Greenwashed?: Developers, Environmental Consciousness, and the Case of Playa Vista

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GREENWASHED?: DEVELOPERS, ENVIRONMENTAL CONSCIOUSNESS, AND THE CASE OF PLAYA VISTA

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Abstract: While many businesses are becoming greener, development corporations may have the greatest incentive to integrate environmental values into their everyday business practices. With the effects of urbanization, suburbanization, and sprawl, cities are increasingly requiring environmental mitigation measures for approval of new development. In response, some development corporations may become greenwashed to obtain discretionary land use approvals to build their proposed developments. Others may build greener developments to meet the market demand from environmentally conscious buyers. An increasing number of developers, however, adopt environmentally responsible business practices for, at least in significant part, altruistic reasons. A prime example of this phenomenon is Playa Vista, the more than 1000-acre development in Los Angeles that is currently the largest urban infill project in the country. Playa Vista serves as a useful case study for exploring how developers’ inclusion of various stakeholders—particularly environmentalists—may signal a paradigm shift in how development occurs.

INTRODUCTION

Corporations increasingly are becoming more environmentally conscious in their products and operations. Some are doing so in response to government regulation, while others are doing so voluntarily.¹ But perhaps no type of corporation has greater incentives to be-

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¹ See generally Robert L. Glickman & Dietrich H. Earnhart, Effectiveness of Government Interventions at Inducing Better Environmental Performance: Does Effectiveness Depend on Facility or Firm Features?, 35 B.C. ENVTL. AFF. L. REV. 479 (2008) (analyzing the effectiveness of environmental regulation); Kurt A. Strasser, Do Voluntary Corporate Efforts Improve Environ-
come more environmentally conscious in its operations and products than does the real estate development corporation.²

Scholars have bemoaned the negative environmental consequences and externalities of urbanization, suburbanization, and urban sprawl—urban runoff, poorer air quality, degraded water quality and availability, unsustainable energy consumption, and the like.³ In response, local governments⁴ are requiring environmental mitigation measures for approval of new development projects. This change in land-use decisionmaking has led many developers to become proactively green to secure discretionary—but necessary—land use approvals to build their new developments.⁵ While there may be many plausible impetuses behind these voluntary efforts, the new environmentally responsible business practices in real estate development are nevertheless noteworthy and warrant further scholarly exploration.

Part I of this Article provides a general overview of local governments’ land use approval processes and powers, and the various mitigation—including environmental—measures required for approval of new development projects. Part II details the ways in which real estate development corporations have become more proactively green in anticipation of cities’ land use approval processes. Part III explores the impetuses behind developers’ proactivity in adopting more environmentally responsible business practices. Finally, Part IV uses the case of the Playa Vista development project in Los Angeles, California as an example of how developers’ voluntary adoption of greener standards and practices and engagement of community stakeholders—environmentalists, in particular—in the development design process can lead to the success-


² In this Article, I use the terms “real estate development corporations” and “developers” interchangeably.


⁴ In this Article, I use the terms “local governments,” “cities,” and “localities” interchangeably and broadly to refer to local government entities with land use authority.

⁵ In this Article, I use the term “green” to refer to environmentally conscious practices.
ful approval of development projects. Moreover, this useful case study may signal a paradigm shift in how development occurs.

I. THE LAND USE APPROVAL PROCESS, MITIGATION MEASURES, AND AN ENVIRONMENTAL FOCUS

A. An Overview of Zoning and Planning

The modern system of zoning and planning did not take root until the beginning of the twentieth century. Throughout the eighteenth and nineteenth centuries, cities did not engage in much land-use regulation, instead relying on the courts to resolve conflicting land uses through nuisance law.6 With the advent of the Industrial Revolution and other significant changes in society, including the growth of major urban centers, cities found nuisance law inadequate to deal with the new land use conflicts that had arisen.7 Accordingly, cities began to develop land use regulatory schemes, largely through zoning ordinances, that divided their boundaries into zones, thereby segregating incompatible land uses from one another.8 Such zoning laws dictated what structures could be built and what uses were permitted on an individual’s property.9 Property owners challenged local governments’ ability to enact such zoning laws, but the U.S. Supreme Court upheld the laws’ constitutionality in the landmark case Village of Euclid v. Amber Realty Co.10 With this decision, Euclidean Zoning was born, a concept that forms the foundation for today’s land use regulatory regime.11

