CALIFORNIA COASTAL COMMISSION
South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071

W16c

CDP 5-18-0554 (CALIFORNIA DEPT. OF FISH & WILDLIFE)
AUGUST 12, 2020

EXHIBITS

Exhibit 1—Vicinity Map

Exhibit 2—Project Location

Exhibit 3 – Drains and Pipes Removal Plans

Exhibit 4 – Wetland Delineation Map

Exhibit 5 --Site Plan with Construction Work Limits

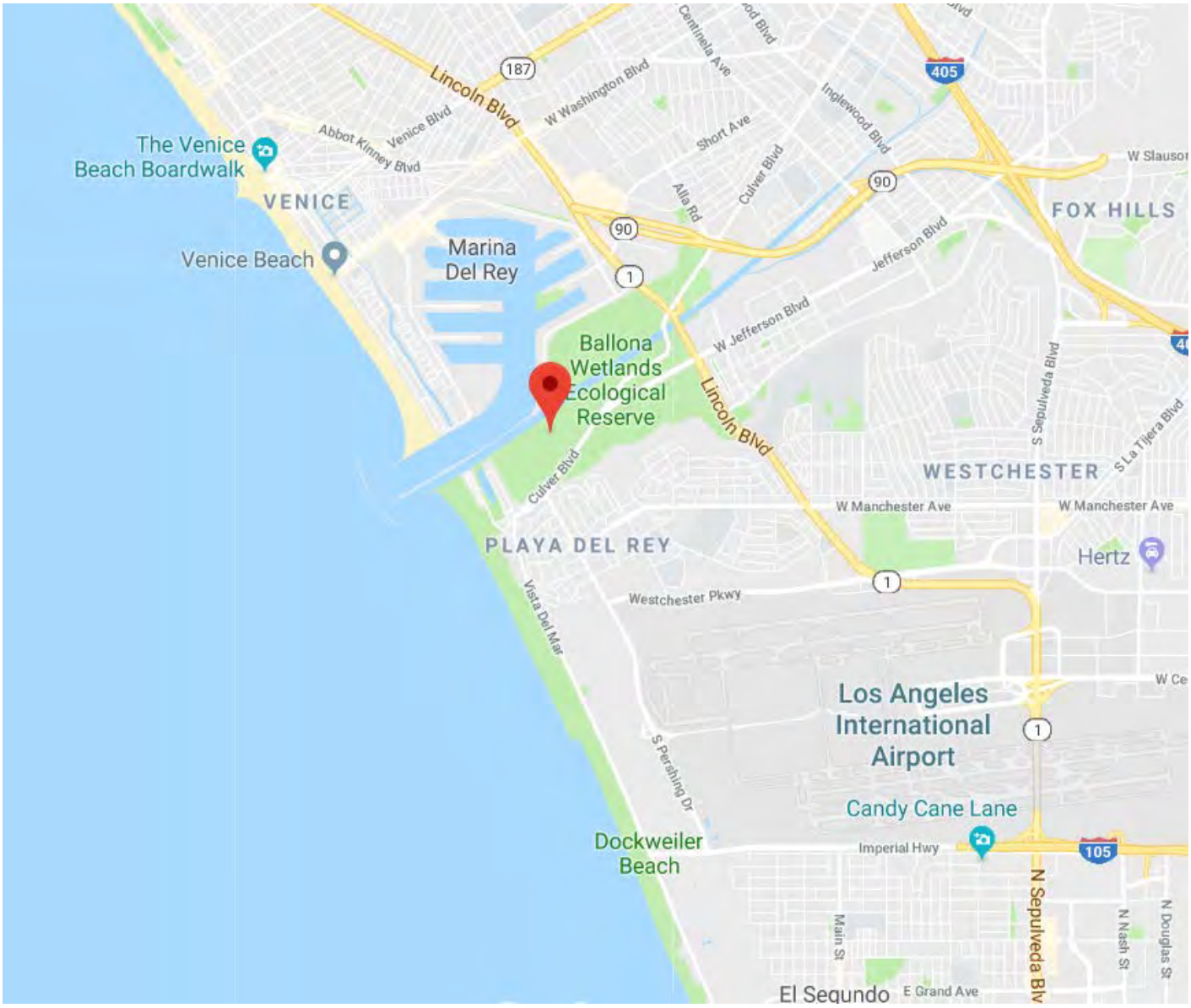
Exhibit 6 – CCC Notice of Violation dated April 11, 2014

Exhibit 7— *Habitat Impacts Related to Ballona Wetlands Ecological Reserve, Playa Del Rey, CA,* prepared by Dr. Jonna Engel, CCC Senior Ecologist, July 22, 2020

Exhibit 8 – Location of Offsite Mitigation

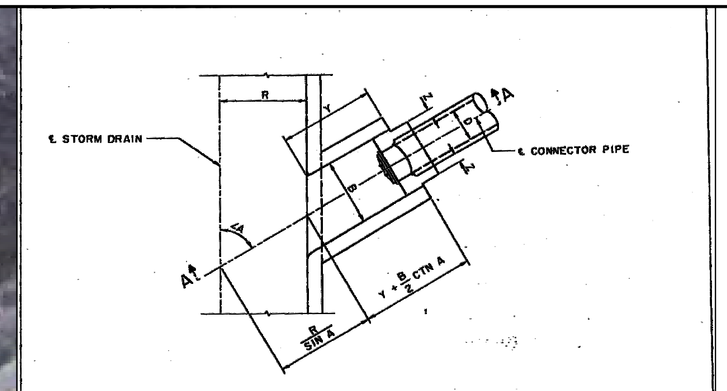
Exhibit 9 -- Letters of Concern

Exhibit 10 – CDFW Memo Regarding South Drain Leakage, dated July 17, 2020



California Coastal Commission
CDP No. 5-18-0554
Exhibit 1

California Coastal Commission
CDP No. 5-18-0554
Exhibit 2

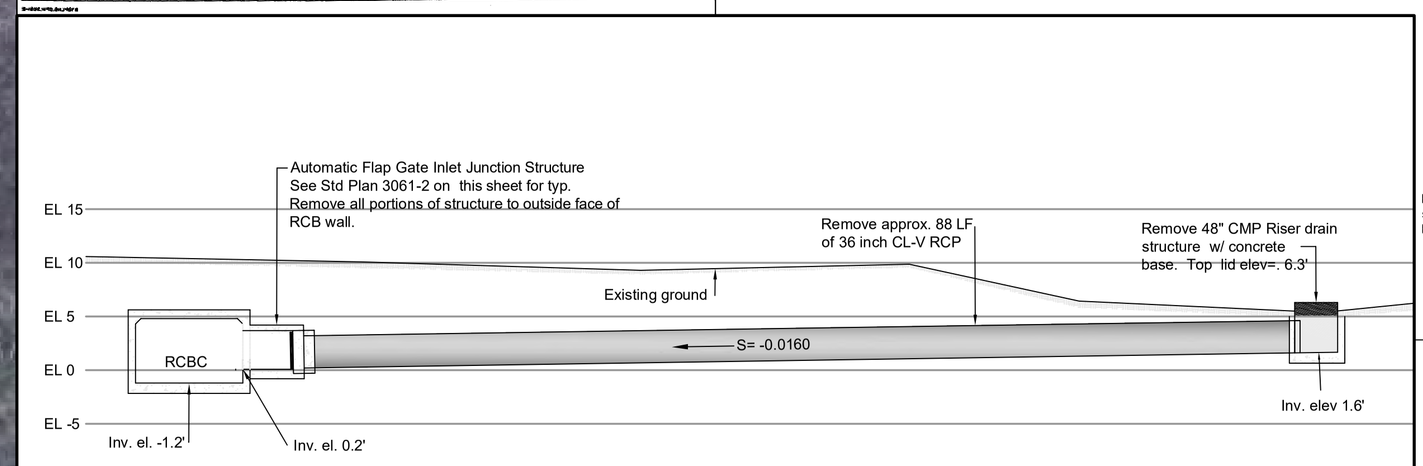


LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS

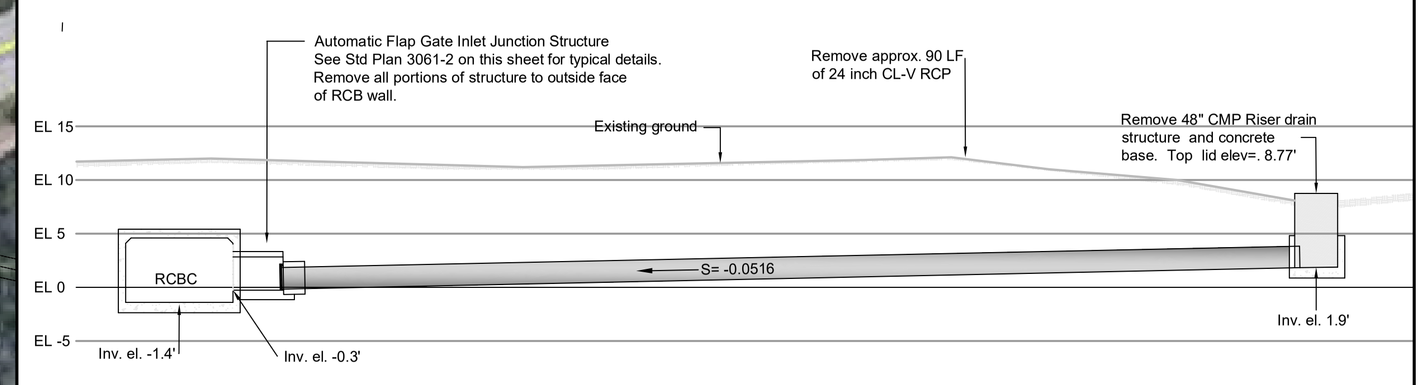
AUTOMATIC FLAP GATE INLET

STANDARD PLAN METRIC 3061-2 SHEET 1 OF 2

APPROVED 5/31/1992 DIRECTOR OF PUBLIC WORKS — DATE — 1995, 1999 REVISIONS



"F" Line
(No Scale)



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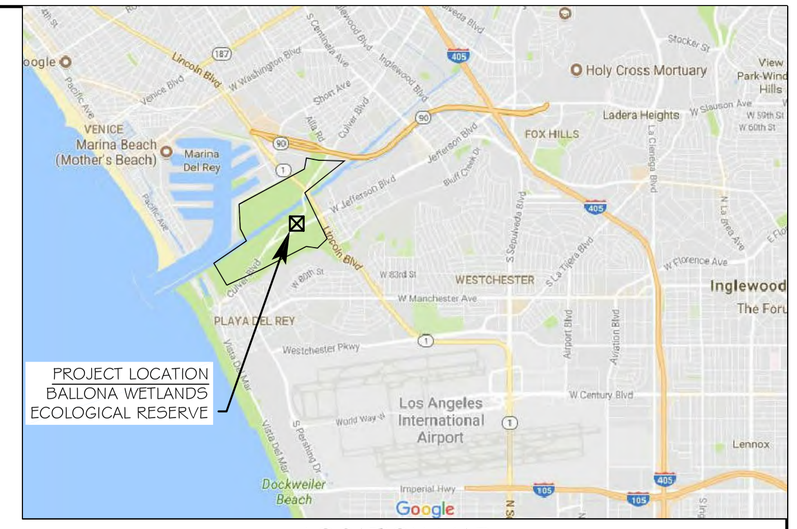


LOCATION MAP

California Coastal Commission
CDP 5-18-0554
Exhibit 3

BENCHMARK- Benchmark used for this project is a 3" Brass NGS disk in front of El Torito Restaurant along the nort side of Fiji Way on the northerly top of curb above a catch basin at the northerly end of a bus pullout.
ELEVATION 15.10' NAVD 88 datum. (NAVD datum difference is -2.28 ft) NAVD 88 elevation used for this survey.

PROJECT DESCRIPTION:

THE PROJECT CONSISTS OF xxxxxxxxxxxxxxx AND OTHER MISCELLANEOUS IMPROVEMENTS.

