

Comments LAMS4 Ballona TMDL Time Schedule Order due 4.27.2015

In is difficult to understand the reasoning behind this TSO.

FINAL BASIN PLAN AMENDMENT Report of March 19, 2013, states:

Source Analysis

The major contributors of flows and associated bacteria loading to Ballona Creek and Estuary, are dry- and wet-weather urban runoff discharges from the storm water conveyance system. **Run-off to Ballona Creek is regulated as a point source under the Los Angeles County MS4 Permit, the Caltrans Storm Water Permit, and the General Construction and Industrial Storm Water Permits. In addition to these regulated point sources, the Ballona Estuary receives input from the Del Rey Lagoon and Ballona Wetlands through connecting tide gates.**

Preliminary data suggest that the Ballona Wetlands are a sink for bacteria from Ballona Creek and it is therefore not considered a source in this TMDL. **Inputs to Ballona Estuary from Del Rey Lagoon, are considered non-point sources of bacterial contamination. This waterbody may be considered for a natural source exclusion if its contributing bacteria loads are determined to be as a result of wildlife in the area, as opposed to anthropogenic inputs. The TMDL will require a source identification study for the lagoon in order to apply the natural source exclusion.**

Other nonpoint sources in Ballona Creek and Estuary include natural sources from birds, waterfowl and other wildlife. Data do not currently exist to quantify the extent of the impact of wildlife on bacteria water quality in the Estuary.

COMMENTS:

What has happened since that approval to determine if natural source exclusion would be appropriate? Was data collected?

What is the status of the General Construction and Industrial Storm Water permits? Has data been reviewed to indicate a source point problem? Since the area is subject to Methane Monitoring, has de-watering occurred in those permits or is contamination entering the system?

Has the Del Rey Lagoon had a source identification study?

Have you contacted the Coastal Commission regarding the Unpermitted Drain into the Ballona Ecological Reserve and the discussed the consequences. The attached letter dated April 11, 2014 from Andrew Willis makes it clear that this problem distracts from

wetland and habitat function and the hydrological function of the area connected to the Unpermitted Drain.

With an Unpermitted Drain inhibiting the natural hydrology, would any compliance date be reasonable before that Unpermitted Drain is removed?

YOU STATE:

IMPLEMENTED WATERSHED CONTROL MEASURES

26. City of Los Angeles: *The City of Los Angeles has implemented the following pollution control measures in the Ballona Creek watershed since the effective date of the 2006*

Ballona Watershed Bacteria TMDL:

a. Mar Vista Recreation Center Storm Water BMP: *Completed in December 2009. This project retains, treats, and beneficially uses storm water within a 243-acre drainage area.*

b. Westside Park Rainwater Irrigation BMP: *Completed in August 2011. This project retains, treats, and beneficially uses urban runoff within a 5,000-acre area.*

c. *Installation of over 18,000 catchbasin retrofits, 10 trash netting systems, 5 hydrodynamic separators, and one outfall screen.*

d. *Street sweeping at a frequency of once per week or once per month, depending on location.*

e. *Catchbasin cleaning at a frequency of 3-4 times per year.*

f. *An outreach and education program to reduce pollutant sources and, specifically, to target dog owners to properly dispose of pet waste.*

g. *A Standard Urban Storm Water Mitigation Program (SUSMP), through which the city has reviewed over 2,347 applications and issued approximately 1,668 permits for new development and significant redevelopment to residential and commercial facilities within the Ballona Creek watershed to ensure that storm water runoff up to the 85th percentile, 24-hour water quality design volume is treated.*

h. *Adoption of a Low Impact Development (LID) Ordinance, which became effective in May 2012.*

COMMENTS:

We know of no data released on **Mar Vista Recreation Center Stormwater BMP** since its completion in November 2010 at a cost of \$4,556,186.

Proposition O, the main funding source, describes the project as follows:

Construction of a stormwater lift station, hydrodynamic separator, underground detention tank, chlorination facility, final effluent pump station, recirculation pump, and overflow piping at Mar Vista Park.

Please provide your analysis of data of outfall monitoring before and after the installation and the impact on the TMDL.

We know of no data released on **Westside Park Rainwater Irrigation** since its completion in August 2011 at a cost of \$8,304,589.

Proposition O, the main funding source, describes the project as follows:

Treat pollutants from on-site and off-site stormwater by installing a stormwater lift station, a subsurface irrigation system, and a dry creek with a perforated pipe for collecting and returning excess irrigation water to the existing storm drain.

Please provide your analysis of data of outfall monitoring before and after the installation and the impact on the TMDL.

Joyce Dillard
P.O. Box 31377
Los Angeles, CA 90031

Attachments:

Coastal Commission Finds Illegal Water Drainage Devices Are Destructive
Coastal Commission Letter 4.11.2014



BusinessWire ion Announces -- California Coastal Commission Finds Playa Vista's Illegal Water Drainage Devices Are Destructive to Ballona Wetlands Ecological Reserve in Los Angeles

California Coastal Commission Rejects Claims of No Wrongdoing by Playa Capital LLC, California Department of Fish & Wildlife, Santa Monica Bay Restoration Commission and Seeks Sanctions for Violations of the Coastal Act Upon Ballona Wetlands Ecological Reserve.