In theory, under Euclidean Zoning, a city would divide its land into zones, stating the permitted uses and physical and spatial building requirements or limitations for each zone; property owners would then build on and use their property accordingly.12 This zoning scheme provided exceptions for unique circumstances through discretionary land use regulatory tools such as variances and special use permits.13 Unsurprisingly, like any rational actor in the marketplace, landowners and developers sought to secure such discretionary approvals to enable

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7 Id.
9 See id.
11 See Selma & Kushner, supra note 8, at 52.
12 See id. at 57 n.1.
13 See id. at 51.
them to do more with their property than the zoning laws allowed, and more than others similarly situated were permitted to do.14 As a result, this discretionary approval process has seemingly become the norm in today’s land use system. So while most cities use zoning laws to set an overall plan for the city’s land use development, a significant portion of a city’s planning and land use efforts arise in connection with such special requests.15

In considering and granting requests for discretionary approvals, city officials must consider the various impacts that new developments will have on their community.16 These externalities include increased traffic, impacts on existing infrastructure, and environmental effects, to name but a few. As a condition of development approval, city officials may require developers to provide exactions, pay impact fees, and/or limit the use of their property.17 It has been said that “[e]xactions are the concessions local governments require of property owners as conditions for the issuance of the entitlements that enable the intensified use of real property.”18 These exactions are often dedications of land that are used to offset the negative impacts of the proposed project or to meet the infrastructure needs of the new development.19 They may include roads, sidewalks, bike paths, and the like. Impact fees are monetary conditions imposed on developers to pay for the proposed development’s proportional increased demand on existing infrastructure.20 They may include everything from school impact fees, anticipating an increase in school-aged children from the new development, to sewer impact fees for expanded sewer capacity needs.21 Local governments also impose conditions on the landowner’s actual use of the property, such as limiting the types of uses or the hours during which a business can operate.22

14 See id. at 50.
16 Id. at 43.
17 See id.
18 Mark Fenster, Takings Formalism and Regulatory Formulas: Exactions and the Consequences of Clarity, 92 Cal. L. Rev. 609, 611 (2004).
19 See id. at 623 & n.57.
22 See Edward H. Ziegler, Partial Taking Claims, Ownership Rights in Land and Urban Planning Practice: The Emerging Dichotomy Between Uncompensated Regulation and Compensable
Local governments impose exactions, impact fees, and conditions on the use of property either through an individualized, ad hoc analysis of a proposed development or through legislatively determined criteria that apply to different proposed developments, depending on size.23 Despite broad authority to condition development, constitutional protections—namely the Fifth Amendment Takings Clause—place a limit on what and how much local governments can require of developers through such means.24 The Supreme Court introduced a two-pronged constitutional test in Nollan v. California Coastal Commission and Dolan v. City of Tigard. First, there must be an “essential nexus” between the mitigation measure imposed and a valid governmental goal. Second, there must be “rough proportionality” between the amount or degree of the mitigation measure and the impacts created by the new development that the measure seeks to allay.25

B. Environmental Mitigation Measures Generally

As many cities have become more environmentally conscious, they have started to impose exactions, impact fees, and conditions on their approval of new development in order to address various environmental impacts. Some states mandate that cities ensure that developers dedicate land and/or pay impact fees to provide open space within both residential and commercial developments before approving developments.26 In other states, cities are merely encouraged and empowered, though not required, to incorporate open space requirements into their discretionary land use approvals, such as subdivision applications.27 For example, Longmont, Colorado requires all new de-

Benefit Extraction Under the Fifth Amendment Takings Clause, 22 J. LAND RESOURCES & ENVT'L. L. 1, 10 & n.54 (2002) (noting various conditions imposed by local governments in granting discretionary approvals).
23 See Fenster, supra note 18, at 645.
27 See id. at 393–95.
velopment projects to set aside a certain percentage of land for open space use, usually ranging from 10% to 30% for residential developments and 20% to 30% percent for nonresidential developments.\textsuperscript{28} In Louisville, Colorado, residential developers must dedicate at least 15% of their subdivided land for park, school, or other related purposes, while nonresidential developers must dedicate a minimum of 12%.\textsuperscript{29}