THE PROJECT SHALL CONFORM TO THE APPLICABLE STATE AND FEDERAL CODES AS SHOWN BELOW:

1. 2016 CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE , TITLE 24 ,PART 1, (CAC).
2. 2016 CALIFORNIA BUILDING CODE, VOLUMES 1, AND 2, TITLE 24, PART 2, (CBC) (2015 INTERNATIONAL BUILDING CODE WITH 2016 CALIFORNIA AMENDMENTS).
3. 2016 CALIFORNIA RESIDENTIAL CODE, TITLE 24, PART 2.5, (CRC)
4. 2016 CALIFORNIA ELECTRICAL CODE, TITLE 24, PART 3 (CEC) (2014 NATIONAL ELECTRICAL CODE WITH 2016 CALIFORNIA AMENDMENTS).
5. 2016 CALIFORNIA MECHANICAL CODE, TITLE 24, PART 4, (CMC) (2015 IAPMO UNIFORM MECHANICAL CODE WITH 2016 CALIFORNIA AMENDMENTS).
6. 2016 CALIFORNIA PLUMBING CODE, TITLE 24, PART 5, (CPC) (2015 IAPMO UNIFORM PLUMBING CODE WITH 2016 CALIFORNIA AMENDMENTS).
7. 2016 CALIFORNIA ENERGY CODE, TITLE 24, PART 6 (CEEC).
8. 2016 CALIFORNIA HISTORICAL BUILDING CODE, TITLE 24, PART 8, (CHBC).
9. 2016 CALIFORNIA FIRE CODE, TITLE 24, PART 9, (CFC) (2015 OF INTERNATIONAL FIRE CODE WITH 2016 CALIFORNIA AMENDMENTS).
10. 2016 EXISTING BUILDING CODE, TITLE 24, PART 10, (CEBC).
11. 2016 CALIFORNIA GREEN BUILDING STANDARDS, TITLE 24, PART 11, (CALGREEN).
12. 2016 CALIFORNIA REFERENCED STANDARDS CODE, TITLE 24, PART 12, (CRSC).
    NFPA 13 - 2016
    NFPA 72 - 2016
13. REFERENCE CODE SECTIONS FOR APPLICABLE STANDARDS
    2016 CBC, CHAPTER 35
    2016 CFC, CHAPTER 45
14. TITLE 8, CALIFORNIA CODE OF REGULATIONS, (CCR), CALOSHA REGULATIONS - SAFETY ORDERS ISSUED BY DIVISION OF INDUSTRIAL SAFETY OF THE STATE OF CALIFORNIA.
15. TITLE 19, CALIFORNIA CODE OF REGULATIONS, (CCR), PUBLIC SAFETY, SFM REGULATIONS, LIST OF FEDERAL CODES & STANDARDS (IF APPLICABLE).
16. 2016 CALIFORNIA ACCESS COMPLIANCE ADVISORY REFERENCE MANUAL (AS PREPARED BY THE DIVISION OF THE STATE ARCHITECT OFFICE, PUBLISHED ON JULY 1, 2016, EFFECTIVE JANUARY 1, 2017.)
17. DOT STANDARD SPECIFICATIONS AND/OR PLANS; STATE OF CALIFORNIA, DOT, 2015.

GENERAL NOTES:

1. CONTRACTOR SHALL READ AND BE FAMILIAR WITH ALL FACETS OF THE PLANS AND SPECIFICATIONS.
2. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD PRIOR TO BIDDING/COMMENCEMENT OF WORK.
3. THESE PLANS ARE FOR GENERAL CONSTRUCTION PURPOSES ONLY. THEY ARE NOT FULLY SPECIFIED.
4. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO SELECT, VERIFY, RESOLVE, AND INSTALL ALL MATERIALS AND EQUIPMENT WITH COMPLIANCE TO CODES AND /OR ORDINANCES.
5. CONSTRUCTION SHALL BE OF THE HIGHEST QUALITY OF WORKMANSHIP. ALL CONNECTIONS SHALL BE MADE SECURE ACCORDING TO ACCEPTED CONSTRUCTION PRACTICES OR AS SPECIFIED HEREIN OR PER CURRENT BUILDING CODES.
6. CONTRACTOR IS RESPONSIBLE FOR ANY CONSTRUCTION WHICH IS IN DEVIATION FROM THESE PLANS.

liform

REVISIONS:

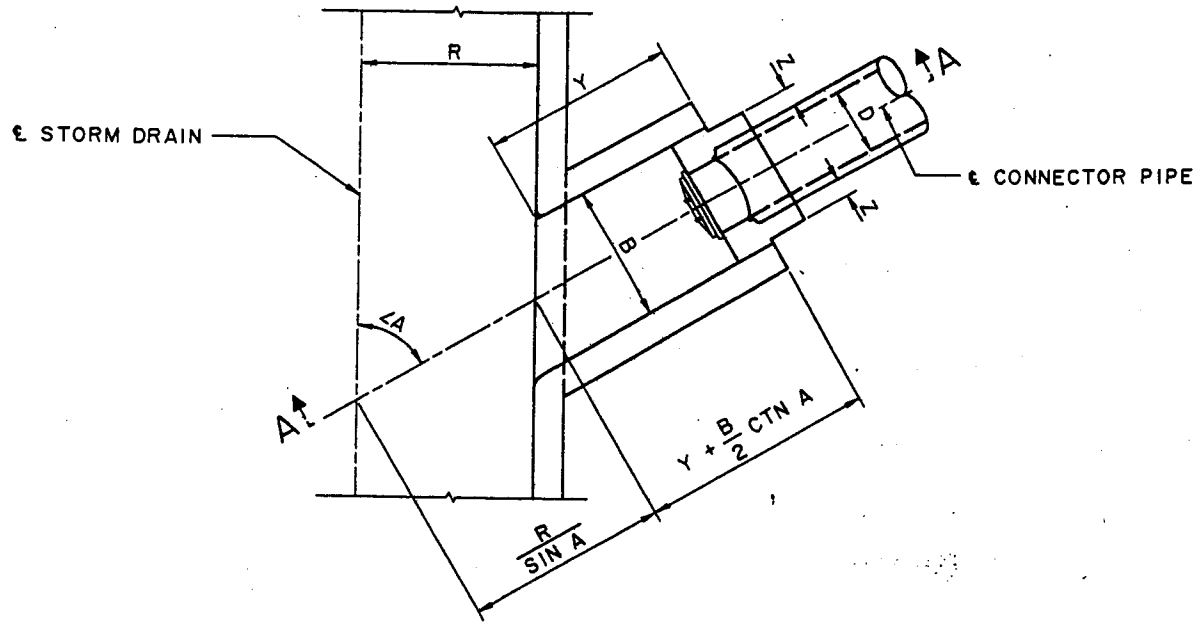
NO.	DATE	APPROVED BY	DESCRIPTION/SHEET NUMBERS

DESIGNED & DRAWN:
RICHARD SMITH

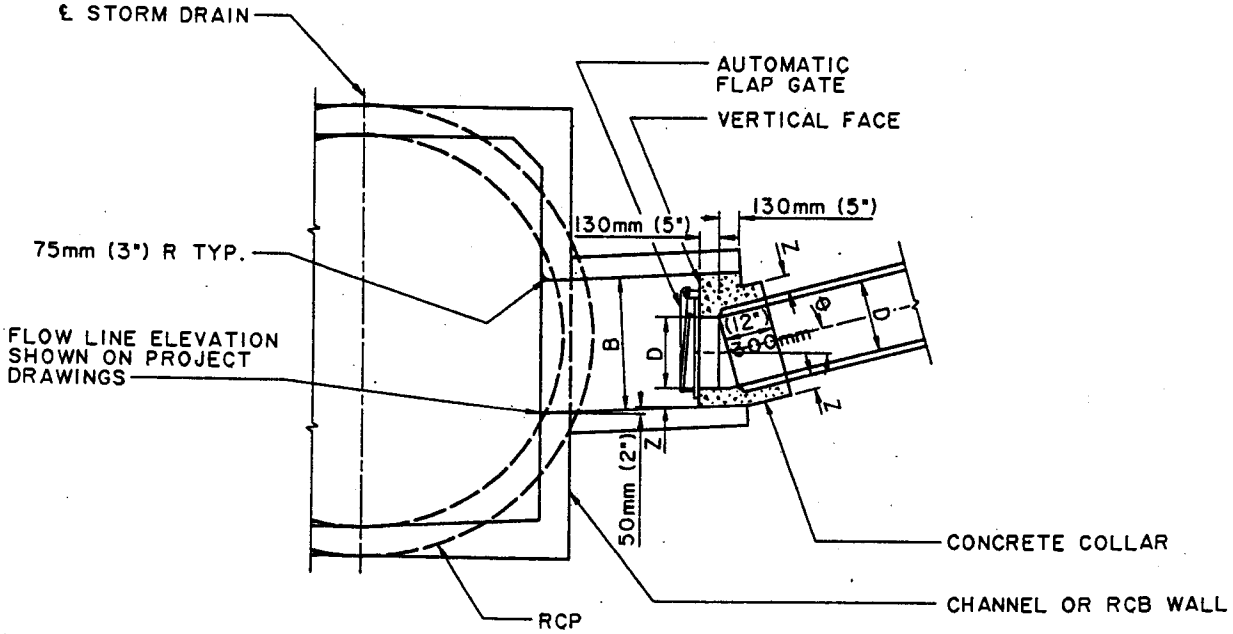
APPROVED:
R. G. BENSON

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
California Department of Fish and Wildlife
ENGINEERING BRANCH