April 29, 2014 11:00 PM Eastern Daylight Time

LOS ANGELES--(BUSINESS WIRE)--Grassroots Coalition (GC), an organization that has long worked to protect the Ballona Wetlands and surrounding habitat along the Los Angeles coast, has received a copy of the April 11, 2014 California Coastal Commission (CCC) response and notification letter to Playa Capital Company LLC and copied to the California Department of Fish and Wildlife, regarding their continued violation of the Coastal Act by use of an unpermitted water drainage system in the Ballona Wetlands. The Unpermitted Drains were installed by Playa Capital LLC, the former landowner. The new landowner, the California Department of Fish & Wildlife (CDFW), has allowed the continued use of the Unpermitted Drains since 2004.

“raises new issues of conflict of interest as it appears clear that the very agencies charged with the protection and restoration of Ballona’s fragile freshwaters and seasonal wetland/upland ecosystems have been clandestinely working instead to take away Ballona’s freshwaters.”

Grassroots Coalition and other groups believe the \$25 million bond dollars, set aside exclusively for Ballona’s studies and restoration, at the time of the \$140 million dollar purchase of the wetlands by the State of California in 2004, has been spent without accountability and tangible results required within the language of the public bond dollars.

Environmental studies, undertaken since CDFW take-over of Ballona, have not included hydrology studies pertaining to Ballona’s freshwater aquifers or habitat and significantly, the studies excluded reference to the ongoing drainage of its freshwaters.

The CCC letter addresses the deleterious effects upon Ballona’s habitat, “the Unpermitted Drains direct water away from habitat areas within the Ballona Ecological Reserve, including a wetland area.”

In 2013 the CCC first sent a letter to Playa Capital LLC and copied the California Department of Fish & Wildlife contending Coastal Act violations for lack of permitting of the drainage systems. See [JULY 10, 2013, Los Angeles, CA Release: Illegal Water Drainage Devices Discovered in Ballona Wetlands Ecological Reserve](#)

Coastal Act Violation letter sent to Playa Capital LLC from California Coastal Commission.

After further investigation of Playa Capital LLC's claims of authorization for the Unpermitted Drains, the responsive CCC letter details their reasons for seeking sanctions at this time, "...the Unpermitted Drains do not provide any necessary flood protection," the letter states, referencing one of the rejected reasons that Playa Capital LLC and others gave for the drainage devices.

The CCC letter's detailed response emphasized ongoing harm to Ballona's ecosystem explaining, "the subject drains are located in the Ballona Ecological Reserve within natural habitat and a wetland that relies on water to function. Thus, the presence of the subject drains is clearly detrimental to natural habitat and the hydraulic functioning of the wetlands.

"Water is the main requirement for a functional wetland. ...The Unpermitted Drains disrupt water supply through direct fill and draining of a wetland and habitat within the reserve.

"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."

The April 11, 2014 CCC letter promotes the option of an agreement to Consent Orders which would avoid costly and time consuming litigation. Litigation, the CCC asserts that, "... could only highlight the violations of the Coastal Act for which the parties are responsible."

The CCC letter provides an April 25, 2014 deadline for response from the responsible parties to the CCC's offer. The CCC letter reasons that the consent cease and desist and restoration orders would provide the responsible parties more input into the process and timing of:

- removal of the Unpermitted Drains;
- mitigation of the damages caused by installation and functioning of the Unpermitted Drains; and
- potential negotiation of a penalty amount;

and noted 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."

For a copy of the California Coastal Commission letter dated April 11, 2014 please contact Jeanette Vosburg, Grassroots Coalition Outreach Coordinator at Jeanette@culverevents.com or go to GrassrootsCoalition.org website.

Patricia McPherson, president of Grassroots Coalition, notified the CCC in 2013 upon discovery of the drains and has been providing further investigative research pertaining to the drains and the parties involved.

"The July 11, 2013 email cited in the CCC letter," states McPherson, "raises new issues of conflict of interest as it appears clear that the very agencies charged with the protection and restoration of Ballona's fragile freshwaters and seasonal wetland/upland ecosystems have been clandestinely working instead to take away Ballona's freshwaters."

"In drought stricken California it is more important than ever to allow rain water to seep into the earth and protect the ground water of Ballona. It's a sad time for wildlife when purported lack of funding seems to be driving CDFW's destructive oversight of Ballona in order to receive money from private interests, including the

Annenberg Foundation who wants to put in a 46,000 sq ft dog and cat facility/ 'urban ecology' center." Joe Young, Sierra Club - Chair, Airport/Marina Group

"Once again the State agencies trusted to protect these natural wetlands are found colluding with corporate interest to the detriment of our Ballona Wetlands to facilitate their bottom line." Paul Ferrazzi, Director, Citizens Coalition For A Safe Community.

Contacts

Grassroots Coalition (GC)

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Photo of Ballona Wetlands looking west down Ballona Creek to the Ballona Wetlands and Santa Monica Bay. (Photo: Business Wire)

CALIFORNIA COASTAL COMMISSION

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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 than 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 well 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 shows 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 you 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

