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PROTECTING THE BALLONA WETLANDS IN WEST LOS ANGELES: A LOOK BACK AT THREE DECADES OF URBAN HABITAT ADVOCACY

CARLYLE W. HALL, JR.*

I. INTRODUCTION

Surrounded by densely populated West Los Angeles, the Ballona Wetlands are a remnant of a larger, flourishing coastal ecosystem that has been subjected to over a hundred years of urban assault. Ninety-eight percent of Los Angeles County's historic wetlands have been filled and developed, and more than a century of abuse and neglect have severely degraded the Ballona Wetlands. Nonetheless, the Ballona Wetlands remain "one of the most important pieces of wildlife habitat" in the region,¹ and they constitute the County's largest remaining coastal wetland.²

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¹ Nancy Hill-Holtzman, *Foes of Playa Vista Project Become its Friends*, L.A. TIMES, Oct. 21, 1990, articles.latimes.com/1990-10-21/news/we-4188_1_ballona-wetlands.

² See generally SANTA MONICA BAY RESTORATION COMM'N, BALLONA WETLANDS BASELINE ASSESSMENT (2011), available at www.santamonicabay.org/smbay/LinkClick.aspx?link=ballona%2FBR+Summary_FINAL.pdf&tabid=185; U. S. ENVTL. PROT. AGENCY, DRAFT TOTAL MAXIMUM DAILY LOADS FOR SEDIMENT AND INVASIVE EXOTIC VEGETATION (2011), available at www.epa.gov/region9/water/tmdl/ballona/tmdl_ballona-wetland.pdf [hereinafter USEPA, DRAFT TDML]; see also *Project Overview 1*, BALLONA WETLANDS RESTORATIONS PROJECT, available at www.santamonicabay.org/smbay/ProgramsProjects/HabitatRestorationProject/BallonaProjectOverview/tabid/184/Default.aspx (in the past 200 years, fifty-three percent of the 221 million acres of wetlands in the lower forty eight have been lost, with fully ninety-one percent lost in California, more than any other state); see generally T.E. DAHL, U.S. FISH AND WILDLIFE SERV., *Wetlands Losses in the United States 1780s to 1980s* (1990), available at www.fws.gov/wetlands/_documents/gSandT/NationalReports/WetlandsLossesUS1780sto1980s.pdf.

As might be expected when an important, severely endangered coastal natural resource located in a highly urbanized urban area is at stake, protecting the Ballona Wetlands has been fraught with controversy. But, unexpectedly, each of the major players has, over time, experienced reversals of position—and of fortune—not commonly encountered.

- On the development side, Howard Hughes’s Summa Corporation (Summa) initially proposed a massive development scheme (approved in 1984) to tear up the wetlands and replace them with a futuristic mini-city. These plans were abruptly terminated five years later when a pioneering, “green”-oriented developer, Maguire Thomas Partners (MTP), acquired the stalled project and proposed a completely redesigned, environmentally sustainable project. But the financial perils of the huge project eventually brought down MTP, and bankers took over the project in 1997. When their efforts to woo major Hollywood moguls to build a new motion picture studio at the site floundered and collapsed in 2003, the bankers chose to sell much of the land to the State and to build a substantially downsized project instead.
- On the environmental side, the Friends of Ballona Wetlands (Friends) led a lonely, yearlong litigation struggle against Summa’s original plan. When Summa sold the project to MTP in 1989, the Friends’ litigation settlement established them as MTP’s partner in designing and managing a new freshwater marsh and a restored, greatly expanded salt marsh. Ultimately, however, when MTP’s successors decided in 2003 to sell much of the project site to the State, the Friends’ role receded. Meanwhile, dissident environmental groups brought a lengthy series of lawsuits against the redesigned project, unsuccessfully trying to stop it in its entirety.
- On the government side, during the time Summa was spreading lavish political campaign contributions, local and regional officials were fully in the developer’s camp. But a strong political backlash ensued, and, when MTP abruptly announced its intention in 1989 to develop the project in an environmentally friendly manner, newly elected city officials and the city’s planning bureaucracy cooperated to bring about the new vision. Federal, state and regional bureaucracies joined local authorities to expedite the needed entitlement approvals and permits. But, when both MTP and its successors nonetheless ran out of money, the State purchased all of the key wetland areas in 2003 for \$139 million. Since then, however, the State has been unable to

aggressively plan and restore the wetlands.

This is a cautionary tale, but it offers hope for the future. When the State formulates its Ballona Wetlands restoration plan, the promise of revitalization to a natural, healthy coastal wetlands ecosystem may finally be realized.

II. THE BALLONA WETLANDS' HISTORY

Originally comprising about 2,120 acres,³ the Ballona Wetlands were formed thousands of years ago at the mouth of the Los Angeles River. Historically, the Los Angeles River switched its course several times a century, sometimes flowing along Ballona Creek into Santa Monica Bay at the Ballona Wetlands and sometimes flowing along the present Los Angeles River route into what is now Long Beach harbor. Complex, changing wetland conditions, including interchange of fresh and seawater at Ballona Creek's ocean outlet, provided a diverse and productive habitat, as well as abundant renewable water and food for the Tongva and other tribes of ancient humans.⁴

By the early 1800s, the Mexican government was making land grants in the area, including Augustine Machado's 14,000-acre "Rancho La Ballona" cattle ranch.⁵ Over time, the Ballona Wetlands were partially drained and developed into agricultural uses. In the early 20th century, as in much of West Los Angeles, oil was discovered in the wetlands; soon, the area was dotted with oil rigs. In the 1920s, developers unsuccessfully sought to develop the Ballona area for recreation and tourism, including hotels, a hunting lodge, boat and car racing facilities, and a fishing pier. Flooding from winter rains, strong tides and heavy seas washed them all away, and the wetlands became regarded as dangerous and prone to flooding.

Despite these early urban assaults, millions of birds continued their annual migration along the Pacific Flyway, stretching roughly 7,500 miles from Alaska to South America. About 300 bird species found the Ballona Wetlands to be a place where they could still survive in the rapidly urbanizing Los Angeles region. Great blue herons continued to

³ See CAL. NATURAL RES. AGENCY, BALLONA WETLANDS OVERVIEW AND SUMMARIES, available at resources.ca.gov/ballona_wetlands/ballona_wetlands_summaries.pdf. The Ballona Creek watershed drains approximately 130 square miles, over ten percent of which is now heavily urbanized. See USEPA, DRAFT TDML, *supra* note 2, at 15, 56.

⁴ *Ballona History*, FRIENDS OF BALLONA WETLANDS, www.ballonafriends.org/history.html.

⁵ *Id.* The origin of the name, "Ballona," is obscure. Some believe it to be from the Spanish word for whales ("ballena") which may, from time to time, have entered the inner Santa Monica Bay, while others think it was from Ballona, Spain, the original home of the Machado family.

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forage along Ballona Creek and nest in tall nearby trees,⁶ while endangered bird species, like the least tern and the Belding's savannah sparrow, made the Ballona Wetlands their home.

Then, between the 1930s and 1960s, urban development brought devastating blows to the habitat:

- In the 1930s, as a flood control measure, the Army Corps of Engineers dredged and cemented the banks and the bottom of the then-meandering Ballona Creek, so that the Creek's fresh water would pour directly into the open seas without first draining through the wetlands. Channel-related infrastructure also kept salt water from ocean tidal flows out of the wetlands.⁷
- In the 1940s, Howard Hughes, one of the twentieth century's most iconic business and aviation figures, acquired the 1,000-acre area that comprised much of the remaining wetlands and their undeveloped uplands.⁸ He developed an extensive airplane manufacturing facility in the parcel's eastern portion, constructing eleven buildings on about 150 acres. He built the enormous, now-historic Building 15, which is nearly six stories high and more than two and a half football fields long, as the largest self-supporting wooden structure in the world.⁹ There, the "Spruce Goose"—the largest airplane from wing-tip to wing-tip ever built—was constructed during World War II.¹⁰ Hughes also developed a 9,600-foot paved runway, almost two miles in length. By the 1950s, over 15,000 Hughes employees worked at the site.¹¹
- The 1960s brought Los Angeles County's construction of the mammoth Marina Del Rey project, which destroyed

⁶ *Ballona Habitat*, FRIENDS OF BALLONA WETLANDS, www.ballonafriends.org/habitat.html (last visited Sept. 21, 2012).

⁷ *Id.*

⁸ In his initial 1940 purchase, Hughes paid the modest sum of \$500,000 for about 380 acres. See also Jeffrey Rabin, *Playa Vista Plan Back on Track as Praise Replaces Hostility*, L.A. TIMES, Jan. 29, 1990, articles.latimes.com/1990-01-29/news/mn-770_1_westchester-bluffs.

⁹ PAUL FREEMAN, ABANDONED AND LITTLE KNOWN AIRFIELDS: HUGHES AIRPORT (2001), available at members.tripod.com/airfiels_freeman/CA/Airfields_CA_LA_W.htm [hereinafter HUGHES AIRPORT]; Robert Welkos, *Playa Vista Studios a New Annex for Hollywood?*, L.A. TIMES, June 21, 1994, articles.latimes.com/1994-06-21/entertainment/ca-6718_1_sound-stages; James Rainey, *Unscripted Twist Adds Film Studio to Playa Vista Project*, L.A. TIMES, Aug. 21, 1995, articles.latimes.com/1995-08-21/news/mn-37411_1_film-industry.