BALLONA WETLANDS
LOS ANGELES COUNTY
CMP Removal
SOUTH COAST REGION



PLAN



SECTION A-A

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS

AUTOMATIC FLAP GATE INLET

STANDARD PLAN METRIC

3061-2

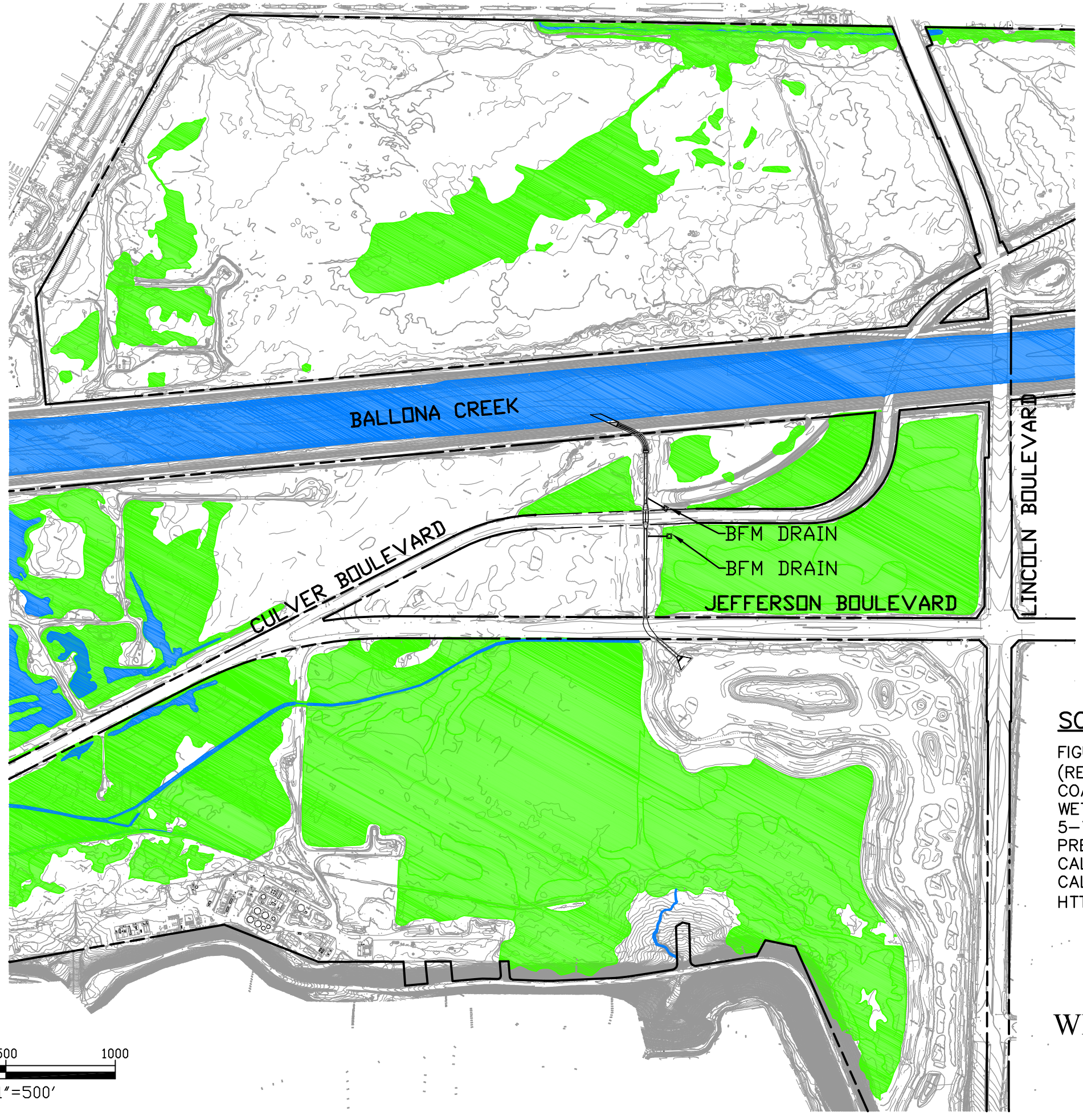
SHEET 1 OF 2

APPROVED Thomas A. Tidemanson 5/31/1992

DIRECTOR OF PUBLIC WORKS — DATE

1995, 1999

REVISIONS



LEGEND

- TIDAL WATERS
- WETLAND

California Coastal Commission
CDP No. 5-18-0554
Exhibit 4

SOURCE NOTE:

FIGURE 9, DELINEATED WETLAND MAP OF THE RESERVE (REPLICATED FROM WRA 2011 USING CALIFORNIA COASTAL COMMISSION DELINEATION BALLONA WETLANDS ECOLOGICAL RESERVE COMPREHENSIVE 5-YEAR MONITORING REPORT, DECEMBER 2015, PREPARED BY THE BAY FOUNDATION, PREPARED FOR CALIFORNIA STATE COASTAL CONSERVANCY AND CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE HTTP://BALLONARESTORATION.ORG/BASELINE-REPORTS/

500 250 0 500 1000

GRAPHIC SCALE: 1"=500'

BALLONA WETLANDS RESERVE RISER ROMOVAL WETLAND DELINEATION EXHIBIT

PSOMAS

DATE: 04/28/17 REVISED ON:
JOB No:1CCC010100

SHEET 1 OF 1

California Coastal Commission
CDP 5-18-0554
Exhibit 5

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

April 11, 2014

Playa Capital Company, LLC
c/o Rick Zbur
355 South Grand Avenue
Los Angeles, CA 90071

Re: Unpermitted drains located in Ballona Ecological Reserve

Dear Mr. Zbur:

Thank you for your December 11, 2013 response to our June 12, 2013 letter. Our June 12 letter described installation of two drains and drain lines in the Ballona Ecological Reserve without the required coastal development permit. After carefully reviewing the information that you included with your letter, our position on installation of the drains at issue has not changed: installation of the drains requires a coastal development permit from the Coastal Commission. As explained below, the unpermitted drains were not authorized, as you contend, by Coastal Development Permit No. 5-91-463, as amended ("the CDP"), which authorized construction of the Ballona Freshwater Marsh ("BFM"). Moreover, the subject drains are located in the Ballona Ecological Reserve within natural habitat and a wetland that rely on water to function. Thus the presence of the subject drains is clearly detrimental to natural habitat and the hydraulic functioning of the wetland.

The two unpermitted drains at issue ("Unpermitted Drains") are located in the Ballona Ecological Reserve, one north of Culver Boulevard and the other south of Culver Boulevard. The Unpermitted Drains are not located within the BFM, but instead within natural saltmarsh and habitat areas separated from the marsh area of the BFM by Jefferson Boulevard. The Unpermitted Drains are not described in the CDP application, nor are the drains identified in the plans submitted with the application and presented to the Commission for approval. Thus the Unpermitted Drains were never authorized through the CDP, or by the Commission in any way that we are aware of.

As a point of clarification since your letter appears to conflate several separate structures, the Commission-approved BFM main drain line and the two other outlets from the BFM (in addition to the main drain line) that are critical to maintaining water levels in the BFM, and which are specifically identified in the CDP application and accompanying plans ("Approved BFM Drain" and "Approved BFM Outlets"), are not at issue in this enforcement matter. Each of these components is identified and described in the CDP application and accompanying plans, which comprise the development approved by the Commission via the CDP. By contrast, the Unpermitted Drains were not identified in the CDP application or its accompanying materials or plans. For reference I've attached a site plan submitted to the Coastal Commission that show the Approved BFM Drain and the Approved BFM Outlets. I've also annotated the plan to show the locations of the Unpermitted Drains, which are not depicted on the approved plan.

Below, I respond to points raised in your December 11 letter related to the Unpermitted Drains. However, first I provide some background and clarification on the purpose and functions of the BFM in order to explain that the Unpermitted Drains function inconsistently with the habitat enhancement, water quality and flood control objectives of the BFM and in no way does the BFM rely on the Unpermitted Drains to perform its necessary functions. Please note that some of our responses to the points you raised in your December 11 letter are provided in the background section below.

Background

The BFM was approved by the Commission pursuant to CDP No. 5-91-463 (as amended) on September 13, 1991. The project is designed to integrate water quality protection functions, habitat creation and restoration, and stormwater control. The first function of the BFM is to collect runoff via inlets specifically identified in the CDP application and accompanying plans. Each of these approved inlets flow into the BFM. The CDP application describes the process by which the BFM achieves its water quality objectives:

> The water quality functions would be performed by the input of a year-round supply of clean freshwater into the system and through the natural processes of a wetlands – sedimentation, adsorption, and transformation – which would reduce levels of pollutants in stormwater and other urban runoff that drains into the system. The freshwater wetlands system would trap and remove pollutants in stormwater runoff as the water moves slowly through the system. Water cleaner that the stormwater runoff originally put into the system would then flow into the Ballona Flood Control Channel or into the salt marsh, thus enhancing the resource values of those areas. [Appendix 5, page 2]

The Unpermitted Drains do not support the water quality objectives of the BFM; the Unpermitted Drains do not direct water into the BFM to be subject to the wetland treatment processes described above. Instead, water flows into the Unpermitted Drains, then untreated into the Ballona Channel.

The second function of the BFM, habitat creation and restoration, is the product of collecting stormwater and treated groundwater within the marsh area of the BFM. This process fosters vegetation growth and, in turn, provides wildlife habitat. The habitat function of the BFM and its reliance upon stormwater is further described in the CDP application:

> The 52-acre freshwater wetland system proposed by Maguire Thomas Partners – Playa Vista, includes a 25-acre riparian corridor and a 27-acre freshwater marsh. This system is to be planted with marsh vegetation, willow woodland and mixed riparian habitat over a three-phase construction period lasting 10 years. It is designed to create new and restore currently degraded freshwater wetland habitat and to enhance their associated uplands. In order to maintain the proposed vegetation and habitat of the system, a water supply of reliable quantity and quality is needed.
>
> ...

- Using two sources of supply (storm runoff and treated groundwater) that are consistent with the urban setting of the Playa Vista project, a completely satisfactory quantity of fresh water would be provided to establish and sustain 52-acres of wetland vegetation and the freshwater need of wildlife. (Appendix 11, ps. EX1-2)

As noted above, the Unpermitted Drains do not drain into the BFM, thus they do not contribute water to the BFM and thus do not contribute to its habitat function. In fact the effect of the functioning of the Unpermitted Drains is deleterious to habitat because the Unpermitted Drains direct water away from habitat areas within the Ballona Ecological Reserve, including a wetland area.

Another function of the BFM is stormwater management and this indeed was a stated objective for constructing the BFM. In contrast to the functioning of the BFM, during all but the most extreme storm events, the Unpermitted Drains do not provide any necessary flood protection because of the elevation of adjacent Culver Boulevard. The BFM project engineer, in describing the value of the Unpermitted Drains, or lack thereof, notes in July 11, 2013 email to staff at the Santa Monica Bay Restoration Commission, and others, that: "If these inlets were plugged, there would be no chance of any flooding ever reaching the adjacent roadways as the roads are about three feet higher than the surrounding grades. A three foot storm would be something on the order of the 1,000,000-year event (purely a guess, but you get the idea) and L.A. would not notice a little flooding here."

Moreover, the Unpermitted Drains are not designed to function when flood control devices would be expected to, i.e. during storm events. During storm events when the water levels in Ballona Channel are elevated, the flapgates in the Approved BFM Drain close in order to prevent water from flowing from the Ballona Channel and out through the Approved BFM Outlets into the BFM. When these flapgates in the Approved BFM Drain close during storm events, water will not flow through the Unpermitted Drains into the Approved BFM Drain, consequently, water will pond in the location of the Unpermitted Drains. Thus, it appears that the idea that stormwater control benefits are provided by the Unpermitted Drains is, at best, dubious. However, as a result of below-grade and at-grade inlets in the Unpermitted Drains, the Unpermitted Drains remove water in the ground and on the surface at all other times water is present. This is a continuous detriment to wetland hydrology and habitat that relies on water to function.

Coastal Development Permit Required

The Unpermitted Drains were not identified in the CDP application or accompanying plans and materials. Therefore, the Unpermitted Drains were not reviewed by the Coastal Commission and installation of the Unpermitted Drains was not authorized via the CDP. Furthermore, the Unpermitted Drains do not, as detailed above, perform any of the intended functions of the BFM and thus could not have been somehow approved in concept by the Commission.

Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Coastal Act Section 30106 as:

> "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....[underling added for emphasis]

Installation of the Unpermitted Drains constitutes development under the Coastal Act and, therefore, requires a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Our goal is to resolve this situation amicably and as quickly as possible so that all parties can move forward. We greatly appreciate your time and input and look forward to discussing this matter further and working on a consensual resolution to this matter. To that end, subsequent to the substantive responses to your letter, below, I propose a potential path forward to resolve this matter collaboratively.

Staff Responses to Section A

You note, as a preliminary matter, that Playa Capital Company, LLC ("PCC") does not currently own the property upon which the Unpermitted Drains are located. You do not specifically argue that as a result of this lack of property interest at the present time, PCC is not liable for installation of the Unpermitted Drains, however, I note that liability for Coastal Act violations attaches to the property owner upon which unpermitted development is located *and to the party that undertook the unpermitted development*. Documents submitted to the City of Los Angeles regarding construction of the Approved BFM Drain indicate that installation of the Approved BFM Drain was commenced by PCC's predecessor-in-interest, Maguire Thomas Partners ("MTP"), and completed by PCC. The Unpermitted Drains connect to the Approved BFM Drain (but as noted above, do not contribute to the functioning of the BFM) and logically then were constructed by PCC and/or its predecessor-in-interest at the time the Approved BFM Drain was constructed. Contemporaneous construction of the Unpermitted Drains and the Approved BFM Drain does not establish, however, that the Unpermitted Drains were authorized pursuant to the CDP. As described above, the Unpermitted Drains are not described in the CDP application or depicted in the accompanying plans, in contrast to the Approved BFM Drain, which is described and depicted in the CDP application and plans.