Other localities have focused environmental mitigation efforts on preservation of farmland, forests, wildlife habitats, and other natural areas. For example, Montgomery County, Maryland developed a successful transferable development rights program to protect its agricultural land.\textsuperscript{30} In Davis, California, developers must pay an impact fee so that the City can purchase land to create a buffer zone between the new development and the remaining agricultural land.\textsuperscript{31} Other states, such as Vermont, have authorized their local governments to impose impact fees or off-site mitigation measures to protect agricultural land and critical wildlife habitats.\textsuperscript{32} Concord, New Hampshire has created a shoreline protection district to better control water pollution, maintain water quality, and protect natural habitats for birds, fish, and other aquatic life.\textsuperscript{33} These examples of environmental mitigation measures are representative of the types of activity occurring at the local and state levels throughout the country.

C. Environmental Mitigation Measures for the Building of New Developments

The most notable area of environmental mitigation measures imposed by states and localities may be in the green building arena.

\textsuperscript{28} LONGMONT, COLO., LAND DEVELOPMENT CODE § 15.05.040(c) (2002), available at http://www.ci.longmont.co.us/planning/dev_code/documents/chapter15.05.02-06amendments.pdf.


\textsuperscript{30} See Julian Conrad Juergensmeyer et al., Transferable Development Rights and Alternatives After Suitum, 30 URB. LAW. 441, 450–51 (1998).


\textsuperscript{32} See id. at 67. Some cities in Vermont have adopted approval requirements to protect agricultural land and wildlife habitat. See, e.g., BENNINGTON, VT., LAND USE & DEVELOPMENT REGULATIONS § 8.11(A)–(B) (3) (2006), available at http://www.bennington.com/government/zhrp.PDF (requiring that subdivisions “be designed to preserve . . . fragile features . . . and rural conservation resources,” and to ensure open space for agricultural and forestry use); BRANDON, VT., LAND USE ORDINANCE § 711(i)(1)–(2)(c) (2006), available at http://www.town.bradon.vt.us/Ordinances/BLUO_May_2006.pdf (expressing the town’s intent to preserve farm and forest land by possibly requiring management plans for farmlands, forests, wildlife, and other natural areas).

\textsuperscript{33} See Nolon, supra note 26, at 409.
Green building, or “sustainable construction,” has been defined as “creating a healthy built environment based on ecologically sound principles” that “look[] at the entire life cycle of the built environment: planning, design, construction, operation, renovation and retrofit, and the end-of-life fate of its materials.”

34 These principles are perhaps most widely recognized as manifested in the Leadership in Energy and Environmental Design (LEED) standards created by the U.S. Green Building Council (USGBC), a private, nonprofit organization with a goal of promoting and standardizing green building methods. 35 The LEED standards are based on building performance in the following categories: site selection; water efficiency; energy and atmosphere; materials and resources; indoor environmental quality and innovation; and design quality. 36

According to the USGBC, nine states and more than forty local governments have passed legislation requiring LEED certification for some forms of new development. 37 Cities such as Austin, Texas; Eugene, Oregon; and San Jose, California require new municipal buildings to meet LEED certification standards. 38 The City of Austin also extends this certification requirement to include certain new private, nonmunicipal buildings. 39 Some cities have gone even further. In 2005,