¹⁰ HUGHES AIRPORT, *supra* note 9. Built for the U.S. military in the midst of World War II and made principally from wood, the H-4 ("Hercules") spanned 320 feet from wingtip to wingtip. Only a single prototype was built. It was flown only once, in November 1947, by Hughes himself, who was a skilled pilot and had set many air flight world records.

¹¹ *Id.* Hughes continued farming operations on the western portions of the site.

approximately 900 acres of the northern wetlands for a vast boat marina and a housing/retail mixed-use development.¹² Approximately 2.5 million cubic yards of dredge spoils from the construction site were deposited throughout 138 acres of the adjacent 1,000-acre Hughes-owned parcel, thereby burying essentially all of what later became Playa Vista's "Area A" under approximately fifteen feet of fill.¹³

By 1980, the Ballona Wetlands ecosystem had basically crashed as a result of these drastic changes.¹⁴

III. SUMMA'S ORIGINAL PLAYA VISTA PLAN

After spending his last years as a reclusive, eccentric billionaire, Howard Hughes died in 1976. Considerable controversy, including at least one forged will, surrounded the disposition of his estate. Two years later, executives of Summa Corporation, which held title to Hughes' enterprises on the wetlands, announced their plans to develop the approximately 1,000-acre parcel, a site slightly bigger than New York City's Central Park.¹⁵ They proposed to wedge "Playa Vista," a \$1 billion mega-development—a "city within a city" with a population close to Hermosa Beach's 18,000—into the already congested West Los Angeles region. At the time, the Playa Vista site constituted the "largest parcel of developable urban land in the United States"¹⁶ and was "one of the nation's most valuable pieces of undeveloped urban land."¹⁷

¹² USEPA, DRAFT TDML, *supra* note 2, at 47 ("[a]ccommodating more than 5,000 privately owned boats, Marina Del Rey is the largest artificial small boat harbor in the United States").

¹³ Roger Vincent and Martha Groves, *L.A.'s Urban Model; After Years of Setbacks and Controversy, Playa Vista is Officially Open*, L.A. TIMES, Oct. 18, 2003. For a full discussion of the history of the Ballona Wetlands and the various urban infrastructure development activities that severely degraded it, see USEPA, DRAFT TDML, *supra* note 2, at 17-22, 29-60; DANIEL S. COOPER, AUDUBON BALLONA WETLANDS PROGRAM, BALLONA WETLANDS TRAINING MANUAL 17-24 (2004), available at cooperecological.com/ballonatrainingmanualnew.pdf [hereinafter BALLONA WETLANDS TRAINING MANUAL].

¹⁴ According to the U.S. EPA, as a result of urban development activities during this period, Ballona's vegetated habitat declined by sixty-three percent compared to historic levels to only 155 acres; intertidal channel habitat declined by twenty-five percent to nineteen acres; and saltpan habitat declined by eighty percent to twenty-two acres; while upland habitat increased by over 1400 percent to 291 acres. USEPA, DRAFT TDML, *supra* note 2, at 20, 34, 42.

¹⁵ Summa closed operations at the Hughes Airport in 1985. HUGHES AIRPORT, *supra* note 9.

¹⁶ Ron Russell, *Builder Offers Expanded Ballona Wetlands Plan*, L.A. TIMES, Jan. 3, 1995, articles.latimes.com/1995-01-03/local/me-15845_1_ballona-wetlands-restoration.

¹⁷ Bill Boyarsky, *Stakes Rise in Battle over Playa Vista Development*, L.A. TIMES, Mar. 1, 1988, articles.latimes.com/1988-03-01/local/me-144_1_summa. See also James Rainey, *Grand Jury Criticizes Summa, County Plans for Marina Del Rey*, L.A. TIMES, Mar. 24, 1985, articles.latimes.com/1985-03-24/news/we-30496_1_grand-jury; Rabin, *supra* note 8.

Accordingly, Summa's design would preserve only the essentially "unbuildable" wetlands.¹⁸

Shortly after Summa's announcement, Ruth Lansford, a nearby resident who had become interested in wetlands preservation, organized a group of citizens, environmentalists and scientists to form a non-profit environmental group, called "Friends of Ballona Wetlands" ("Friends"), to fight the proposed project and to preserve as much of the remaining wetlands as feasible.

Following a lavish public relations campaign that included almost \$200,000 in campaign contributions to the five Los Angeles County Supervisors, close to \$100,000 to Los Angeles City Council Members, and \$25,000 to Mayor Tom Bradley, Summa obtained the needed local entitlements to develop. In 1984, the California Coastal Commission (CCC) granted its approval.¹⁹ As approved, the Summa plan called for construction of 8,837 residential units; approximately six million square feet of commercial/office/light industrial uses, including a series of high rise office towers; about one million square feet of retail space, including a large regional shopping center; 2,400 hotel rooms; and a new forty-acre marina. Only about 170 acres of the 1000-acre parcel would be preserved as wetlands.²⁰

IV. THE FRIENDS' LITIGATION AND SETTLEMENT

In December 1984, Friends sued.²¹ Lansford had contacted attorneys from the Center for Law in the Public Interest (CLIPi), a non-profit public interest law firm, founded in 1971 as one of six such firms in the nation largely funded by the Ford Foundation. In its first decade, CLIPi had successfully fought several other mega-projects, and it offered its legal services to the Friends on a pro bono basis. CLIPi's complaint focused on alleged violations of the Coastal Act, contending that the CCC had improperly underestimated the amount of wetlands acreage meriting Coastal Act protection²² and unlawfully authorized construction

¹⁸ Summa proposed to locate condominiums, a golf course and an exclusive senior citizen housing project within the marshland area. Martha Groves, *A Patch of Blue at Playa Vista*, L.A. TIMES, Apr. 18, 2003, articles.latimes.com/2003/apr/18/local/me-marsh18.

¹⁹ Boyarsky, *Stakes Rise in Battle over Playa Vista Development*, *supra* note 17.

²⁰ See generally Rainey, *supra* note 17; James Rainey, *Residents File Suit*, L.A. TIMES, Jan. 2, 1986, articles.latimes.com/1986-01-02/news/we-23728_1_environmental-report; Boyarsky, *supra* note 17; Bill Boyarsky, *Joint Venture Formed to Develop Property in Playa Del Rey*, L.A. TIMES, Feb. 16, 1989, articles.latimes.com/1989-02-16/local/me-3636_1_develop-del-rey.

²¹ Friends of Ballona Wetlands v. The California Coastal Commission, No. C525 82, 1984 L.A. Super. Ct. Two other groups, the League for Coastal Protection and the League of Women Voters, and an individual, Mary Thomson, also joined as plaintiffs in the lawsuit.

²² See generally Rainey, *Residents File Suit*, *supra* note 20.

of a major road (the Falmouth Avenue Extension) through the wetlands. The lawsuit also alleged critical procedural errors, including a series of “behind closed doors” meetings between Summa’s representatives and CCC Commissioners and the CCC’s refusal to allow CLIPI to obtain discovery during the administrative proceedings about the ex parte meetings. The CCC, Los Angeles County and the City of Los Angeles, each of which had approved some portion of the Summa project entitlements, were named as defendants.

The litigation dragged on for nearly five years.²³ Meanwhile, Summa obtained Los Angeles City approval to build another project, called the “Howard Hughes Center,” on a nearby sixty-nine acre parcel to the east of Playa Vista that abutted the 405 Freeway. As with Playa Vista, approvals for the Howard Hughes Center authorized high-rise office towers up to twenty stories tall, and, as the project was being constructed, the general public saw a strange “space age” vision that Summa executives appeared to have for the area.²⁴ Momentum began to shift against Summa when, in June 1987, its champion on the Los Angeles City Council, Pat Russell, who represented the district in which the Playa Vista project was to be developed, suffered a stunning political defeat at the hands of Ruth Galanter, a former CCC Commissioner and close ally of Ruth Lansford, the head of the Friends.²⁵

An even more dramatic turn occurred in February 1989, when Nelson Rising of Maguire Thomas Partners (MTP) led a take over of the Summa project in which MTP became managing partner, while Summa was relegated to the role of landowner/passive investor.²⁶ A local attorney and businessman who had graduated from UCLA and UCLA School of Law, Rising had successfully guided the Library Square

²³ Besides the author, CLIPI attorneys who worked on the Ballona Wetlands litigation during its early years included Joel Reynolds, Fred Woocher and Lucas Guttentag. Another group, the Venice Town Council, also later filed suit in January 1986, after Los Angeles City annexed much of the 1,000-acre parcel and approved the environmental impact report (EIR) for the project’s traffic and sewage impacts. See Rainey, *Residents File Suit*, *supra* note 20.

²⁴ The Howard Hughes Center’s plan allowed 2.7 million square feet of office uses. Alan Citron, *Development Key Issue, Russell on Defensive*, L.A. TIMES, Feb. 12, 1987, articles.latimes.com/1987-02-12/news/we-2772_1_development-policies.