You also provide in Section A your description of the function of the Approved BFM Outlets and equate the Unpermitted Drains with the Approved BFM Outlets. You assert that:

> *The outlet drains in question were initially incorporated in the Freshwater Marsh design with the approval of the City of Los Angeles, to protect the Ballona salt marsh located to the west of the Freshwater Marsh from imminent construction impacts, and, ultimately, to prevent flooding of the roadways adjacent to the Freshwater Marsh during severe storm events in the long-term.*

However, the Unpermitted Drains are distinct from the Approved BFM Outlets. The three Approved BFM Outlets (including the Approved BFM Drain) are identified in the CDP application and plans. These outlets allow for freshwater to be directed from the BFM into the Ballona Channel or into the saltmarsh west of the BFM when needed to adjust salinity levels in the saltmarsh. The CDP application specifically identifies the Approved BFM Outlets as such:

> *Three water management structures are included in the design of the system: a spillway system between the freshwater marsh and the salt marsh, a sluice-gate structure between the freshwater marsh and the salt marsh, and a control weir with a tide-gated outlet between the freshwater marsh and the Ballona Channel.* [pgs. II-7-8]

Clearly none of these descriptions pertain to the Unpermitted Drains. The Unpermitted Drains can be further distinguished from the Approved BFM Outlets in a number of ways. First, the Unpermitted Drains are not depicted in the CDP application or the plans, as the Approved Outlets are, and thus the Unpermitted Drains were not approved by the Commission. Second, the Unpermitted Drains are not outlet drains. The Approved BFM Outlets provide outlets for freshwater water to move from the BFM into Ballona Channel and into the saltmarsh west of the BFM for salinity level management purposes. In contrast, the Unpermitted Drains do not outlet water from the BFM. Thus, categorically, the Unpermitted Drains are not "outlets" from the BFM. Instead, they drain water from native habitat and a wetland area separated from the BFM by Jefferson Boulevard. Third, the Unpermitted Drains do not direct drained water into the saltmarsh, thus they also do not share the function of the Approved BFM Outlets to provide the saltmarsh with freshwater. Finally, the saltmarsh that is protected by the Approved BFM Outlets that is referenced in the CDP application and associated documents is west of the BFM. In contrast, the Unpermitted Drains are located in the saltmarsh and habitat area north of the BFM.

Regarding the assertion in Section A that the Unpermitted Drains are necessary flood control measures that were approved by the City of Los Angeles, the lack of any flood prevention provided by the Unpermitted Drains is addressed above. In addition, as you are no doubt aware, even if the Unpermitted Drains were approved by the City of Los Angeles through local processes, such approval is not a substitute for authorization from the Commission and does not waive the coastal development permit requirements of the Coastal Act. Furthermore, no regulation is cited in the City's letter attached to your December 11 letter that confirms that there is a basis for the City to require construction of the Unpermitted Drains for flood protection. Nor could City staff identify such regulation in its discussions with Commission staff. In fact, in discussions with us, City staff had no objections to removal of the Unpermitted Drains, which is not surprising since the Unpermitted Drains provide negligible (if any) flood control benefits.

Staff Responses to Section B

In Section B, you again apparently confuse the Unpermitted Drains with the Approved BFM Outlets. As detailed above, in contrast to the Unpermitted Drains, the Approved BFM Outlets were approved by the Commission pursuant to the CDP and, again in contrast to the Unpermitted Drains, perform important habitat enhancement, water quality and flood control functions.

You also assert that staff was made aware of the plans to construct the Unpermitted Drains prior to construction of said drains (but subsequent to Commission approval of the BFM) and that staff concurred with their construction. Regardless of whether this assertion is true, and it is not, as explained below, the Unpermitted Drains were not a component of the CDP application; were not presented in narrative or graphic form, or in any manner to the Commission for review; were not authorized by the Commission pursuant to the CDP in any way; and there is no other Commission action that authorized the Unpermitted Drains. Furthermore, the assertion that staff was aware of plans to build the Unpermitted Drains prior to construction of said drains and concurred with their construction, which we did not, has no bearing on whether the Commission authorized construction of the Unpermitted Drains.

To support your assertion noted above that staff was aware of installation of the Unpermitted Drains, you outline staff's receipt of plans that depict the Unpermitted Drains and staff's investigation of construction of the Approved BFM Drain, which you mistakenly describe as an investigation of the Unpermitted Drains. In 1995, subsequent to the Commission's approval of the BFM, staff was provided with a copy of the BFM Habitat Mitigation and Monitoring Plan ("HMMP") prepared by PCC's predecessor for the U.S. Army Corps of Engineers, which included plans depicting the Unpermitted Drains. This document was not a requirement of the coastal development permit authorizing the BFM, and therefore, staff was under no obligation to review and approve it. Thus, it cannot be concluded from the mere submittal of the HMMP that staff was aware of its contents. Furthermore, in reviewing compliance with the CDP, the HMMP document would not be central to staff's review since the Commission's approval is embodied in the CDP application and accompanying documents, as wells as the CDP and staff report, none of which depict the Unpermitted Drains.

As you note in your letter, in 1996 staff investigated alleged unpermitted grading in the vicinity of the BFM. Commission staff investigated the incident and determined that the grading was undertaken in order to install the Approved BFM Drain. To investigate the report, staff reviewed the CDP application and associated plans, which describe and depict the Approved BFM Drain. Thus, staff confirmed that the Approved BFM Drain and associated grading was approved by the CDP and sent a letter dated July 10, 1996 to that effect to PCC's predecessor. Staff gave no indication in the letter or otherwise that we were aware of the plan to install the Unpermitted Drains. You claim that an April 4, 1996 letter from MTP to staff would have made staff aware of the plan to install the Unpermitted Drains. Although the Approved BFM Drain is described in detail in the April 4 letter, there is no mention in the letter of the Unpermitted Drains, nor are the Unpermitted Drains identified in the attachments to the April 4 letter. In fact, one of the exhibits to the April 4 letter, which delineates the limits of work required for installation of the Approved BFM Drain, does not include in its delineation the areas where the Unpermitted Drains are located. Thus, far from making staff aware of a plan to install the Unpermitted Drains, the letter

would do the opposite and indicate that there were no plans to disturb the area where the Unpermitted Drains were ultimately constructed.

In addition, staff would not have been aware from visiting the site that MTP or Playa Capital planned to install the Unpermitted Drains. At the time staff visited the site, grading had occurred to begin the process of installing the Approved BFM Drain, but neither the Approved BFM Drain nor the Unpermitted Drains had been installed yet, so staff would not have been made aware of their presence in that way either.

Again, regardless of whether the April 4 letter made staff aware of the plan to install the Unpermitted Drains, which was not the case, the Unpermitted Drains were not a component of the CDP application; were not presented in narrative or graphic form, or in any manner to the Commission for review; were not authorized by the Commission pursuant to the CDP in any way; and there is no other Commission action that authorized the Unpermitted Drains. Thus the Unpermitted Drains constitute unpermitted development and a violation of the Coastal Act.

Staff Responses to Section C

You assert in Section C that the Unpermitted Drains have not had any adverse impacts on wetlands. You attach a memorandum from your biological consultant that purportedly supports this claim. However, the memorandum is limited in scope to a comparison of surveys of the vegetative communities around the Unpermitted Drains before and after installation of the Unpermitted Drains. There is no discussion of the effects the Unpermitted Drains might have on wetland hydrology.

Attached to the memorandum is a vegetation survey of the vegetation in the Ballona Wetlands area in 1990, prepared by MTP's biological consultant, and results of a survey of the vegetation in 2006, undertaken by the California Department of Fish and Game. The prior survey show the vegetation around the Unpermitted Drains to be arguably upland before installation of the Unpermitted Drains, the subsequent survey shows seasonal saltmarsh south of Culver Boulevard and a mix of seasonal saltmarsh and riparian vegetation north of Culver Boulevard. You thus assert that wetland habitat has expanded since installation of the Unpermitted Drains. However, the dominance by wetland vegetation documented in the survey conducted after installation of the Unpermitted Drains is evidence of a trend to dominance by wetland vegetation that began at the time agriculture use of the site ceased in the 1980's, before installation of the Unpermitted Drains.

In a 1991 memorandum, the Department of Fish and Game, which delineated wetlands in the Ballona Wetlands area in 1991, stated "During the evolution of the now certified Playa Vista Land Use Plan, we predicted that, were it not for the then ongoing agricultural operation, wetlands in Area B would expand. These agricultural activities ceased for approximately three years prior to the Corps' wetland determination, and, as we predicted, the wetlands did expand into the area which was formerly used for the production of barley and lima beans." The Unpermitted Drains are located in such a formerly farmed area. The 1990 MTP vegetation survey notes of the area where the Unpermitted Drains are located that "All of this area at some

time has been disturbed, and much of it has been used for agriculture, some within the past 10 years."

The survey goes on to say that "The elevations of the flats appear to reflect the original elevations and except for the elevated roadways, the areas appear not to have been artificially filled." Indeed the survey labels the areas where the Unpermitted Drains are located as "old marsh flats." It is not surprising then, given the history of the site, that the 2006 survey found that wetland vegetation has returned to much of the area around the Unpermitted Drains, despite the limiting effects on hydrology that the Unpermitted Drains have had.

Again your general assertion in Section C is that the Unpermitted Drains have not had any adverse impacts on wetlands. As explained above, the memorandum attached to your letter does not persuasively support this assertion. Moreover, this assertion is both conceptually and factually incorrect. Water is the main requirement for a functional wetland. Any fill or alteration of wetland hydrology reduces a wetland's ability to function. If water is drained or removed, or isn't present in the wetland for as long, then wetland function is degraded. Therefore, wetland function is degraded by actions that disrupt water supply through direct fill of a wetland or draining. The Unpermitted Drains disrupt water supply through direct fill and draining of a wetland and habitat within the reserve.

One of the chief components of wetland habitat is wetland vegetation. Thus, removal of wetland plant species, whether through removal or physical preclusion of growth, reduces the habitat value of a wetland. In addition, degradation of wetland function through alteration of hydrology means that the same plants may not grow and habitat value and wildlife use of the wetland are reduced. This has clearly happened in the vicinity of the Unpermitted Drains. It is readily apparent from a review of the vegetation in the vicinity of the Unpermitted Drain located in a wetland south of Culver Boulevard that the drain is precluding growth of wetland plant species. Moreover, since the Unpermitted Drain is designed to drain water from the soil in the wetland around it, as well as ponding water that flows into the drain, this deleterious effect would not be limited to just the immediate vicinity where water pools, but would extend to any area hydrologically connected to the Unpermitted Drain.

You also point out in Section C that the Commission approved limited fill of wetlands through authorization of the BFM project, and thus argue that fill of wetlands for purpose of constructing the Unpermitted Drains is consistent with that approval. Please note that the Commission did not review fill of wetlands for the purpose of constructing the Unpermitted Drains because such structures were never before the Commission for its review. The Commission did review the proposal for the Approved BFM Drain, since this structure was part of the application and proposal for the BFM. The Commission found that limited fill of wetlands for the purpose of constructing the Approved BFM Drain was consistent with the Coastal Act. Coastal Act Section 30233 allows for fill of wetlands through the coastal development permit process in certain circumstances, including for restoration purposes. The Approved BFM Drain is a necessary component of a restoration project, the BFM, approved via the coastal development permit process. However, in contrast, no coastal development permit was applied for nor obtained for the Unpermitted Drains, and the drains do not facilitate the restoration functions of the BFM, nor do they serve any restoration purpose independent of the BFM. In fact, the Unpermitted Drains

detract from wetland and habitat function. Thus the Unpermitted Drains are both unpermitted and could not be found to be consistent with Section 30233 of the Coastal Act.

Resolution

As we have expressed to you throughout our discussions, we would like to work with you to resolve these issues amicably. One option that you may want to consider is agreeing to consent orders. Consent cease and desist and restoration orders would provide your with an opportunity to have more input into the process and timing of removal of the Unpermitted Drains and mitigation of the damages caused by installation and functioning of the Unpermitted Drains, and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the violation without any formal legal action. Another advantage to agreeing to a consent order is that it replaces the need for costly and time consuming litigation. Further, in a consent order proceeding, Commission staff will be promoting the agreement between the parties and staff, rather than addressing the violations through a disputed hearing, which could only highlight the violations of the Coastal Act for which the parties are responsible.