34 Charles J. Kibert, Policy Instruments for a Sustainable Built Environment, 17 J. LAND USE 
CategoryID=19 (last visited Apr. 29, 2008).
37 Developers, Managers See Green Building Perks, REALTOR MAG. ONLINE, June 29, 2007, 
http://www.realtor.org (search “Developers, Managers See Green Building Perks?”); see 
Christopher D. Montez & Darren Olsen, The LEED™ Green Building Rating System and 
Related Legislation and Governmental Standards Concerning Sustainable Construction, CONSTRUC 
TION L., Summer 2005, at 38, 39–42 (discussing how LEED standards have influenced or 
been adopted by federal, state, and local governments).
38 See Montez & Olsen, supra note 37, at 41–42.
39 See Austinfo, Energy Efficiency, Residential Green Building Program, For 
Programs/Green%20Building/Programs/residential.htm (last visited Apr. 29, 2008). 
These developments include mixed-use projects in the City’s central business district and 
downtown areas; multifamily residences in the City’s university neighborhood overlay 
district; single-family residences, multifamily residences, and commercial and institutional 
buildings with an area greater than 25,000 square feet in the City’s Mueller redevelopment 
district; Planned Unit Developments; SMART housing projects; and houses in the City’s 
%20Efficiency/Programs/Green%20Building/Participation/requirements.htm (last visited 
Apr. 29, 2008).
Scottsdale, Arizona became the first city in the United States to require that all new city buildings be certified at the LEED Gold standard level.\textsuperscript{40} As evidenced by these trends, more states and cities are encouraging or requiring LEED standard certification for new developments within their boundaries.\textsuperscript{41}

II. DEVELOPERS BECOME MORE PROACTIVELY GREEN

In response to the rise and increase of such environmental mitigation measures and requirements, many developers voluntarily have become proactively greener in their new developments. For example, some developers propose more open space in their projects than a locality would normally require. Many developers include energy-efficient appliances in new homes, even if local requirements do not mandate their inclusion. Other developers use recycled materials such as scrap metal, concrete, wood, and the like in their new developments without the local government requiring them to do so. Some developers propose more pedestrian-friendly developments to lessen residents’ use of cars. Many developers build more energy-efficient homes than required by local and state standards. They include, among other things, effective insulation, solar panels, radiant floor heating, high-performance windows, rainwater collection systems, tight construction and ducts, and energy-efficient heating and cooling systems. Many commercial developments also boast environmentally friendly qualities: individualized temperature controls at work stations, waterless urinals, faucets with automatic sensors, computerized blinds that respond to outdoor weather conditions, and roof gardens designed for added insulation and to help control nonpoint source runoff pollution.\textsuperscript{42} As discussed further below, while there may be many impetuses for this trend, the results of such proactivity in exceeding current environmental mitigation standards and requirements are nevertheless impressive and noteworthy.\textsuperscript{43}

\begin{itemize}
  \item \textsuperscript{40} See Montez & Olsen, \textit{supra} note 37, at 42.
  \item \textsuperscript{41} See \textit{id.} at 39–42. Recently, the City of Los Angeles adopted a new green development program that required certain larger new developments to be fifteen percent more energy efficient. See Margot Roosevelt, \textit{Bid to Make Buildings Greener OK’d,} L.A. Times, Nov. 16, 2007, at B1, available at 2007 WLNR 22709069.
  \item \textsuperscript{43} See discussion \textit{infra} Part III.
\end{itemize}
III. The Potential Impetuses Behind Developers’ Environmentally Responsible Business Practices

There may be many explanations as to why developers voluntarily propose such environmentally friendly new developments. Some may be straightforward and monetarily based. For example, it is likely that by anticipating and controlling for the environmental mitigation measures in advance, developers can better approximate the associated costs and build them into their business models with greater certainty. In addition, by exceeding the local standards and requirements, developers can better ensure a more expeditious approval process and, thus, limit costs for delays in the process that might normally arise when city officials consider what exactions, impact fees, and conditions to impose.

Many developers may lean toward greener developments because of financial incentives that various levels of government provide for developing greener buildings. For example, the federal government offers a credit of $2000 for developers who construct homes that are projected to save a minimum of fifty percent of the heating and cooling energy of a comparable home that meets or exceeds the standards of the 2003 International Energy Conservation Code.44 In addition, the Internal Revenue Code provides a tax deduction to property owners for the costs of certain “energy efficient commercial building property placed in service during the taxable year.”45 States and cities also provide financial incentives for greener building by, among other approaches, waiving certain application fees, providing expedited review of the proposed development project, and offering tax increment financing.46

In an increasingly competitive political marketplace for securing discretionary land use approvals, developers may be proposing greener developments to ingratiate themselves to local government decision-makers. In many cities—particularly those on either coast—environmental consciousness has become a community value, and thus, residents expect their local government officials to incorporate this value