²⁵ Frank Clifford and Victor Merina, *Galanter, Holden Win in Council Voting*, L.A. TIMES, June 3, 1987, articles.latimes.com/print/1987-06-03/news/mn-2700_1_public-office. By helping to convince MTP executives that its best interests lay in reaching a mutual accommodation with the Friends, Council member Galanter played a crucial role in bringing about the Friends/MTP settlement. She also pressed MTP to include hundreds of affordable housing units in the Playa Vista project.

²⁶ John Lawrence, *Nice Profits From A Better City Life*, FORTUNE MAG., Oct. 9, 1989, money.cnn.com/magazines/fortune/fortune_archive/1989/10/09/72557/index.htm. At the time, MTP was the largest commercial developer in the United States in terms of billings for commercial construction.

project in downtown Los Angeles. To much public acclaim, this project restored the City's historic central public library in return for development approvals and credits on the seventy-three story First Interstate World Center tower (the tallest building west of the Mississippi River) and the fifty-two story Gas Company building.²⁷

Whereas Summa favored a behind-closed-doors, campaign-contributions-based planning style, Rising advocated transparent, environmentally sensitive planning, along with extensive outreach to neighboring residents and communities. Before the term "smart growth" became an important term in the planning lexicon, Rising envisioned a sustainable Playa Vista as "something completely different in urban design in Southern California." A "campus-style" Playa Vista would employ a predominately low-rise, two to four-story "Santa Barbara Spanish" architectural design. The redesigned project would have a more suitable job/housing balance, a variety of features to encourage walking and discourage automobile use, and a public image of preserving, not trashing, the environment.²⁸ Importantly, Rising saw a strong, emerging market among potential buyers and lessees for this sort of development.²⁹

Shortly after MTP took over Playa Vista, the City of Los Angeles brought several motions in early 1989 designed to bring the litigation to a conclusion without a trial. Superior Court Judge Miriam Vogel listened to the arguments and indicated that she gave some weight to the City's contentions. Jo Powe, who was opposing the motions on behalf of the Friends, informed the Court that MTP had recently taken over the project. Because MTP was considering substantial project revisions that might be agreeable to the Friends,³⁰ she suggested that it might be

²⁷ *Id.*; Boyarsky, *Joint Venture Formed to Develop Property in Playa Del Rey*, *supra* note 20.

²⁸ No residential structures would be taller than 6 stories, and no commercial buildings would exceed 10 stories, lower than the nearby Westchester bluffs. Boyarsky, *Joint Venture Formed to Develop Property in Playa Del Rey*, *supra* note 20. Rising explained that Playa Vista would have "neighborhoods where everyone is within six minutes walking distance of a town center. People will not need their cars to get from one place to another." Julio Moran, *Scaled-Back Playa Vista Building Plan Is Released*, L.A. TIMES, June 30, 1989, articles.latimes.com/1989-06-30/local/me-2844_1_retail-space-open-space-mid-rise. Los Angeles City Council Member Ruth Galanter later described the revised Playa Vista project's design as being "as close to smart growth as you'll find anywhere in this country." James Sterngold, *A Little Piece of Los Angeles Is a Wide Open Battleground*, N.Y. TIMES, Aug. 18, 2001, www.nytimes.com/2001/08/18/us/a-little-piece-of-los-angeles-is-a-wide-open-battleground.html?pagewanted=all&src=pm.

²⁹ See generally Matthew Parlow, *Greenwashed?: Developers, Environmental Consciousness and the Case of Playa Vista*, 35 B.C. ENVTL. AFF. L. REV. 513 (2008), available at lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1047&context=ealr (discussing MTP's "proactively green" embrace of sustainable development principles as a "model of environmental consciousness").

³⁰ Summa had recently resolved payment of its estate taxes owed to California by transferring Area A to the State, while retaining an option to repurchase it and build it out as part of the Playa Vista development. Powe pointed out to Judge Vogel that the new State Controller, Grey

appropriate to refer the case to a mandatory settlement conference before the Court made its rulings. Judge Vogel did exactly that.

Nelson Rising and I both attended that Court argument. We knew each other well. In fact, by coincidence, almost two decades earlier in 1971, Rising had raised the critical initial seed money that enabled me and other CLIPI co-founders to gather the other monies needed to start CLIPI. Rising had also served on CLIPI's board of trustees during its first several years, and we had grown to trust and respect each other. Following the Court argument, we promptly launched a series of settlement discussions.

By the end of 1989, the Friends and MTP had agreed on the basic parameters of the settlement. As a Friends' spokesperson later emphasized, "[o]ur issue is not the development per se. It is the wetlands and whether or not the proposed development will have an adverse impact on the wetlands."³¹ From the Friends' standpoint, the settlement would accomplish their most important objectives:

- The wetlands area to be preserved would expand to 270 acres. Besides preserving the entire area of salt marsh that the Friends' experts delineated, MTP would spend about \$18 million to construct a new twenty-five acre freshwater marsh and a twenty-six acre riparian corridor leading to it. MTP would have responsibility in perpetuity for maintaining the desired water quality standards in the newly constructed freshwater marsh.³² This new freshwater marsh component would serve as flood control for the development project, but it would also provide critical new habitat for birds and wildlife, while filtering the fresh water runoff before it flowed into the salt marsh and then drained to the sea.³³
- The salt marsh would be restored to a fully functioning natural habitat. In consultation with their respective expert advisors, the

Davis, whose office controlled the newly transferred parcel, had also opened discussions with MTP and the Friends about facilitating a more environmentally acceptable Playa Vista redesign.

³¹ Greg Krikorian, *Hearing Reveals Growing Optimism About Playa Vista Project*, L.A. TIMES, Dec. 6, 1992, articles.latimes.com/1992-12-06/local/me-3327_1_ruth-lansford.

³² As part of the settlement, MTP agreed to the California Coastal Commission's imposing numerous Special Conditions on its construction of the freshwater marsh, which required MTP to demonstrate that the freshwater marsh was successfully established and that it met specified biological and water quality standards that substantially exceeded baseline conditions. Additionally, MTP had to devise financing and institutional mechanisms that would ensure the freshwater marsh met the specified standards in perpetuity.

³³ See Rabin, *supra* note 8; Jeffrey Rabin, *Workshops Let Residents Air Views on Playa Vista Project*, L.A. TIMES, July 15, 1990, articles.latimes.com/1990-07-15/local/me-192_1_westchester-bluffs/2; Russell, *supra* note 16; Groves, *supra* note 18.

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Friends and MTP would jointly plan the salt marsh restoration. MTP committed \$10 million (which later increased to \$13 million) to complete the restoration and to establish a long-term maintenance fund.³⁴ Experts for both the Friends and MTP agreed that this would be an adequate sum for a mid-tidal restoration, in which ocean waters would reach much of the marsh through ordinary tidal action.³⁵ The fifty-one acre freshwater marsh construction, the 191-acre salt marsh restoration, as well as ninety acres of bluff restoration on the project's southern edge and eight acres of sand dunes to be restored along the western edge, would total approximately 340 acres of new and restored habitat.³⁶

- Because the ongoing lack of fresh and salt water continued to degrade the marsh, MTP was required to construct the freshwater marsh in the near-term and not leave it as an afterthought. Accordingly, the settlement precluded MTP from developing Phase One of the project until the freshwater marsh construction was approved and underway, while it could not start developing Phase Two until the salt marsh restoration was approved and underway.
- More immediately, in order to help prevent further rapid wetlands deterioration, MTP committed \$750,000 to fund an interim restoration program. This money would fund redesign and installation of new flap gates between the Ballona Creek channel and the salt marsh, allowing a more adequate interim supply of seawater to enter the salt marsh. Once the freshwater marsh construction was completed, the salt marsh would then

³⁴ Russell, *supra* note 16.

³⁵ At the time of the settlement, the Friends and MTP viewed a "full tidal" salt marsh restoration (with saltwater flows in the range of six feet) as optimal, but they also considered a "mid-tidal" restoration (with culverts from Ballona Creek channel allowing a lesser range in tidal action) as a desirable and attainable goal. Full-tidal flows would be considerably more costly and difficult to achieve, because existing public and private infrastructure and development in and around the wetlands would have to be removed or modified. Accordingly, the settlement provided that MTP would use its "best efforts" to raise an additional \$30 million, the estimated cost of a full tidal restoration within Area B. The Friends and MTP viewed numerous off-site mitigation programs of the Ports of Los Angeles and Long Beach as feasible sources of funding for the full-tidal option. See James Rainey, *Galanter Opponents See A Backlash*, L.A. TIMES, Feb. 17, 1991, articles.latimes.com/1991-02-17/news/we-1756_1_6th-district; Russell, *supra* note 16. Michael Josselyn, a highly respected wetlands biologist, served as the Friends' primary wetlands consultant. Architect Douglas Gardener was MTP's project manager, and Jacob Lipa and Sharon Lockhart were among its primary wetlands consultants. All are outstanding practitioners in their fields. The settlement provided that MTP would pay the Friends' costs of retaining expert consultants and attorneys to assist in designing the wetlands restoration and generally implementing the settlement.

³⁶ Russell, *supra* note 16.

receive both freshwater and saltwater flows, even before full restoration was accomplished. Additionally, the interim funding would pay for restoration of the eight-acre sand dunes area at the wetlands' western edge.