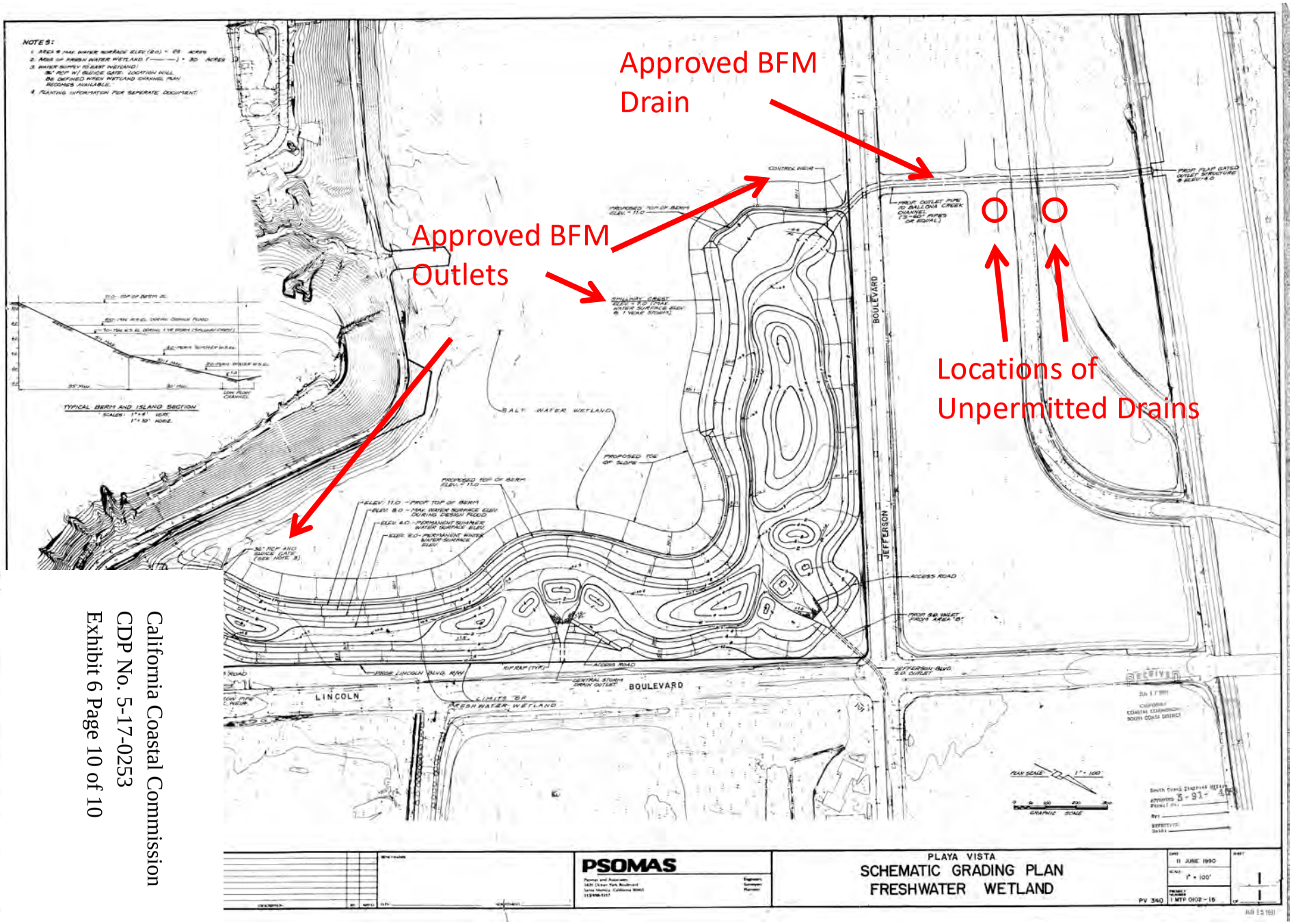
If you are interested in discussing the possibility of agreeing to consent orders, please contact me by no later than April 25, 2014 to discuss options to resolve this case. Staff would be happy to meet with you before the date noted above to discuss the steps necessary to resolve the unpermitted development described in this letter and to discuss the necessary scope of that resolution. Our goal is to resolve this situation amicably and as quickly as possible so that all parties can move forward. We greatly appreciate your time and input and look forward to discussing this matter further and working together on a consensual resolution. If you have any questions about this letter or the pending enforcement case, please do not hesitate to contact me as soon as possible at (562) 590-5071.

Sincerely,

Andrew Willis
Enforcement Analyst

cc: Rick Mayfield, Department of Fish and Wildlife
Michael Patonai, City of Los Angeles

Encl: Annotated plan



California Coastal Commission
CDP No. 5-17-0253
Exhibit 6 Page 10 of 10

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
VOICE (805) 585-1800
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WWW.COASTAL.CA.GOV

M E M O R A N D U M

FROM: Jonna D. Engel, Ph.D., Senior Ecologist

TO: Mandy Revell, Coastal Program Analyst

SUBJECT: Habitat Impacts Related to Unpermitted Drains in Ballona Wetlands Ecological Reserve

DATE: July 23, 2020

Documents Reviewed:

CDFW, South Coast Region. July 6, 2020. Draft Ballona Wetlands Ecological Reserve Willow Restoration Plan.

Burg, R. (CDFW, Environmental Program Manager, South Coast Region). February 11, 2019. Letter to Mandy Revell, Coastal Program Analyst. Re: Coastal Development Permit Application 5-18-0554.

Brody, R.C. (CDFW, Land Manager, Ballona Wetlands Ecological Reserve). December 18, 2018. Memorandum to: Concerned parties, Department of Fish and Wildlife. Subject: Sealing of Two Risers at the Ballona Wetlands Ecological Reserve.

E. Read and Associates, Inc. September 19, 2018. Addendum to Biological Evaluation of Two Drains Adjacent to Culver Boulevard. Letter Report to: Mr. Marc Huffman, Vice President of Planning and Entitlements.

PSOMAS. September 27, 2017. Hydrologic Analysis for Freshwater Outlet Drain Risers. Prepared for: Playa Capital Company, LLC.

E. Read and Associates, Inc. November 11, 2013. Biological Evaluation of Effects of Debris Drains on the Ballona Wetlands. Letter Report to: Mr. Marc Huffman, Vice President of Planning and Entitlements.

In approximately 1996 two debris drains were installed on either side of Culver Boulevard within the Ballona Wetlands in association with the freshwater marsh

(FWM) storm drain overflow outlet pipe (Figure 1). The debris drain risers were at the end of pipes connected to the FWM storm drain overlow outlet pipe (Figure 2). The debris drain risers and pipes were not permitted. I have been asked to evaluate the history and current conditions of the natural resources within the vicinity of the unpermitted debris drains. To do this I visited the site on February 1, 2019 and have reviewed aerial photos and the documents listed above.

E. Read and Assc, Inc. (2013) reviewed vegetation maps from 1991 and 2006 reports respectively, and found that according to the 1991 map, vegetation in the vicinity of the debris drains consisted of roadside upland weeds dominated by non-native invasive black mustard with the only natives being weedy species of wide occurrence. E. Read reported that the 2006 vegetation map concurred with the 1991 vegetation map. E. Read visited the site on November 8, 2013 and found that the vegetation on-the-ground was similar to that depicted on the 1991 and 2006 vegetation maps except that small patches of saltmarsh vegetation occurred around the debris drain riser on the south side of Culver Boulevard:

> *Vegetation in the area of the drain north of Culver Blvd continues to be dominated by non-native weedy species, as it was prior to drain construction. Vegetation in the area of the drain south of Culver Blvd is now a mix of weedy species and saltmarsh vegetation (pickleweed).*

In a 2018 addendum to the E. Read 2013 report, E. Read re-visited the site, surveyed the vegetation, and provided the following update regarding the area immediately around the north and south drains:

> *North Drain*
> *This area is occupied entirely by non-native weedy vegetation, primarily iceplant (Carpobrotus edulis), black mustard (Brassica nigra), and castor bean (Ricinus communis). This drain is about 15 feet north of Culver Boulevard below a stand of castor bean.* (Figure 3)
>
> *South Drain*
> *Unlike the north drain, this drain has patches of wetland-associated species growing in disturbed areas where black mustard is less prevalent. These species include pickleweed (Salicornia pacifica), spear oracle (Atriplex patula), and alkali mallow (Malvella leprosa).* (Figure 4)

During the February 1, 2019 site visit with Coastal Commission staff (Amber Dobson, Shannon Vaughn, and Mandy Revell) and CDFW staff (Richard Brody) I observed the physical and biological conditions surrounding the two drains. I found that the vegetation on-the-ground closely matched the descriptions of E. Read (2013 and 2018). The north drain was surrounded by upland non-native invasive species including iceplant, black mustard, and castor bean and the vegetation surrounding the south drain was dominated by black mustard with small patches of pickleweed and alkali mallow in close proximity to the drain riser. The area surrounding both drains was characterized by disturbed upland ruderal habitat. The area immediately

around the north drain was the same as the overall surrounding area; disturbed upland ruderal habitat. I observed that the north drain riser was not topographically situated to remove water from the area because it was not located in much of a perceptible depression. The area surrounding the south drain was in a slight depression that was enabling water to pond and I could envision water draining out of the area during and after big storms (Figure 5). My thought is that, along with residual salt in the soil, ponding storm water would facilitate and account for the occurrence of small patches of saltmarsh plants.

PSOMAS (Sept. 27, 2017) conducted a study "to review the hydrologic conditions surrounding, and function of, two debris risers that were installed on either side of Culver Boulevard west of Lincoln Boulevard; and, to determine to what extent the installation of these risers may have affected the surrounding hydrologic conditions prior to their installation." PSOMAS described the drainage area of each drain as follows:

> *North of Culver*
> *This debris riser is located at the upper end of a small drainage swale that runs between two higher areas. The swale is between the north side of the existing Culver Boulevard roadway, and the south edge of a dirt embankment that used to be the alignment of Culver Boulevard prior to the construction of the Ballona Creek in its current alignment. The elevation of the swale at the riser location is at an elevation of approximately 8.0 feet Above Mean Sea Level (AMSL) … Only a small area immediately west of the debris riser drains toward it. This area is approximately 200 square feet…*
>
> *South of Culver*
> *This debris riser is located in a flat area between the higher ground of Culver Boulevard and the Ballona Channel levee to the north, Lincoln Boulevard to the east, Jefferson Boulevard to the south, and the dirt over the FWM Outlet Drain structure to the west. The elevation of the soil ten to twenty feet away from the riser location is at an elevation of approximately 6.8 feet AMSL. Only a small area immediately west of the debris riser drains toward the riser. This area is approximately 300 to 400 square feet. The ground immediately around the debris riser is a about a foot lower than 6.8 feet AMSL…*

PSOMAS analyzed the hydrology of the area surrounding the drains using a modeling program ('Hydrocalc', approved for use by the City of Los Angeles) that generates output based on numerous field parameters including drainage basin area, length of flow path, slope of flow path, intensity of runoff, soil type, storm frequency, etc. etc. Based on their modeling results PSOMAS concluded that:

> *A. The elevations of the debris risers are set at an elevation higher than surrounding ground and potential storm water ponding and therefore have not affected the hydrology of the area in any appreciable way. 53 cu-ft from 122,600 cu-ft is negligible (0.04%).*

B. The elevations of the debris risers are set at an elevation higher than surrounding ground and potential storm water ponding and therefore have not affected groundwater elevations in any appreciable way.

C. Likewise, capping of the debris risers will have no appreciable effect on the hydrology or groundwater in the area.

While CDFW maintains, based on physical and biological evidence from several sources (including those described herein), that the debris drains were not significantly impacting the Ballona Wetlands Ecological Reserve (BWER) hydrologically or biologically, the Commission approved Coastal Development Permit 5-17-0253 to seal the drains. According to CDFW (Dec. 18, 2018 CDFW Letter):

Sealing the risers included applying epoxy sealant around the interior of each weep hole …, sleeving the interior of the risers to cover all weep holes, applying epoxy sealant to the rim of the risers and caps…, and epoxying and bolting down L-brackets in an abundance of caution against lid removal. These steps were taken to ensure a watertight seal at every level of installation (sleeving, capping, and bracketing).

