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May 23, 1991

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Re: Friends of Ballona Wetlands v. California Coastal Commission/
Application for Proposed Freshwater Marsh and Freshwater Marsh
System

Dear Members of the Ballona Wetlands Committee:

As a follow-up to the April 25, 1991 meeting, Peter Douglas has met with his staff to address some of the questions raised concerning the application for coastal permit the Ballona Wetlands Committee proposes to file concerning the development of a Freshwater Marsh and Freshwater Marsh System at Ballona. Peter has asked me to give you the benefit of his further thoughts on the proposed application.

First and foremost, at a staff level Peter is in full support of doing whatever he can to accomplish the attainment of a full tidal salt marsh at Ballona. His intent is to try to accommodate the mutual objectives of the Friends, Councilperson and Maguire Thomas Partners while ensuring that the Commission fully meets its responsibilities under the Coastal Act.

Concerning filing of the application, Peter has discussed with his legal and planning staffs the question of whether the Commission would indeed be acting as a "lead" agency on this proposed project and whether an EIR would be required prior to filing. As to the former, there has been some confusion whether there is any local discretionary approval required to construct the Freshwater Marsh in Area B. John Bowers, staff counsel for the Commission in San Francisco, is currently checking with the City Attorney's Office

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specifically to determine whether a City coastal permit would be required. If so, at some point the City would have to entertain separately an application for a local coastal permit and to comply with CEQA accordingly.

In any event, with respect to the freshwater marsh application, the Commission's role under CEQA remains the same whether it functions as a lead agency or not. No EIR or negative declaration would be required either to file the application or to process it. This is so because the Commission's regulatory program as to coastal development permits has been certified by the Secretary of Resources, thus exempting it from the preparation of such documents. (Pub. Resources Code, § 21080.5; Cal. Code Regs., Tit. 15 § 15251(c); see, e.g., Environmental Protection Information Center, Inc. v. Johnson ("EPIC") (1985) 170 Cal.App.3d 604, 617-618.) Even so, you should note that under CEQA the Commission still must address, among other things, feasible alternatives and mitigation measures which would lessen or avoid significant adverse environmental impacts and significant environmental objections raised during the application review process. (EPIC, 170 Cal.App.3d at 618, 620, 627-628.)

In the case of the freshwater marsh application, Peter is willing to waive applicable local approvals and any CEQA documentation which would be generated thereby once the nature of those approvals is clarified. That should be taken up directly with Chuck Damm in the Commission's Long Beach office and the Commission's staff counsel, John Bowers, in San Francisco. In the event local approvals are waived, an application will be accepted for filing only if it is accompanied by, at a minimum, environmental documentation which includes: (1) a full evaluation of all alternatives and mitigation measures, and (2) written comments from the state and federal fish and wildlife agencies which are specifically directed to this particular application and which address the salt marsh issues raised by it.

Beyond the filing issue, the Commission staff is prepared to agree that the proposed Freshwater Marsh, including the 25-acre riparian corridor outside the coastal zone, can be accepted as adequate mitigation for the loss of salt marsh habitat in Area A and freshwater marsh located in Area B. However, staff wants the Committee to understand that it views this project as an integral part of full wetland restoration at Ballona, whether restoration be mid-tidal or full-tidal in nature. Therefore, if for some reason the overall restoration project does not go forward, the mitigation credit provided by an approval of this application would be rendered null and void.

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As to the remaining issues, the staff is not prepared to agree to application of a HEP analysis at Ballona which involves establishing some level of biological value to be achieved in one location while setting some type of habitat value elsewhere for purposes of determining future mitigation credits. The staff believes the issue is more appropriately dealt with on an acreage basis. Staff is also not ready to discuss what kind of mitigation ratio might apply in the circumstances presented. That would remain a post-filing issue.

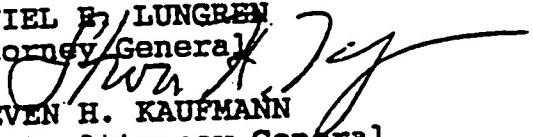
Finally, the staff is willing to request that Fish and Game undertake an updated delineation of wetlands in Area A. Staff is likely to rely upon that determination in addressing the mitigation credit issue.

Obviously, this letter is a summary of the various issues Peter discussed with Commission staff. Therefore, it should not be construed as a definitive statement concerning the staff's ultimate recommendation on these points. Nonetheless, we hope it will serve to assist the Ballona Wetlands Committee in moving forward with its proposed application for permit.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

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