- The Falmouth Avenue Extension, which would have served as an essential traffic mitigation measure for Summa's project design but would have bisected the wetlands, would now be eliminated.
- The Court would appoint a referee to oversee the settlement, enforce timely compliance with all schedules, and resolve any disputes.³⁷
- Presciently, the Friends also insisted that the settlement provisions would "run with the land" and bind any MTP successors.

As MTP "drastically altered" the Playa Vista project, its own goals were to meet the Friends' environmental demands, while also providing for ample development and profit from build out of what would still be one of the biggest building projects in the city's history.³⁸ From MTP's point of view, the settlement would accomplish those objectives:

- In order to shift the development from the expanded wetlands, about 2,300 residential units and 70,000 square feet of retail space would be relocated from Area B (the 338-acre portion of the parcel west of Lincoln Boulevard and south of Culver Boulevard in which the principal wetlands were located) to Area D (the large 545-acre area east of Lincoln Blvd. and south of the Ballona Creek channel, which included the areas previously developed by Hughes). A six-story senior citizen housing complex planned for Area B's west corner would be eliminated. Together, these changes would preserve another forty-seven acres of Area B's marshland.
- By eliminating the Falmouth Avenue Extension, MTP would lose a considerable number of traffic mitigation credits. To gain equivalent credits, MTP would reduce retail space to about 595,000 square feet by eliminating a proposed 250,000 square feet regional shopping center, and it would lower the commercial/office space to about five million square feet, by

³⁷ E. Clement Shute, an environmental public interest lawyer based in San Francisco, became the first referee and served for sixteen years until 2006. At that time, Dan Selmi, a professor of land use and environmental law at Loyola law school in Los Angeles, was appointed successor referee.

³⁸ Rabin, *supra* note 8.

deleting approximately one million square feet of commercial high-rise towers. To compensate for these reductions, the total number of residential units would increase from almost 9,000 units to about 12,000 units.³⁹ The Revised Playa Vista Plan would house approximately 24,000 residents and provide 20,000 jobs along with shops, offices and hotels.⁴⁰

Although the proposed settlement would accomplish most, but not all, of the Friends' goals, two problems led to substantial internal debate within the Friends. First, MTP wanted the Friends to publicly support its development plans, which, MTP argued, would be generating the funds needed to accomplish the wetlands restoration. The Friends felt they could not do this, because the development would have other negative impacts (e.g., generating large amounts of traffic in an already congested region). Further, because the impacts that Playa Vista's development could have on the wetlands restoration—as well as ways to mitigate those impacts—had not yet been fully evaluated in a project EIR, the Friends felt it necessary to reserve their rights to comment on the draft EIR. They also insisted that their public support of the development project be limited to stating simply that they did not believe it would have an adverse impact on the wetlands and, if they determined it would have an adverse wetlands impact, they could withdraw any support.

Second, the Friends wanted all of the development proposed for Area B, the 338-acre portion that included the principal wetlands, to be relocated or eliminated. MTP, however, insisted that approximately 1,800 dwelling units proposed for development on fifty-four acres in the northeast corner of Area B could not economically be relocated or eliminated.⁴¹ After much internal debate, the Friends concluded that the Project EIR would later provide the needed analysis of the impacts from

³⁹ Moran, *supra* note 28; Rabin, *supra* note 8; Jeffrey Rabin, *Playa Vista Developers Plan Public Workshop*, L.A. TIMES, July 8, 1990, articles.latimes.com/1990-07-08/news/we-362_1_public-workshops. Pursuant to MTP's discussions with Councilmember Galanter, approximately 15 percent of the residential units would be affordable to low and moderate-income families. Playa Vista characterized its affordable housing component as "unprecedented," "the most far-reaching commitment of any project in Los Angeles history." Kenneth Agid, *Playa Vista Project Provides Urban Solutions for L.A.*, L.A. TIMES, Mar. 20, 2000, articles.latimes.com/2000/mar/20/entertainment/ca-10683.

⁴⁰ Moran, *supra* note 28; Rabin, *Workshops Let Residents Air Views on Playa Vista Project*, *supra* note 33; James Rainey, *Galanter Opponents See a Backlash*, L.A. TIMES, Feb. 17, 1991, articles.latimes.com/1991-02-17/news/we-1756_1_6th-district; Jeffrey Rabin, *Report Outlines Impact of Huge Playa Vista Project*, L.A. TIMES, Oct. 2, 1992, articles.latimes.com/1992-10-02/news/mn-336_1_impact-reports.

⁴¹ See generally Jeffrey Rabin, *Battle Over Developing Wetlands is Nearing End*, L.A. TIMES, Dec. 11, 1989, articles.latimes.com/1989-12-11/local/me-95_1_ballona-wetlands.

this nearby development on the wetlands. If the impacts were minor, they could be mitigated; if they turned out to be major, the Friends could withdraw their support and demand that the City impose appropriate conditions to address those impacts.

On October 18, 1990, the Friends and MTP executed the settlement agreement calling for the Revised Playa Vista Plan. At the press conference held later that day, MTP's Rising asserted that the settlement removed a "major roadblock to Playa Vista's development." The Friends' Lansford said it showed that "you can fight City Hall." She praised MTP's "uniquely cooperative" approach to the Playa Vista redesign.⁴² But much more work remained. In particular, environmental impact studies under both CEQA and NEPA would have to evaluate the impacts of both the development complex and the wetlands restoration effort. Following approvals of the needed entitlements, estimated to occur by 1992, MTP envisioned that it could complete project build-out in eight to ten years, or about 2002.⁴³

During the next two decades, however, Playa Vista's ownership would again change hands, and the developer's leadership team would change several times. Ultimately, much of the 1,000-acre Playa Vista site would be sold to the State.

V. INITIAL EFFORTS TO DEVELOP PLAYA VISTA CONSISTENT WITH THE REVISED PLAN

During the next four years (1990-94), MTP worked closely with Los Angeles City planners to study the overall environmental impacts of the Revised Playa Vista Plan. In late 1992, a 28,000 page administrative draft of the environmental impact report (EIR) for the entire Revised Playa Vista Plan was made public. The administrative draft EIR noted that, even after the settlement-related revisions, Playa Vista would remain "one of the biggest [developments] in Los Angeles history."⁴⁴ Indeed, the cost of full project build-out had risen to an estimated \$7 billion.⁴⁵

⁴² Hill-Holtzman, *supra* note 1.

⁴³ Rabin, *Workshops Let Residents Air Views on Playa Vista Project*, *supra* note 33.

⁴⁴ Rabin, *Report Outlines Impacts of Huge Playa Vista Project*, *supra* note 40; Jeffrey Rabin, *Playa Vista Report Raises New Questions*, L.A. TIMES, Jan. 10, 1993, articles.latimes.com/1993-01-10/news/we-1710_1_environmental-impact.

⁴⁵ The total project was estimated to create roughly 137,000 jobs and pump nearly \$13 billion into the local economy over its ten-year build-out. Ron Russell, *Report Cites Benefits of Playa Vista Project*, L.A. TIMES, July 26, 1993, articles.latimes.com/1993-07-26/local/me-17134_1_developers-and-opponents.

A separate 2,000 page EIR more specifically analyzed the impacts of MTP's proposed "Phase One" development, which encompassed Area D's eastern portion, utilized for forty years by the Hughes airplane manufacturing facilities, and its western portion bordering Lincoln Boulevard. The Phase One EIR concluded that the proposed Area D development would not have an adverse impact on restoration of the wetlands.⁴⁶ In September 1993, the City Council approved the Phase One EIR and project entitlements, including the freshwater marsh. Under the Phase One approvals, MTP could build about one quarter of the overall proposed project: 3,246 dwelling units; one-and-a-quarter million square feet of commercial/office/light industrial uses; and 35,000 square feet of neighborhood serving retail stores.⁴⁷

Concurrently, in order to take more immediate steps to stop the ongoing degradation of the wetlands caused by lack of fresh and seawater, the Friends and MTP made the interim restoration measures a top priority. After the Friends concurred in the design of the freshwater marsh system, MTP obtained a permit from the Army Corps of Engineers that authorized the necessary dredging and filling for the freshwater marsh system and began to construct it, thereby providing a potentially abundant freshwater supply for the marsh.⁴⁸ The Friends and MTP also began examining options to replace the rusty flap gates at the Ballona Creek barrier with a new tidal gate system that would allow muted tidal flows of seawater to return to the salt marsh on an interim basis. Additionally, utilizing the volunteer efforts of hundreds of participants, the Friends launched a dunes restoration program along the western edge of Area B.

Throughout this four-year period, the Friends and MTP also worked hard to design the long-term salt marsh restoration and to obtain the agreement of the other parties to sign on to the overall parameters of the Friends/MTP settlement.⁴⁹ Meanwhile, MTP's Nelson Rising spent

⁴⁶ Krikorian, *supra* note 31.

⁴⁷ See Rabin, *Playa Vista Report Raises New Questions*, *supra* note 44. MTP also began negotiations in the early 1990s to obtain a small 1.8-acre strip of County-owned land that would give access to the ocean to Area A, the 138-acre quadrant where MTP still proposed to construct a marina and hotel development. Although located near the ocean and on the Ballona Creek channel, no portion of Playa Vista actually has direct access to the ocean. South of Ballona Creek, the Del Rey Lagoon and several dozen long-existing homes separate Area B's wetlands and dunes from the ocean. North of the Creek, a narrow strip of County-owned land, containing a lifeguard stand and sheriff's facility, separates Area A from the ocean.