Currently at issue is whether to remove the debris drain risers and pipes now or to leave them in place for removal during the future large-scale Ballona Wetlands restoration. CDFW proposes that the least ecologically damaging approach is to leave the drains in place for removal during the large-scale wetland restoration. In his February 11, 2019 letter R. Burg states:

To bring in heavy equipment and conduct trenching activities to remove the risers and lateral pipes would cause unnecessary and unwarranted impacts in BWER…
Both the South Coast marsh vole (Microtus califomicus stephensi), a CDFW species of special concern, and the imperiled wandering skipper (Panoquina errans) are known to occur within or adjacent to the project area. The project site is adjacent to or within potentially suitable or known occupied habitat for the burrowing owl (Athene cunicularia), south coast marsh vole (Microtus califomicus stephensi), wandering skipper (Panoquina errans), and San Bernardino ring-necked snake (Diadophis punctatus modestus)…

Removing the risers and lateral culverts now would duplicate impacts to BWER when the same area is disturbed as part of the Department's planned restoration of BWER...In addition, because the Department is not aware of any evidence that the currently sealed risers have any impact on the biology, hydrology, or any methane gas at BWER, the Department maintains its position that abandonment in place would be less impactful as compared to removing the risers and lateral pipes.

I concur with CDFW that the drains currently are not significantly impacting BWER based on the 1991 and 2006 vegetation maps, E. Read's biology surveys and reports, the PSOMAS hydrology report, current and historical aerial photographs, my observations, and the 2018 sealing and capping of the drain risers. Based on the location of the debris drains within the BWER, the presence of patches of saltmarsh species around the south drain riser, and the potential occupation of the area surrounding both drains by sensitive species (Feb. 11, 2019 CDFW Letter) including the South Coast marsh vole, burrowing owl, San Bernardino ring-necked snake, and wandering skipper, much of the area would likely rise to the level of environmentally sensitive habitat (ESHA) and wetland as defined by the Coastal Act[1]. Section 30240[2] and Section 30233[3] of the Coastal Act are ESHA and wetland policies, respectively, that significantly limit the type of allowable uses in these areas. Restoration is one of the few types of allowable uses. Given that removing the debris drain risers and pipes now would mean that the area would be disturbed twice and that I find that the drains are not currently adversely impacting BWER, I agree with CDFW that leaving the drains in place for future removal during the large-scale restoration is the most parsimonious and least environmentally damaging approach. In addition, CDFW has agreed to mitigate for the construction impacts caused by the installation of the drains and wetland impacts at the south drain riser site as described below. Furthermore, the EIR[4] for the BWER restoration acknowledges that the drain risers and pipes will be removed during the restoration project. Finally, if the drain risers and pipes are not required to be removed immediately pursuant to Coastal Development Permit No. 5-18-0554 , this permit includes a condition that the debris drain risers and pipes be removed during the BWER restoration project or within 5 years, whichever comes first.

I worked with Commission staff and CDFW staff on an appropriate mitigation acreage and approach for the drain installation and wetland impacts. We used the dimensions of the CDFW Wetlands Pipe Removal Project (Figure 2) for the

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[1] Section 30107.5: "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. Section 30121: "Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

[2] 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.

[3] 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…

[4] ESA. December 2019. Final Ballona Wetlands Restoration Project. Environmental Impact Report, State Clearing House No. 2012071090. Prepared for California Department of Fish and Wildlife, South Coast Region (Region 5).

north and south drains to calculate the mitigation area owed for the initial drain installation and the hydrology analysis report to estimate the mitigation area owed for wetland impacts at the south drain riser. We calculated the total mitigation area owed to be 0.53 acres[5].

During our February 1, 2019 site visit we discussed mitigation options and visited potential mitigation sites. We coalesced on a nearby area of BWER invaded by a near monoculture of non-native invasive pampas grass (*Cortaderia selloana*) adjacent to the freshwater marsh (Figures 6). Many considerations go into determining what constitutes an appropriate mitigation site; Is the mitigation area in-kind?, Is it proximal to the impact area?, Is it within the same watershed? Does it make sense regarding future development plans, etc. etc. In this case the mitigation site is located in habitat invaded by non-native invasive species, proximal to the impact site (apprx. 0.35 miles away), and within the BWER and watershed. While the drains are located primarily in upland habitat, much of which is fill from building Culver Boulevard, that is invaded by several non-native invasive species (described above), the mitigation site is lower in elevation and is invaded by non-native pampas grass that is within wetland habitat that supports arroyo willow (*Salix lasiolepis*) and saltmarsh species and numerous wildlife species including the state and federally endangered least Bell's vireo (*Vireo bellii pusillus*) (Figures 7 and 8).

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[5] The following calculations are based on CDFW's wetland pipe removal project exhibit (see Figure 2) and the PSOMAS hydrology report (Sept. 27, 2017):

Mitigation for Debris Drain and Pipe Installation
-North Culver Drain
Total area = 10,019 sq. ft. (non-native annual grassland/non-native invasive species)
Mitigation Ratio – 0.5:1, therefore, 10,019 X 0.5 = 5,009.5 sq. ft.
-South Culver Drain
Total area = 11,761 sq. ft. (8,761 sq. ft. of annual non-native grassland/non-native invasive species; 3,000 sq. ft. of wetland (saltmarsh))
Mitigation Ratio = 0.5:1 for annual non-native grassland/non-native invasive species, therefore, 8,761 X 0.5 = 4380.5 sq. ft.
Mitigation Ratio = 4:1 for wetland (saltmarsh), therefore, 3,000 X 4 = 12,000 sq. ft.
Total for Installation Impacts
Mitigation Area for initial debris drain and pipe installation = 5,009.5 + 4,380.5 + 12,000 = **21,390 sq**. ft.

Mitigation for Wetland (saltmarsh) Temporal Impacts
From PSOMAS hydrology report, 400 sq. ft. of wetland (saltmarsh) immediately around the South Culver debris drain riser was subject to impacts (subject to water removal).
Total for Temporal Impacts
Mitigation Ratio = 4:1 for wetlands, therefore 400 X 4 = **1600 sq. ft.**

Total Mitigation Required for Debris Drain and Pipe Impacts
21,390 sq. ft. + 1600 sq. ft. = 22,990 sq. ft. or **0.53 acres**

The mitigation site is a 0.6 acre (larger than the required 0.53 acres) area that was strategically chosen for its position regarding prevailing wind and as the outer boundary of pampas grass invasion in the area to facilitate invasive non-native species eradication, prevent re-invasion, and complement future large scale invasive non-native species removal efforts (Figure 9). Furthermore, the mitigation site is in an area of BWER that is outside the footprint of the large-scale restoration so it will not be disturbed in the future.

The mitigation plan (CDFW, July 6, 2020) involves removing pampas grass and any other invasive non-native species and planting native arroyo willow, mule fat (*Baccharis salicifolia*), and California blackberry (*Rubus ursinus*). The long-term goal of the mitigation is to sustain native vegetation and provide suitable habitat for native wildlife including the least Bell's vireo (CDFW, July 6, 2020). It is my professional opinion that the proposed mitigation is in-kind, proximal, practical, and compensates for the original installation of the debris drain risers and pipes and temporal wetland impacts at the south drain riser.

Figure 1. Exhibit A of E Read and Assc., Inc. September 19, 2018 Addendum showing the location of the drain risers on either side of Culver Boulevard and the area surveyed for vegetation mapping.

Figure 2. CDFW, Engineering Section, BWER Wetlands Pipe Removal Project exhibit (page number T -) that depicts the approximated areal extent of impact for removing the debris drain risers and pipes north and south of Culver Boulevard (that was used to calculate the mitigation acreage) and shows how the debris drain risers and pipes are connected with the freshwater marsh storm drain.

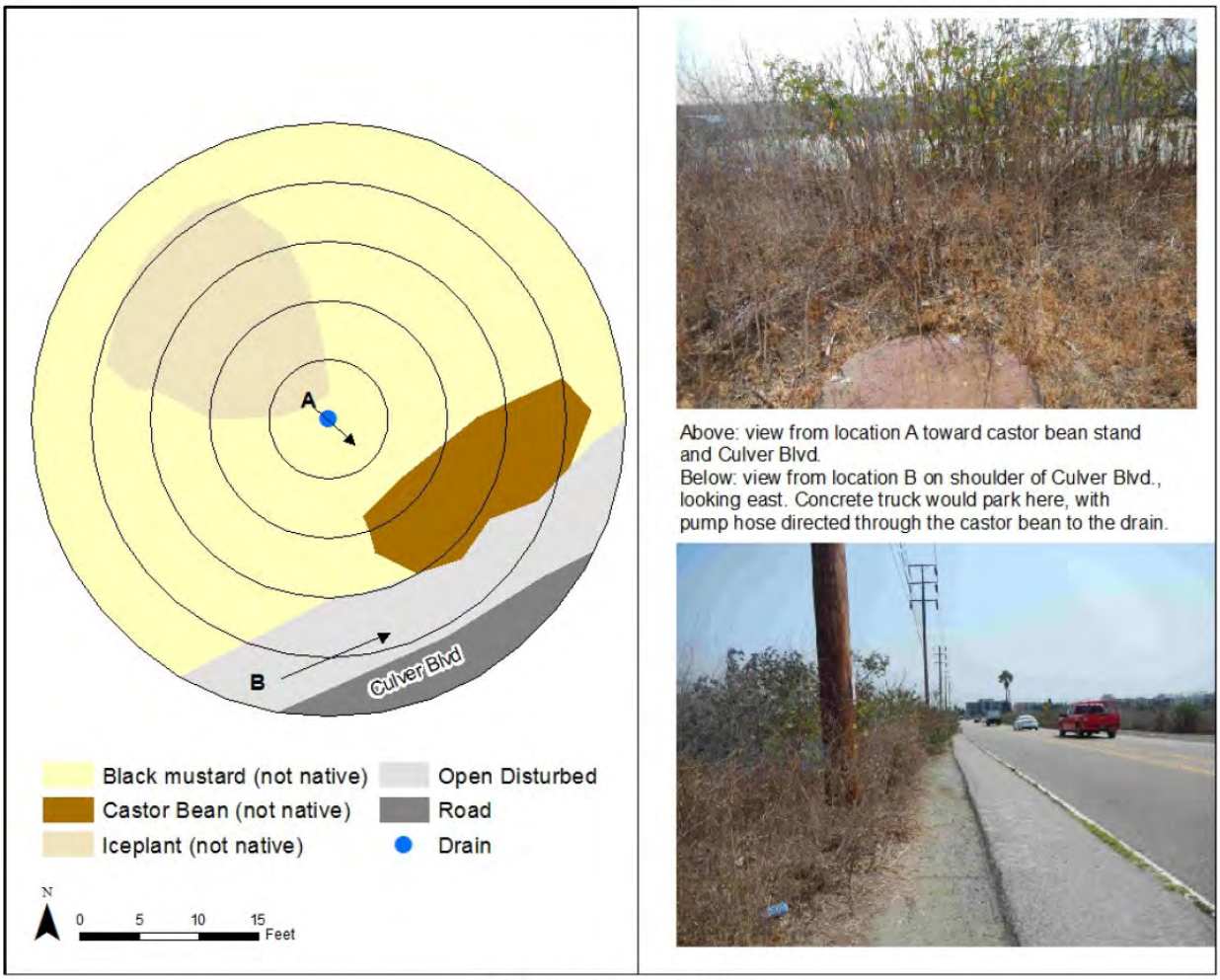
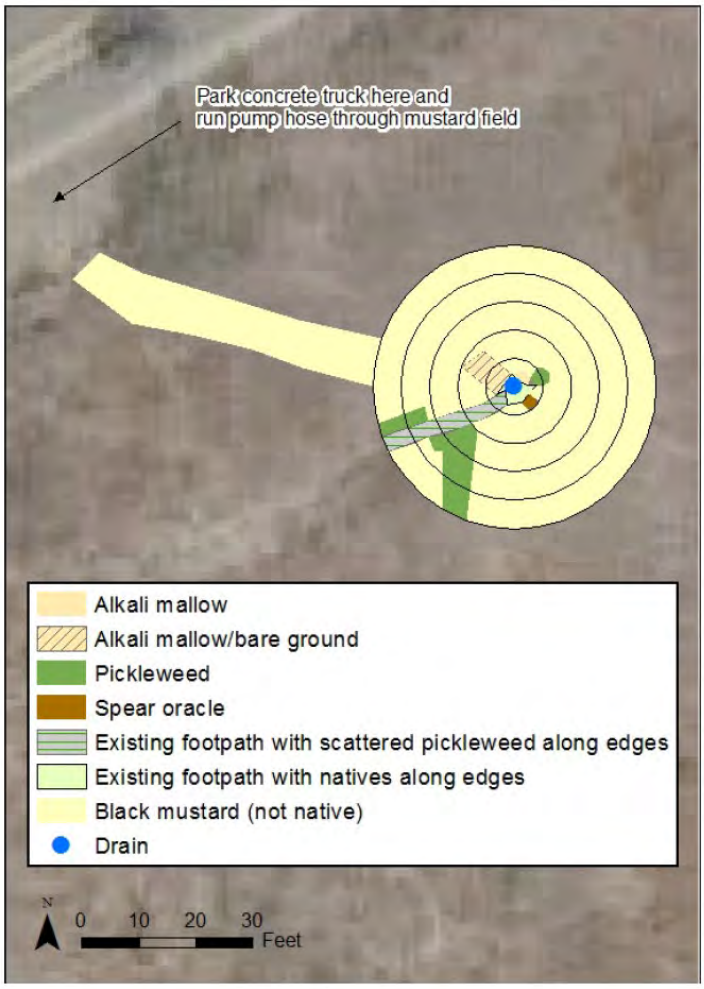


