a shallow, clay-rich confining layer over portions of the site provides a soil environment characteristic of many wetlands and demonstrates wetland potential. In fact, I think it more likely than not that some areas in or near the swale but outside the boundaries of the delineated wetland will develop wetland characteristics over a period of years with normal rainfall. However, there is no factual basis for delineating additional areas at this time. Because of the unique situation at this site, identifying such areas would require observations during the rainy season of a normal rainfall year, or a significant experimental study of hydrology and soil characteristics.

<sup>17</sup> Competition would be unlikely at this recently exposed site because it had no vegetation in November 2000 and was probably still relatively unvegetated at the beginning of the 2001-2002 wet season. Compared to nearby areas, it still has considerable open space.