⁴⁸ Ironically, several dissident project opponent groups filed a lawsuit seeking to block construction of the freshwater marsh. The Ninth Circuit flatly rejected the dissidents' claims. See *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F. 3d 1105 (9th Cir. 2000).

⁴⁹ The stipulated settlement, executed by all parties and entitled "Stipulation for Entry of Judgment," was filed with the Superior Court on June 7, 1994.

much of his time flying around the United States and the world seeking additional project financing for the Playa Vista build out. He encountered substantial difficulties, however, partly because the world economy was in a decline that hit Southern California's real estate market especially hard, and partly because the Playa Vista project was enormous in scope, risky to bring to market, and front loaded with costly infrastructure and other development costs, while profit was unlikely to be generated for many years.⁵⁰ By the end of 1994, Rising decided to assume the position as CEO of Catellus Development Corporation, which, as the successor to the Southern Pacific Railroad's non-rail assets, was the largest private landowner in California. For the next eleven years, Rising devoted himself to designing and overseeing San Francisco's highly successful Mission Bay mixed-use development project.

MTP hired Peter Denniston, a former Irvine Company official, to replace Rising. Starting in the 1990s, Denniston supported two significant changes in the Revised Playa Vista Plan, one that the Friends encouraged, and one that they questioned.

First, Denniston proposed to replace the Area A boat marina development with a large recreational lagoon that would receive tidal flows from the ocean. Overlooking the new lagoon, MTP would build the hotel and condominium development that the Revised Playa Vista Plan allowed, and it would also restore additional Area A land to natural habitat. Although the Friends had many concerns about the details, they welcomed the idea of replacing the marina with a recreational lagoon and substantial new natural habitat.

Second, Denniston proposed modifications needed to accommodate a glamorous Playa Vista anchor project, a new DreamWorks SKG movie studio to be constructed at the forty-seven acre site of the former Hughes aircraft manufacturing facility in the eastern portion of Area D. Steven Spielberg, Jeff Katzenberg and David Geffen had formed DreamWorks SKG Studios only a couple of years earlier, and they very much wanted to build Hollywood's first new studio complex in more than sixty years.⁵¹ The Playa Vista site appealed because Hughes' enormous

⁵⁰ By the 1990s, estimated costs for the total Revised Playa Vista Plan had risen to about \$8 billion. *The Los Angeles Times* reported that the projected cost of Playa Vista's needed infrastructure, such as streets, sewers, storm drains and the electrical grid, had alone reached an "exorbitant" \$700 million. Rainey, *supra* note 9; Editorial, *The City Hopes its Dream Works; L.A. Officials Unite in Offering Incentives to Studio*, L.A. TIMES, Dec. 12, 1995, articles.latimes.com/1995-12-12/local/me-13031_1_city-council. According to *The Los Angeles Times*, the financial community attributed Playa Vista's project financing difficulties to its huge costs and the failure to break the project into "smaller units" that could be "securitized and sold in financial markets." James Flanigan, *Dream Project That Could Yet Come True*, L.A. TIMES, Nov. 20, 1996, articles.latimes.com/1996-11-20/business/fi-932_1_dreamworks-principals.

⁵¹ Lorenza Munoz, *DreamWorks Complex Takes Step Closer to Reality*, L.A. TIMES, Dec. 9,

Building 15 already had a reputation as a fine place for indoor shooting of major motion pictures,⁵² and because MTP promised them ample room in a campus-style, West Los Angeles setting.⁵³ The DreamWorks proposal required changes to the Phase One EIR and entitlements. It envisioned a newly excavated private eight-acre lake adjacent to the DreamWorks executive offices, which would be located in a \$250 million, technically innovative “creative campus setting” with about 7,000 workers. Negotiations over the price, the parcel size and the control of the development extended over the next four years.⁵⁴ MTP pursued the needed EIR revisions and helped negotiate a series of public subsidies that DreamWorks sought from the City as an inducement to locate in Los Angeles, rather than other competing nearby cities.⁵⁵ Along with much of the general public, the Friends questioned the feasibility of the DreamWorks deal. But they were not in a position to dictate to MTP its choice of buyers/tenants, and they could only protest the lengthy delays the DreamWorks negotiations were causing.

In December 1995, the Los Angeles City Council approved the DreamWorks modifications.⁵⁶ At a splashy news conference held in cavernous Building 15 the next day, scores of politicians and Hollywood heavy-hitters watched Mayor Richard Riorden declare it “the biggest business win any city ever had.” Governor Pete Wilson jested that, if he were the Los Angeles Mayor, he would have “sold [his] family to get a project like this.”⁵⁷ DreamWorks’ Jeff Katzenberg proclaimed that the

1995, articles.latimes.com/1995-12-09/local/me-12048_1_building-permit.

⁵² Blockbuster movies shot in Building 15 included “Apollo 13,” “Batman Forever” and “Independence Day.” Rainey, *Unscripted Twist Adds Film Studio to Playa Vista Project*, *supra* note 9. More recently, much of the high-grossing movie, “Avatar,” was filmed there. John Horn, *Director Cameron to Shoot Again*, L.A. TIMES, Jan. 8, 2007, www.latimes.com/entertainment/news/la-et-cameron8jan8.O.1470846.story.

⁵³ Joel Wilgoren & Nancy Rivera Brooks, *Studio Deal a Hit with City Council*, L.A. TIMES, Dec. 6, 1995, articles.latimes.com/1995-12-06/local/me-10950_1_city-council-members.

⁵⁴ See Rainey, *supra* note 9; James Rainey, *Playa Vista Project Gets Key City OK*, L.A. TIMES, Oct. 14, 1995, articles.latimes.com/1995-10-14/local/me-56821_1_marina-del-rey; Jean Merl & James Bates, *Council Gives Initial OK to DreamWorks Studio Deal*, L.A. TIMES, Dec. 13, 1995, articles.latimes.com/1995-12-13/news/mn-13522_1_council-members; James Bates, *DreamWorks Kills Studio Plan for Playa Vista*, L.A. TIMES, July 2, 1999, articles.latimes.com/1999/jul/02/news/mn-52300; Todd Purdum, *Spielberg and Partners Drop Long-Troubled Plan to Build Big Studio Complex*, N.Y. TIMES, July 3, 1999, www.nytimes.com/1999/07/03/us/spielberg-and-partners-drop-long-troubled-plan-to-build-big-studio-complex.html?src=pm.

⁵⁵ MTP and DreamWorks sought between \$70 and \$100 million in public “concessions” from Los Angeles City and other public agencies. The massive incentive package was “unique for Los Angeles.” James Rainey, *DreamWorks Picks L.A. Site for Studio*, L.A. TIMES, Dec. 5, 1995, articles.latimes.com/1995-12-05/news/mn-10465_1_city-council.

⁵⁶ Munoz, *supra* note 51.

⁵⁷ David Ferrell, *Spielberg Notes Hollywood Twist for Dream Works*, L.A. TIMES, Dec. 14,

Council's approval would "forever change" how the business world perceives the City and that the new studio would "cement Los Angeles as the media capital of the world."⁵⁸

VI. PCC TAKES OVER THE PROJECT AND ATTEMPTS TO DEVELOP PLAYA VISTA CONSISTENT WITH THE REVISED PLAN

As the DreamWorks negotiations dragged on, MTP's continuing difficulty in raising additional funds to finance its development project began to undercut its negotiating position, as DreamWorks could not be sure that MTP would deliver on its promises. MTP still had no revenue stream generating cash flow, and, in 1997, when MTP essentially ran out of cash for the project, its financial backers instituted foreclosure proceedings.⁵⁹ When the bankers refused to provide MTP with any more funding for the project, MTP had little choice but to approve a term sheet for the sale of its Playa Vista interests to Goldman Sachs, Morgan Stanley, and Dean Witter, which together had acquired the troubled MTP debt from the Wall Street banks.⁶⁰ In October 1997, MTP sold its Playa Vista interests to Playa Capital Company (PCC), a new entity formed by the buyers to manage their interests. In exchange for majority ownership, the new owners pledged an infusion of \$200 million in badly needed funds.⁶¹

As PCC stepped into the role of master planned community developer, it committed to implementing the Revised Playa Vista Plan with Denniston's proposed alternations. In particular, PCC aggressively continued to pursue DreamWorks. By 1998, PCC thought it had an agreement in which DreamWorks would pay \$20 million (\$13 million cash up front and \$7 million in promissory notes) for forty-seven acres. But a year later, in July 1999, DreamWorks pulled out.⁶² The *Daily Variety*, the industry journal, was quick to headline the news: "Hasta La Playa Vista, Baby."⁶³ Katzenberg explained, "It was a very grand, exciting idea . . . five years ago. And maybe it was just a little too

1995, articles.latimes.com/1995-12-14/local/me-13876_1_howard-hughes.

⁵⁸ Merl & Bates, *supra* note 54.

⁵⁹ James Bates & Jesus Sanchez, *Agreement May Ward Off Foreclosure on Playa Vista*, L.A. TIMES, July 3, 1997, articles.latimes.com/1997/jul/03/business/fi-9253. By early 1996, Wall Street banks, including Chase Manhattan and Bank of America, had loaned MTP approximately \$150 million. See Flanigan, *supra* note 50.