Figure 3. Exhibit B of E Read and Assc., Inc. September 19, 2018 Addendum. Survey of the Vegetation within a 25 foot radius around the North Culver Boulevard Drain. The vegetation is ruderal; comprised of non-native invasives including iceplant, mustard, and castor bean.



Above: view from drain toward Culver Blvd. Native alkali mallow, often associated with wetlands, surrounded by non-native mustard.
Below: existing footpath with native pickleweed, alkali mallow, and spear oracle along edges. Tape measure extends 25 ft from drain. Due to presence of wetland-associated species along footpath, personnel will be routed through mustard field north of the drain.

Exhibit C. South Drain Vegetation

Figure 4. Exhibit C of E Read and Assc., Inc. September 19, 2018 Addendum. Survey of the Vegetation within a 25 foot radius around the South Culver Boulevard Drain. The dominant vegetation is ruderal; comprised of mustard with a small portion of the area by salt marsh species including pickleweed and alkali mallow.

Figure 5. February 1, 2019 photograph of the south drain riser showing small amount of ponded water.

Figure 6. Figure 1, July 7, 2020 CDFW, BWER Willow Restoration Project. The left panel shows the proximal location of the drains and the pampas grass/willow mitigation area (approximately 0.35 acres apart). The right panel is a close up of the freshwater marsh and 0.6 acre pampas grass removal/willow restoration mitigation area outlined in yellow.

Figure 7. February 1, 2019 photograph facing east and showing the pampas grass mitigation site on the right and the freshwater marsh habitat on the left.

Figure 8. February 1, 2019 photograph facing north-west showing the pampas grass mitigation site on the left and the freshwater marsh habitat on the right.

Figure 9. Excerpt from Figure 1, July 7, 2020 CDFW, BWER Willow Restoration Project, depicting the 0.6 acre pampas grass removal/willow mitigation area outlined in yellow.

Figure 1. Restoration areas at Ballona Wetlands Ecological Reserve, Los Angeles County.

CDP 5-18-0554
Exhibit 8

SIERRA CLUB Airport-Marina Group

Mr. Andrew Willis
Southern California Enforcement Supervisor

Ms. Mandy Revell
Coastal Program Analyst

California Coastal Commission
South Coast District Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

May 11, 2020

Dear Mr. Willis and Ms. Revell:

The Sierra Club Airport Marina Group is requesting your support to investigate and take enforcement action per violations of the California Coastal Act occurring in the Ballona Wetlands Ecological Reserve (BWER). We are the regional group of the Sierra Club LA Chapter and are empowered with territorial jurisdiction of the BWER.

We are raising two critical issues brought to your attention in an April 27, 2020 email, "Subject: 2017 California Department of Fish & Wildlife, (CDFW) Betty Courtney Cites Harm to Ballona Due to Reduced Water Flow from Playa Vista | Grassroots Coalition."

In her email, Patricia McPherson, President of GC, highlights three points:

1. It is Grassroots Coalition's understanding that the CDP Application was to provide for the removal of the Drains within six months and was NOT to be an Application for the abandonment of the Drains. The current application includes abandonment as an equal option. Also Condition #4, the removal within a year of action has been dismissed by CDFW ,and instead ties the removal of the drains to CDFW's Plans to dig and dredge out Ballona.

The Coastal Commissioners voted unanimously and vigorously to disallow CDFW from applying the Application for the removal of the drains to CDFW's Plan for digging and dredging out Ballona Wetlands Ecological Reserve. CDFW has presented its Application in defiance of the orders of the California Coastal Commissioners. (See also Richard Burg's email to Mandy Revell of Oct. 11, 2019)

Furthermore, CDFW has acknowledged gross errors in their flood control design and specifications for their Plan, to which they have acknowledged it will likely take another two years before design corrections are made.

2. **During recent rains it has been documented that methane is being vented from at least one of the drains.** This demonstrates that the drains are not properly capped. And, that with the breech of the drain, both outgassing and draining of water is taking place.

The specific concern of volatile gases utilizing the Main Drain and the risers as secondary collector zones of oilfield gas was raised by GC and dismissed by CDFW and its partner Playa Capital (and consultants) during the Coastal Commission hearings.

3. The ongoing outgassing over Playa Vista's oil well - University City Syndicate has also been dismissed as a non-occurrence by CDFW vis a vis its Playa Vista/Brookfield leadership and consultants during Coastal Commission hearings.
The outgassing over University City Syndicate has since been reviewed by oil/gas experts including the City of LA's former expert-Exploration Technologies Inc. and the need for re-abandonment of the well has been brought to the attention of Cal Gem.

Sierra Club Airport-Marina Group reiterates the Grassroots Coalition position and believes CDFW to be in violation of its permit conditions to cap the drains and to properly submit an application to remove the drains and associated unpermitted development within a year.

Along with Grassroots Coalition, Sierra Club Airport-Marina Group wishes to alert the Coastal Commission enforcement staff so that they may take immediate action to remedy the situation.

This situation threatens the public health, safety, and well-being of the 700,000 residents who live above and in close proximity to the BWER, as well as the endangered ecosystems that CDFW is mandated to protect and preserve.

Please contact Sierra Club Airport-Marina Group if you have any questions or would like additional information.

Thank you for timely attention to this critical situation.

For Sierra Club Airport-Marina Group,

Kathy Knight
Chair, Executive Committee
Sierra Club Airport-Marina Group
1122 Oak St., Santa Monica, CA 90405

Kathy Knight
Chair – Executive Committee
(310) 613-1175
kathyknight66@gmail.com
SIERRA CLUB Airport-Marina Group

GRASSROOTS COALITION
ENVIRONMENTAL INTEGRITY & PUBLIC POLICY

Good Afternoon Mr. Willis and Ms. Revell,

New and potentially highly dangerous issues have arisen in Ballona Wetlands that relate both to the CAPPING OF THE UNPERMITTED DRAINS and the **Coastal Development Permit Application for removal of the drains infrastructure** from CDFW**.**

1. It is Grassroots Coalition's understanding that the CDP Application was to provide for the removal of the Drains within six months and was NOT to be an Application for the abandonment of the Drains. The current application includes abandonment as an equal option. Also Condition #4, the removal within a year of action has been dismissed by CDFW ,and instead ties the removal of the drains to CDFW's Plans to dig and dredge out Ballona.

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And, that with the breech of the drain, both outgassing and draining of water is taking place. The specific concern of volatile gases utilizing the Main Drain and the risers as
secondary collector zones of oilfield gas was raised by GC and dismissed by CDFW and its partner Playa Capital (and consultants) during the Coastal Commission hearings.

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The outgassing over University City Syndicate has since been reviewed by oil/gas experts including the City of LA's former expert-Exploration Technologies Inc. and the need for reabandonment of the well has been brought to the attention of Cal Gem.

Grassroots Coalition believes CDFW to be in violation of its permit conditions to cap the drains and to properly submit an application to remove the drains and associated unpermitted development within a year.

Grassroots Coalition submits this alert to Coastal Commission enforcement staff so that they may take immediate action to remedy the situation.

From: Burg, Richard@Wildlife <Richard.Burg@wildlife.ca.gov>
Sent: Friday, October 11, 2019 3:04 PM
To: Revell, Mandy@Coastal <Mandy.Revell@coastal.ca.gov>
Cc: Brody, Richard@Wildlife <Richard.Brody@wildlife.ca.gov>; Takei, Kevin@Wildlife <Kevin.Takei@wildlife.ca.gov>
Subject: CDP application 5-18-0554 design drawings

Good afternoon Mandy, I hope you have had a pleasant and productive week. I have attached a set of design drawings and engineers notes for the removal of the two risers and associated pipes. Though the plans pertain to removing the pipes as a stand-alone project, the Department wishes to emphasize it is not applying to remove the risers and pipes as a stand-alone project and is submitting the attached material as requested to complete its application. A hard copy of the attachment will be mailed on Monday (10/14). Please let me know if you have any questions or need any additional information. Have a great weekend!
Rich

Richard Burg
Environmental Program Manager
California Department of Fish and Wildlife
South Coast Region 5
3883 Ruffin Road
San Diego, CA 92123
T: (858) 467-4209
F: (858) 467-4239
"Only when the last tree has died and the last river poisoned and the last fish caught will we realize that we cannot eat money".
-North American Cree Indian

California Coastal Commission
CDP 5-18-0554
Exhibit 9 p. 5 of 6

Grassroots Coalition also seeks assistance from the California Coastal Commission Enforcement Staff to end the ongoing harm to Ballona from the persistent removal and throw-away of Ballona's groundwater and surface rainwater.

Harm to Ballona Wetland's hydrology is already established as stated in the CCC's letter to Playa Vista and CDFW on 4/11/14.

Additionally, the August 9, 2017 letter from Ms. Courtney of CDFW to Playa Vista leadership regarding Ballona hydrology, established that 'reduced volume of water has compromised the success of the mitigation project, limited the habitat function and value, and decreased fish and wildlife diversity." Ms. Courtney cited her concerns that Playa Vista-
Brookfield Residential Planning & Entitlements was not considering the beneficial uses of freshwater for existing fish, wildlife and plant resources.
(See letter link below)

http://www.saveballona.org/2017-california-department-fish-wildlife-cdfw-betty-courtney-cites-harm-ballona-due-reduced-water-flow-playa-vista.html

Please respond,

Patricia McPherson, Grassroots Coalition

State of California
Department of Fish and Wildlife

Memorandum

Date: July 17, 2020

To: File

From: Region 5 Staff

Subject: **Ballona Wetlands ER Drain Leakage**

On June 29, 2020, Patricia McPherson's attorney, Todd Cardiff, emailed Gary Tavetian, the Department's lawyer with the Office of the Attorney General, raising concerns about the two risers situated along Culver Blvd at Ballona Wetlands Ecological Reserve.
Mr. Cardiff wrote that the seal attaching the cap to the drain had split apart and that consequently water from pooling rainwater could enter the drain. He also wrote that Ms. McPherson "documented methane being vented from the drains. . .[d]uring the rains this last spring (March and April 2020)." Mr. Cardiff also wrote that "there is an explosive safety hazard caused by the drains."