⁶⁰ Bates & Sanchez, *supra* note 59.

⁶¹ See Abigail Goldman, *A Look Ahead: After Years of Delays, Developers of the 1,087-Acre, Multibillion-Dollar Playa Vista Project Near LAX Are Poised to Break Ground*, L.A. TIMES, May 25, 1998, articles.latimes.com/1998/may/25/local/me-53300.

⁶² Bates, *supra* note 54.

⁶³ Purdum, *supra* note 54.

grand.”⁶⁴ PCC’s Denniston had earlier lamented the rancorous negotiations: “The deal is clearly one where DreamWorks’ limits were tested and where our limits were tested.”⁶⁵ Nonetheless, Denniston now claimed to be pleased that PCC now had “more control” over its destiny and would not be “in DreamWorks’ shadow.”⁶⁶

If it was not clear in 1999 that Denniston was whistling in the dark, it became clear two years later in 2001, when PCC still had no major anchor tenant. Rather than holding to MTP’s approach of trying to build the project with a unified vision, PCC entered into agreements with seven independent builders in early 2000. Within overall Playa Vista architectural standards, these builders would construct the first 1,600 residential units according to their preferred architectural approaches.⁶⁷ But as of 2001, almost eight years after the City’s approval of the Phase One entitlements, not a single residence had been completed.⁶⁸ Indeed, during the dozen years that MTP and PCC owned the Playa Vista project, they had generated no meaningful cash flow from its operations, while their ongoing management and construction costs had been huge.⁶⁹ Further, as PCC focused on DreamWorks and other Area D projects, its energies and resources were diverted from processing the entitlements needed to develop Areas A, B and C. Beyond the Phase One approvals that it had obtained in 1993, PCC still had no entitlements for the rest of Revised Playa Vista Plan.

⁶⁴ Claudia Eller & James Bates, *Dreamworks Wakes Up to Reality*, L.A. TIMES, July 13, 1999, articles.latimes.com/1999/jul/13/business/fi-55382-2. As its reasons for moving on, DreamWorks officials cited Playa Vista’s many “delays” and the higher costs of financing in the commercial real estate market. Bates, *supra* note 54.

⁶⁵ *DreamWorks and Developers Agree to Terms for Movie Studio*, N.Y. TIMES, Sept. 22, 1998, at A24.

⁶⁶ Jesus Sanchez, *At Playa Vista, Plot Takes a New Turn, Plot Takes a New Turn*, L.A. TIMES, Aug. 31, 1999, articles.latimes.com/1999/aug/31/business/fi-5239.

⁶⁷ Monte Morin, *Playa Vista Signs Deals for 1st Homes*, L.A. TIMES, Feb. 17, 2000, articles.latimes.com/2000/feb/17/local/me-65345; Jesus Sanchez, *Home Builders Still Dedicated to Playa Vista Despite Delays*, L.A. TIMES, Feb. 13, 2001, articles.latimes.com/2001/feb/13/business/fi-24730.

⁶⁸ See Michael Stremfel, *Buildings Rise as End to Years of Bitter Dispute Nears*, L.A. BUS. J., Oct. 29, 2001, www.allbusiness.com/north-america/united-states-california-metro-areas/820578-1.html. Construction on the new residences was scheduled to start in the fall of 2001, while a 250,000-square-foot office project, called Water’s Edge, was to be completed in late 2002.

⁶⁹ PCC’s President Steve Soboroff later explained that the Playa Vista project “really [had] only two phases,” and the land to be developed had “sat dormant” for many years, making it a “difficult financial investment.” *Steve Soboroff’s Enthusiasm for Playa Vista is Contagious*, THE PLANNING REPORT (Nov. 19, 2003), www.planningreport.com/2003/11/19/steve-soboroffs-enthusiasm-playa-vista-contagious.

VII. PCC SELLS THE MAJORITY OF THE PLAYA VISTA SITE TO THE STATE

In August 2001, PCC decided to take a fundamentally different approach. It knew that the Planning and Conservation League and other environmental groups were discussing possible circulation of what became Proposition 50, an initiative petition asking the State's voters to approve more than \$3 billion dollars in bonds for open space acquisitions by the State for clean water purposes.⁷⁰ Purchase of the Ballona Wetlands would perfectly fit the contemplated acquisition criteria. PCC began discussions with the Trust for Public Lands (TPL), which had experience in bringing together many similar acquisitions in California and other states.

On August 8, 2001, PCC granted TPL an option to purchase, at a price to be determined, 192 acres of the Playa Vista project, including all 138 acres of Area A and the fifty-four acres in the northeast corner of Area B that were scheduled to be developed for residential uses under the Revised Playa Vista Plan. Upon TPL's exercise of that option, PCC would donate 291 acres to TPL, including the Ballona Creek channel acreage and the acreage in Area B containing the principal wetlands. PCC would also terminate its right to develop the sixty-three acre Area C (which the State had acquired from Summa in 1988 in settlement of state inheritance taxes on the Hughes estate),⁷¹ which was a part of the overall Revised Playa Vista Plan. Under this "dramatically reduced" approach, the State would end up with the majority of the Playa Vista site (about 600 acres of the total 1,087 acres), and PCC would finally obtain a potentially huge infusion of cash while forgoing its rights to develop anywhere but Area D.⁷² Since Area D had always been regarded as the

⁷⁰ See CAL. NATURAL RES. AGENCY, *supra* note 3, at 2.

⁷¹ See Boyarsky, *supra* note 17. Like Area A, Area C had received 300,000 cubic yards of fill dredged during construction of Marina Del Rey when it was spread up to eighteen feet high. USEPA, Draft TDML, *supra*, note 2, at 46, 58 and 60.

⁷² Starting with the City's 1993 approval of the Phase One entitlements through PPC's 2001 decision to sell the majority of the site to the State, dissident project opponents filed some fourteen separate lawsuits challenging the City's environmental studies and project approvals for Playa Vista, including the Phase One EIR, the Freshwater Marsh construction permits, the DreamWorks EIR modifications, the Area D infrastructure financing arrangements and construction of the initial Area D infrastructure improvements. None of those legal challenges succeeded. See L.A. CITY PLANNING DEP'T, FINAL EIR FOR THE VILLAGE AT PLAYA VISTA 482-485 (2004), available at cityplanning.lacity.org/EIR/PlayaVista/PlayavistaFEIR/issues/VI_C.pdf. Nonetheless, on-going negative commentary by dissidents about Playa Vista, as well as occasional publicity stunts, such as dressing in frog costumes to picket the DreamWorks Building 15 news conference, generated considerable press attention. See, e.g., Russell, *supra* note 16 (dissident contends that, even if the Friends/MTP settlement were to achieve a "great restoration," the project's other impacts "should prevent Playa Vista from moving forward"); Wilgoren & Brooks, *supra* note 53 (dissident argues

“heart” of the Playa Vista project and included other additional potential development entitlements beyond those in Phase One, the scaled-back Playa Vista plan would still be one of the largest development projects in Los Angeles history.⁷³ Nonetheless, without the more extensive and difficult development challenges posed by Areas A, B and C, PCC’s development completion time frame for Area D alone could be reduced to a much shorter time frame.⁷⁴

In November 2002, the voters approved Proposition 50.⁷⁵ The immediate question became whether the State Department of Fish and Game, which was to manage the disbursement of the bond funds, would agree to purchase the Ballona Wetlands. In deciding whether to politically support the proposed acquisition, the Friends had many concerns. If it went through, the acquisition would result in a major change in the Revised Playa Vista Plan. Under the settlement’s Revised Plan, the Ballona Wetlands were to be restored using \$13 million, with a guaranteed funding source that would fund a mid-tidal restoration. This approach had now been agreed to by the Friends and MTP (and later PCC) during the course of several years of meetings, discussions and accommodations. Although the long-term wetlands restoration program was still unrealized, MTP, PCC and the Friends had worked together to design and implement successful short-term restoration actions that brought both freshwater and saltwater to the degraded salt marsh, and PCC’s nearly completed construction of the freshwater marsh would soon be officially opened. PCC had also recently embraced its new lagoon-oriented, rather than marina-oriented, design for Area A. Besides the Friends’ legal authority under the settlement, its dunes restoration program and docent wetlands tours made it an important presence at the wetlands. All of this would potentially be foregone. Indeed, for all practical purposes, long-term salt marsh restoration planning for Ballona

“it’s going to be huge amount of traffic”); Ferrell, *supra* note 57 (“about a dozen” dissidents picketed in the rain during the DreamWorks Building 15 news conference); Seema Mehta, *Groups Trade Lawsuit Settlement for Voice*, L.A. TIMES, Apr. 29, 2001, www.environmentalrelief.net/lawsuitsettlements_mehta_index_15.html (reporting that the Friends’ offices had been vandalized and Ruth Lansford had received death threats, while dissidents had accused the Friends of selling their souls); Bob Pool, *Tarp That Covers Wetlands Angers Environmentalists*, L.A. TIMES, Aug. 8, 2008, articles.latimes.com/2008/aug/08/local/me-tarp8 (reporting a dissident’s arrest for vandalism for cutting non-native trees and shrubs in the Ballona Wetlands); Sterngold, *supra* note 28 (reporting that some dissidents had “chained themselves to bulldozers” to protest Playa Vista construction activities).

⁷³ Martha Groves, *Playa Vista Plans Sharply Curtailed*, L.A. TIMES, Nov. 14, 2002, articles.latimes.com/2002/nov/14/local/me-playa14.

⁷⁴ PCC saw Proposition 50 as a “funding mechanism” whereby it could finally generate immediate cash flow of approximately \$139 million. THE PLANNING REPORT, *supra* note 69.

⁷⁵ Groves, *supra* note 73. PCC contributed more than \$830,000 to the Proposition 50 campaign.

would have to start over from the beginning, as the Department of Fish and Game pursued its new studies and new determinations about the best way to comprehensively restore the Area A, B and C wetlands. Once a restoration plan was formulated, the source of State funds to accomplish the restoration was unknown.

Nonetheless, the Friends decided to endorse acquisition of Areas A, B and C with the Proposition 50 monies, and they led the political campaign to obtain the environmental community's support. Friends' advocates noted that the acquisition would eliminate the residential housing in the northwest corner of Area B that they had questioned at the time of their 1990 settlement; that it would broaden the Area B wetlands restoration to include Areas A and C; and that the State should be presumed to be a competent and fair steward of the wetlands if it decided to acquire them.⁷⁶

On August 22, 2003, the State, PCC and TPL entered into an agreement whereby the State acquired 192 acres in Areas A and B for \$139 million in Proposition 50 funds, PCC donated 291 acres in Area B and along the Ballona Creek channel to the State, and PCC released its development rights in Area C. At about the same time, the City issued the Draft EIR evaluating PCC's proposal for developing the remaining unentitled portion of Area D. Called "The Village," this smaller, greener 111-acre final development phase would include 2,600 residential units; 67,000 square feet of commercial office space; 150,000 square feet of neighborhood retail shops; and about 40,000 square feet of community-serving uses. Thus, the entire scaled-down Playa Vista Project would be 5,846 residential units (less than half of the approximately 13,000 units called for in the Revised Playa Vista Plan); 185,000 square feet of retail space (only about a third of the 595,000 square feet approved for the Revised Plan); 3.4 million square feet of commercial/office/industrial space (about two-thirds of the Revised Plan); and 160,000 square feet of community serving uses (one quarter of the Revised Plan). Basically, the footprint to be developed within the 1,087-acre parcel would now be scaled back to just 330 acres as plans for the marina and hotels in Area A and for other development formerly proposed for Areas B and C were entirely removed from the books.⁷⁷

⁷⁶ For a discussion of California's planning and acquisition of wetlands for habitat restoration in Southern California, see generally Joan Hartmann, *The Southern California Wetlands Recovery Project: The Unfolding Story*, 30 GOLDEN GATE U. L. REV. 855, 952-53 (2000).

⁷⁷ Groves, *supra* note 73; Martha Groves, *State to Finalize its Purchase of Ballona Wetlands*, L.A. TIMES, Dec. 19, 2003, articles.latimes.com/2003/dec/19/local/me-ballona19; PAUL SHIGLEY, PLAYA VISTA GROWS, SHRINKS AND GETS READY FOR NEXT ROUND, 18 CAL. PLANNING AND DEV. REPORT (2003), available at www.cp-dr.com/node/704. When the parks and open space within the 330-acre Area D developed area is taken into account, the scaled-back development footprint now

Playa Vista's new President, Steve Soboroff, a former commercial real estate broker in Los Angeles, who took over just before the sale to the State was finalized, told the press that PCC would now concentrate on developing a reduced project that would still be a "model of the new urban lifestyle."⁷⁸ But the sale to the State left much about the wetlands restoration planning undetermined.

VIII. PCC'S DEVELOPMENT OF AREA D AND THE STATE'S RESTORATION PLANNING EFFORTS SUBSEQUENT TO THE 2003 SALE

In the nearly nine years since the State acquired Ballona Wetlands, PCC's development of Area D has progressed, but the State has made relatively little progress on comprehensive long-term wetlands planning at the site.

The first residents began moving into Playa Vista in early 2002,⁷⁹ and, to date, development of approximately 3,000 units of handsome low-rise condominiums and apartments, park and recreational facilities, and neighborhood retail stores has been completed in much of the western portion of Area D.⁸⁰ Commercial enterprises, including the Los Angeles Clippers professional basketball team have moved into Area D's eastern portion, where PCC has recently opened to the public its new eight-acre "Central Park," designed by Michael Maltzan.⁸¹ Electronic Arts, the world's largest video game publishers, has established its headquarters in the western part of Area D.⁸² In March 2010, the City Council approved the EIR and the entitlements needed to develop The Village as the now scaled-back Phase Two.⁸³ Even though the Great

provides fully 750 acres as parks, open space and habitat area, almost seventy-five percent of the 1,087-acre parcel. *See Parks and Open Space*, PLAYA VISTA, www.PlayaVista.com/living/parks.php (stating that more than 750 acres of parks are available for recreation at Playa Vista) (last visited Sept. 22, 2012).

⁷⁸ THE PLANNING REPORT, *supra* note 69.

⁷⁹ *See* Martha Groves, *Playa Vista Views Shared*, L.A. TIMES, Dec. 13, 2002, articles.latimes.com/2002/dec/13/local/me-playa13; Stremfel, *supra* note 68.

⁸⁰ *Playa Vista Gets a Green Light to Phase II*, THE PLANNING REPORT (Apr. 26, 2012), www.planningreport.com/2012/04/26/playa-vista-gets-green-light-phase-ii. As Nelson Rising had forecast, Playa Vista's emphasis on environmental preservation and sustainable design principles has become a major part of its marketing campaign. *See, e.g.*, L.A. TIMES *Advertising Supplement*, Sept. 7, 2002. Playa Vista officials tout its "enlightened urban design principles" and point with pride to its receipt of the prestigious Ahwahnee Award for design excellence from the California Local Government Commission. *See* Agid, *supra* note 39.

⁸¹ *See Central Park is Planned Community's Latest Amenity*, THE ARGONAUT, Apr. 4, 2010, www.argonautnewspaper.com/articles/2010/08/05/news_-_features/playa_vista/pv1.txt.

⁸² *See* Roger Vincent, *Game Maker Electronic Arts Renews Lease in Playa Vista*, L.A. TIMES, Jan. 19, 2012, articles.latimes.com/2012/jan/19/business/la-fi-mo-playa-vista-20120118.

⁸³ *See* David Zahnizer & Martha Groves, *Playa Vista's Second and Final Phase Wins L.A. City Council's Approval*, L.A. TIMES, Mar. 26, 2010, latimesblogs.latimes.com/lanow/2010/03/la-

Recession continues, construction activity in The Village is expected to begin soon. In November 2010, the Ratkovich Company, well known and highly respected for its sensitive, but commercially successful, restoration of important historic Los Angeles properties, paid \$32.4 million for the twenty-eight acre site that DreamWorks had previously eyed. Ratkovich announced plans to restore the historic Hughes aircraft buildings as an entertainment complex featuring Building 15's soundstage.⁸⁴

The settlement's Phase One and interim wetlands restoration activities have now been successfully completed. In April 2003, PCC formally opened the fifty-one acre freshwater marsh and riparian corridor system,⁸⁵ and it has worked well. Since its opening, more than 200 species of birds have been attracted to the freshwater marsh, including some special status species returning to Ballona to nest after a seventy year absence.⁸⁶ In 2004, a new tide gates system was installed to replace the older flap gates between Ballona Creek and the salt marsh, thereby allowing a muted tidal regime of salt and fresh water to enter and exit the salt marsh on an interim basis.⁸⁷ The Friends obtained a non-exclusive

council-approves-the-village-playa-vistas-second-and-final-phase.html. The City Council had originally approved the entitlements for The Village in April 2004, but dissident environmental groups filed CEQA litigation that temporarily held up the approval while various specific changes were made in the project EIR. Following the City Council's March 2010 approvals, dissidents filed yet another CEQA challenge, but the Court of Appeals' November 2011 decision rejected this latest challenge. *Ballona Wetlands Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455. According to current PCC co-President Patti Sinclair, the 2010-approved Phase Two project was essentially identical to the project previously approved by the City in 2004, so the opponents had merely caused additional expense and delay. See THE PLANNING REPORT, *supra* note 80. Sinclair noted that, by 2012, dissident groups had filed some nineteen lawsuits against Playa Vista development, including Phase Two, thereby causing a very "long and cumbersome" development process. *Id.* Ironically, the temporary delay occasioned by the Phase Two litigation may have inadvertently helped PCC to avoid bringing The Village onto the market at the bottom of the real estate trough in 2008-09.

⁸⁴ Heather McMahon, *Howard Hughes' Airport to be Revitalized*, NAT'L TRUST FOR HISTORIC PRES. MAG., Nov. 3, 2012, www.preservationnation.org/magazine/2010/todays-news/howard-hughes-airport-to-be.html.

⁸⁵ Groves, *A Patch of Blue at Playa Vista*, *supra* note 18. The completed twenty-six acre freshwater marsh features 3,000 trees and 10,000 shrubs and native plants. Maintenance costs are estimated to run between \$200,000 and \$500,000 annually, including occasional dredging to eliminate buildup of pollutants.