The next day, on June 30, Mr. Cardiff sent Mr. Tavetian a "video of the drain outgassing."

We believe that Ms. McPherson previously sent the video to staff of the Coastal Commission and the Department. The Department believes the video shows the south riser covered in water with bubbles rising above what appears to be one area of the riser. According to Mr. Cardiff, the video was taken on April 10, 2020 at 10:21am.

On July 1, 2020, Mr. Tavetian, Mr. Cardiff, and Ms. McPherson discussed her concerns related to the risers. After the call, Mr. Cardiff emailed Mr. Tavetian a summary of the conversation. Mr. Cardiff listed nine items in his email including the following:

1. South drain is venting methane (measured by VOC meter)
2. Drains are serving as a collector site for methane
3. The seals are failing (both draining water and outgassing methane)
4. The risers and pipes are creating a safety hazard

During the conversation, Ms. McPherson and her attorney stated that Ms. McPherson could see a gap where the seal failed, and that the sealant used on the risers is not compatible with saltwater.
Following the conversation, the Department determined there were three issues to assess:

1. Is there a gap in the seal?
2. Is methane escaping from the gap?
3. Is the sealant used to cap the drains incompatible with saltwater?

The Department's current assessment of the three issues follows:

1. Is there a gap in the seal?

As mentioned above, Ms. McPherson indicated she saw a gap where the seal failed, but the Department could not find what Ms. McPherson saw. However, as explained more fully below, the

Department believes there is a small gap in the seal of the south riser. The Department considered resealing the gap but decided not to do so without further direction from the Coastal Commission or its staff.

On July 06, 2020 Department staff inspected the two risers situated along Culver Blvd. Visual observations and photos did not indicate any clear compromise of the seal. At approximately 0730 hrs., no airflow could be heard or otherwise detected from the south riser, but when inspected again at 1130 hrs. it was determined to have a small leak in a portion of the seal between the cap and the riser. When lightweight flagging tape was placed over the area where bubbling was shown on the video occurring during a flood event on April 10, 2020 at 1021 hrs., air flowing out from the seal was clearly evident (flagging was moving) and air flow could be heard when a razor blade was inserted in the gap. When airflow was rechecked at 1400 hrs. it was again undetectable through the seal at this same location.

The Department thinks that positive pressure pushing air outward through the seal is from a rising tide inside the main drain and is only detectable after the rising tide has enough time to create enough positive air pressure, pushing air out through the air hole. This is not an uncommon occurrence for air to escape through infrastructure around tidally influenced areas. Evidence to support that conclusion is that the AM high tide on 07/06/2020 started rising from a -1.1 feet (extreme low) at 0519 hrs. and peaked at 3.9 feet at 1155 hrs. The afternoon began falling at 1155 hrs. until 1627 hrs.

The above scenario would indicate that on the infrequent occasions when standing water gets high enough to pond above the capped south drain, only lasting for a short duration before percolation, some small amount of water may be draining. Thus, the small gap does not seem to negatively impact the Reserve in any measurable way. A very small amount of water entered the risers prior to them being capped.[1] Now, even less water (a small portion of a small portion) escapes through the gap in the seal because that gap is so small. Still, the Department is willing to investigate additional sealing products to add to the seal of both risers if the Commission desires.

There is one other factor to consider pertaining to resealing the drain. As noted above, Ms. McPherson claims that there is methane buildup that is escaping from the drain due to the leak. The Department does not have any information to corroborate Ms. McPherson's claim. But if her claim is true, then a small gap in the seal would help prevent any such buildup of methane.

2. Is methane escaping from the gap?

In response to Ms. McPherson's claim that methane is escaping from the leak in the seal, the Department requested that the Los Angeles county Fire Department Health Hazmat personnel measure for any harmful gas leaks. On July 09, 2020 from approximately 1145-1215 hrs., Department staff met Los Angeles County Fire Department Health Hazmat personnel (HazMat) at the north and south drains attempting to detect and/or measure any potential hazardous gas present and/or escaping from the risers.

The results of this testing were negative with Lower Explosive Limit (LEL) 0%, Volatile Organic Compounds (VOC) 0 ppb, Hydrogen Sulfide (H2S) 0 ppm, as read from a meter calibrated to methane. Measurements were taken directly in front of air felt flowing out of the small leak at the south drain (Figures 2) and from additional locations around the cap seal of the north drain. HazMat is preparing

[1] See "Riser Hydrologic Analysis for Freshwater Marsh Outlet Drain Risers," September 27, 2017, submitted to the Coastal Commission in 2017. Less than 1% of the water falling around the risers enters them (i.e. 0.04%).

written findings of these results and the Department hopes to receive a copy.

This finding is in stark contrast to the information provided by Mr. Cardiff and Ms. McPherson. Mr. Cardiff indicated that Ms. McPherson determined that methane was venting at the south riser measuring it with a VOC meter. Other than being informed that Ms. McPherson used an "INFICON Gas-Mate Combustible Gas Detector" on April 11, 2020, to take her measurement, the Department has not received any information as to what time of day the measurement was taken or what the measurement was.

A review of the manufacturer's website for INFICON Gas-Mate Combustible Gas Detector[2] indicates the device is for finding leaks, it does not appear to measure the quantity of gas (i.e. gas detector vs gas meter). Also, the device does not appear to differentiate between the type of gas it detects because it is used to detect the presence, or absence, of gases such as methane, natural gas, propane, butane, and other combustible gases. Moreover, the manufacturer's website indicates the meter is sensitive to detecting 5 ppm of methane. Methane is combustible at concentrations in air between its Lower Explosive or Flammable Limit of 50,000 parts per million by volume (ppmv) and upper explosive or flammable limit of 150,000 ppmv. It is unclear if the gas Grassroots Coalition detected was at a combustible volume.

Ultimately, the Department found the representation from Ms. McPherson to be inconclusive at best or simply inaccurate. The information does not indicate that the riser is venting methane. Assuming the riser is venting methane, the information does not indicate if that amount of methane is flammable. Nor does the information indicate if the volume of methane is any different than background levels of methane that are typically in an environment like the Ballona Reserve. Additionally, the information does not tell the Department if the venting is occurring nonstop or if the venting occurs sporadically. Intending to conduct its own tests, Department staff inquired as to the availability of gas meters in the Department but learned the Department does not use such equipment.

3. Is the sealant used to cap the drains incompatible with saltwater?

No, the sealant can be used in saltwater.

After the July 1 conversation, Mr. Cardiff responded to a follow-up to the question as to how it was determined the sealant was incompatible with saltwater, Mr. Cardiff emailed Mr. Tavetian that "[t]he material safety data sheet shows that Sikadur 31 is toxic to fish and aquatic invertebrates. In addition, potable water lacks the salinity and other factors that seawater contains. Every epoxy that is rated for marine uses specifies such fact in the product data sheet."

The Product Data Sheet indicates the sealant is suitable for potable water contact, but that means it is safe for use around drinking water; it does not mean it is not suitable for use near saltwater. More importantly, Department staff contacted the manufacturer's representative and was told that saltwater would not affect the sealant in any appreciable way different from freshwater and that the sealant can be used in both fresh and saltwater. The sealed caps come in direct contact with freshwater but have no direct contact with saltwater, and an indirect contact with saltwater in the form of possibly salt air at times. As far as toxicity, the material safety data sheet (MSDS) Mr. Cardiff referred to is for either Sikadur 31 Part A or Part B, which are pastes or gels and are tested as such. These two parts were mixed, as directed, and applied as a seal which rapidly turns to something like stone and has none of the same toxicity or characteristics of its separate parts. Mr. Cardiff is comparing

[2] https://products.inficon.com/en-us/nav-products/product/detail/gas-mate-combustible-gas-leak-detector/

the toxicity of something that was not used directly to seal the risers and had no chance of entering water in doses deemed toxic. As mentioned above, a de minimis amount of water enters the drains through a gap in the stone-like sealant, and only under very specific conditions, is tolerant to saltwater, and is suitable for contact with potable water.

Figure 1: HazMat Meter Reading Directly in Front of South Drain Leak (all zero, except 20.9% oxygen and 1 ppm ammonia)

Figure 2: South Drain Reading Directly in Front of Air Leak (water poured over to expose leak)

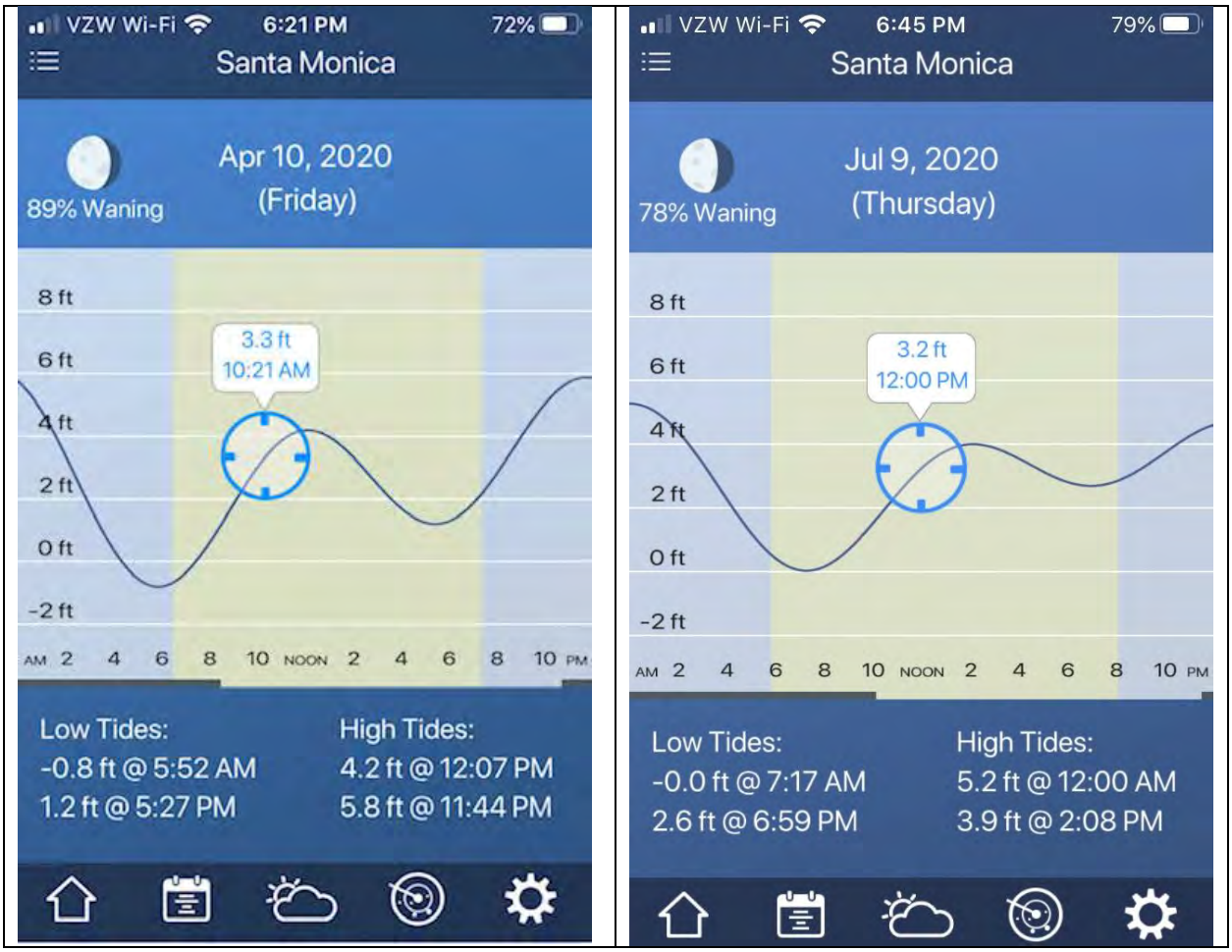

Figure 3: Tide Tables during Grassroots "detection" and HazMat Reading (both during rising tides)

Area with leak

Area with no leak

Figure 4: Pictures Meant to Show Difficulty in Finding Any Compromise in the Seal