⁸⁶ Returning bird species include the least bittern, a listed state species of special concern, the common moorhen and the Canadian goose. *Ballona Habitats*, FRIENDS OF BALLONA WETLANDS, www.ballonafriends.org/habitat_wildlife.html; BALLONA WETLANDS TRAINING MANUAL, *supra* note 13, at 24. PCC has now formally transferred title to the freshwater marsh to the State, while it continues to have the legal responsibility to remediate any water quality problems that may arise.

⁸⁷ The tidal reach of the new tide gates allows the salt marsh to receive up to one meter of seawater. See CAL. NATURAL RES. AGENCY, *supra* note 3; USEPA, DRAFT TDM, *supra* note 2, at 12, 21, 36, and 39. The new tide gates assist in flood control, allow saltwater and sea life to enter the wetlands more naturally, and increase tidal flushing. *Ballona Today*, FRIENDS OF BALLONA WETLANDS, www.ballonafriends.org/history.html.

license from the State granting them the right to continue their dunes restoration activities and tours. Aided by a 2003 grant from the Coastal Conservancy, the Friends' volunteers have now restored much of the dunes on the western edge of the site, transforming a vast mat of invasive, non-native plants into a healthy, restored dunes native habitat. New areas of coastal dunes buckwheat, critical habitat for the endangered El Segundo Dunes Blue Butterfly, have been planted. The extensive native plant growth established and tended by the Friends has flourished, creating habitat pockets for native insects, reptiles, birds, and small mammals.⁸⁸ The presence of the threatened California legless lizard has been confirmed in several dunes locations, including places where it had not been found in twenty years.⁸⁹ Working with nearby Loyola Marymount University, the Friends have also been raising funds for a Discovery Center educational facility for studying the wetlands and explaining them to the public. PCC and Loyola have contributed more than \$2 million to the Discovery Center and to a three-acre Discovery Park that opened in late 2011 with outdoor exhibits describing the history and function of the wetlands.⁹⁰ In 2006, Rush Lansford was awarded the prestigious "National Citizen Planner of the Year Award" by the American Planning Association, after winning the State award in 2005.⁹¹

In contrast, the State's comprehensive long-term wetlands restoration planning efforts for its now almost 600-acre portion of the site have moved along very slowly. When the State acquired the Ballona parcel, the Coastal Conservancy, which initially agreed to fund and lead the effort to develop a comprehensive long-term restoration plan, envisioned a three to five-year planning effort.⁹² In late 2004, the Conservancy's board approved the first funds for restoration planning, then anticipating close to a four-year planning effort to be completed by 2008.⁹³ During 2004 to 2006, the Santa Monica Bay Restoration Commission, designated by the Department of Fish and Game as the lead

⁸⁸ *Ballona Habitats*, *supra* note 86.

⁸⁹ The Audubon Society's training manual has characterized the success of the Friends' dunes restoration effort as "truly remarkable." BALLONA WETLANDS TRAINING MANUAL, *supra* note 13, at 25.

⁹⁰ The original Friends/MTP settlement provided that MTP would set aside the parklands that eventually became the three-acre Discovery Park. *See* Stipulated Settlement, *supra*, note 49, Exhibit J.

⁹¹ *Board of Directors*, FRIENDS OF BALLONA WETLANDS, www.ballonafriends.org.

⁹² CAL. NATURAL RES. AGENCY, *supra* note 3, at 9. Groves, *State to Finalize its Purchase of Ballona Wetlands*, *supra* note 77.

⁹³ BALLONA WETLANDS RESTORATION PROJECT, BALLONA WETLAND RESTORATION PLANNING PROCESS, attachment 5, 5 (2008), *available at* www.santamonicabay.org/smbay/portals/O/Ballona%20Wetland%20Restoration%20Planning%20Process.pdf.

agency for the comprehensive long-term restoration plan,⁹⁴ convened a working group and a science advisory team (which included several of the Friends' experts) to formulate project goals and alternative projects. Five alternatives were identified, with two selected for more detailed analysis.⁹⁵ An environmental impact report/environmental impact statement (EIR/S) must now be prepared in compliance with the California Environmental Quality Act and the National Environmental Policy Act to evaluate the impact of the restoration alternatives. But the baseline survey of existing wetlands conditions—the starting point for an EIR/S analysis—did not begin until 2009. The Commission sponsored symposia in 2006 and 2010 to obtain public and expert comments; first, on the proposed restoration goals and alternatives and, later, on the baseline assessment study. In December 2011, the Commission finally released its first-year existing conditions “baseline assessment.” Further environmental analysis and planning will not proceed until the second-year baseline assessment is completed.

In January 2012, state officials approved another \$6.5 million for technical studies and design work for the comprehensive restoration plan. The estimated cost to comprehensively restore Areas A, B and C has now grown to \$100 million.⁹⁶ Given the State's current budget crisis, its ability to fund any sizable and viable wetlands restoration project at this time is problematic.

IX. CONCLUSION

Throughout almost three decades of litigation over preservation and restoration of the Ballona Wetlands, the Coastal Commission has played a remarkably limited role. Of course, it triggered the initial litigation when, at perhaps the nadir of its coastal protection oversight role, it approved the original Summa plan. It then took essentially no role in the Friends/MTP settlement or its subsequent implementation. In fact, as various modifications of the original settlement evolved, it consistently remained in a hands-off position, and it rarely became involved in discussions about how the settlement might appropriately be modified to

⁹⁴ *Id.* A collaboration of federal, state and local entities whose mission is to restore and enhance the Santa Monica Bay, the Commission was originally brought together under the auspices of the United States Environmental Protection Agency in order to prepare a restoration plan for the entire Santa Monica Bay. *About Us*, SANTA MONICA BAY RESTORATION COMM'N, www.santamonica.org/AboutUs/aboutus.html.

⁹⁵ *Ballona Wetland Restoration Planning Process*, BALLONA WETLANDS RESTORATION PROJECT, (Santa Monica Bay Restoration Found.), Dec. 2010.

⁹⁶ Tony Barboza, *California OKs \$6.5 Million to Plan Ballona Wetlands Restoration*, L.A. TIMES, Jan. 21, 2012, articles.latimes.com/2012/jan/21/local/la-me-ballona-wetlands-20120121.

take account of subsequent events.⁹⁷

Almost thirty years of Ballona Wetlands litigation provide a uniquely useful primer on the practical opportunities and limits of public interest litigation to stop destructive urban development projects and to accomplish restoration goals. For years, the Friends' litigation successfully blocked Summa's ill-conceived project. With the political cooperation of Los Angeles City Council member Galanter and others, the litigation brought about an extraordinary settlement, providing for a landmark wetlands protection and restoration program, as well as a redesigned, "smart growth" Playa Vista development project that would pay for the settlement's wetlands preservation and restoration program actions. The settlement's provisions for private wetlands restoration funding, for respectful reconciliation of opposing interests and concerns, and for surmounting bureaucratic obstacles, presented abundant potential for accomplishing wetlands restoration.

The Friends have been largely successful in accomplishing the important habitat restoration: construction of the freshwater marsh to reintroduce abundant quantities of fresh water into the marsh, installation of a new tidal gates system to restore substantial ocean tidal flows, and extensive restoration of the dunes habitat. Together, these have restored vitality within much of the habitat.

But the settlement's long-term wetlands restoration goals, which were tied to the post-Phase One build out of Playa Vista, have not been achieved. A scaled down Playa Vista continues to be developed as a master planned community featuring the hallmarks of sustainable, smart growth. But, from the beginning, MTP/PCC's more ambitious development proposals proved to be financially flawed. Their proposed Playa Vista project was too big, too loaded with huge infrastructure costs, and too lacking in smaller, incremental development steps that could provide more private revenue. In hindsight, both MTP and PCC spent too much of their time and resources romancing DreamWorks.

Although a public agency's purchase of land threatened by urban development is often seen as a panacea for achieving ultimate resource protection, this has not yet been the case with the Ballona Wetlands. When it acquired Areas A, B and C, the State was overly optimistic about how quickly it could start a comprehensive long-term restoration program, and it underestimated the costs. The State's bureaucratic

⁹⁷ The CCC has also consistently rebuffed efforts to bring it into controversies generated by dissident groups and individuals about the proposed Playa Vista development and wetlands restoration. See, e.g., CAL. COASTAL COMM'N, STAFF REPORT: REVOCATION REQUEST (2001), available at www.coastal.ca.gov/lb/5-91-463A2.pdf (recommending denial of dissident's effort to obtain CCC revocation of freshwater marsh construction permits).

planning process has lumbered along, and it has not yet directly confronted the inevitable political maneuvering by dissident groups and individuals, who have played little constructive role in bringing about desirable, practical solutions. Can the State now move its comprehensive long-term wetlands planning program forward promptly, efficiently and in a scientifically credible, fact-based manner? While the State's comprehensive planning process continues, can it also take additional interim steps to enhance habitat productivity? Can it finance the comprehensive long-term restoration costs that are now estimated to total upwards of nine figures? These are important questions that no one can answer, but, the State will confront a difficult challenge.

Throughout it all, one constant remains. Despite the setbacks and damage inflicted on the Ballona Wetlands, they have been remarkably resilient. If the State can now follow through on its comprehensive long-term restoration planning efforts, the potential for a thriving, restored coastal wetlands habitat at the Ballona Wetlands remains achievable.