45 I.R.C. § 179D (2006). This deduction applies to both new and retrofitted developments. See id.
46 See, e.g., Perzan, supra note 36, at 42 (noting the City of Chicago’s financial incentives for green development). Moreover, states such as New York, Maryland, Massachusetts, and Oregon provide tax credits for LEED-certified buildings. See Montez & Olsen, supra note 37, at 39–40.
in their land-use decisionmaking. This incidence increases the possibility that a development project that barely meets the locality’s environmental standards and requirements may be rejected by the city or may be denied preferential treatment, such as financial incentives and expedited review, in favor of greener developments. By voluntarily and proactively exceeding environmental mitigation standards and requirements with their proposed projects, developers increase the likelihood of securing the necessary approvals to construct their development.

Developers may also be attempting to meet an increasing market demand for environmentally friendly buildings or homes, and there are sensible reasons for doing so. According to a recent study, residential green building is expected to grow from $7.4 billion in 2005 to somewhere between $19 and $38 billion by 2010.\textsuperscript{47} Green buildings also seem to improve worker productivity. As one scholar noted, “[N]umerous studies of sustainable design have concluded that a structure’s interior thermal environment, which includes temperature, humidity levels, and ventilation control, influences worker productivity and performance, the building’s overall air quality, and acoustics.”\textsuperscript{48} Thus, greener buildings have the potential to save millions, if not billions, of dollars for the American economy based on “increased productivity and reduced absenteeism.”\textsuperscript{49} In addition, a recent study found that a group of students in Orange County, California improved their test scores in environmentally conscious buildings that maximized natural light.\textsuperscript{50} Moreover, as environmental consciousness grows in many communities, so does the market for greener homes.


\textsuperscript{49} See Taub, supra note 42, at 405–06 (citing California’s Sustainable Building Task Force’s October 2003 study, which found that green building could save up to $250 billion by preventing the “sick building syndrome”).

\textsuperscript{50} BLDG. DESIGN & CONSTR., WHITE PAPER ON SUSTAINABILITY: A REPORT ON THE GREEN BUILDING MOVEMENT 34 (2003), available at http://www.ussgc.org/Docs/Resources/BDC_WhitePaperR2.pdf (noting that students in classrooms with the most “daylighting” progressed 20% faster on math tests and 28% faster on reading tests in an academic year than those students with the least “daylight”).
Finally, while developers are clearly motivated by profit, they may also be proposing greener development, at least in part, for altruistic reasons. Indeed, as noted below with the case of Playa Vista, some real estate development corporations have inculcated a culture of environmental consciousness in their businesses and developments.

IV. THE CASE OF PLAYA VISTA

A. The History

The Playa Vista development project in Los Angeles, California is the largest urban infill project in the country, at approximately 1087 acres. Although the project is one of the greenest in the country, it did not start out that way. The story of Playa Vista is, thus, an instructive example of how developers may adopt and embrace greener standards, in part, by partnering with environmental groups to secure the approvals for, and ultimately construct, a development that at one point appeared impossible to achieve. Moreover, the story demonstrates how this change in approach may have led to a transformation into the greener culture that now defines Playa Vista.

The land now referred to as Playa Vista was originally owned by Howard Hughes. Hughes left the property largely undeveloped, save for a few structures, including a large airplane hanger. After Hughes died intestate, the Summa Corporation—one of the two corporations that took most of Hughes’s property as successors-in-interest—became the owner of the property. In January 1978, the Summa Corporation began plans to develop the property. It proposed an elaborate development plan that called for 3246 residential units; 2,950,000 square feet of office and light industrial use, including high-rise office towers; 2,050,000 square feet of regional mixed-commercial use, including mas-

51 See discussion infra Part IV.
55 See Lawrence, supra note 54, at 117; Stremfel, supra note 54, at 34.
56 See Stremfel, supra note 54, at 34.
sive shopping centers; 600,000 square feet of retail and commercial use for mixed-use development; and 600 hotel rooms. The project contemplated little, if any, environmentally friendly building design. Moreover, the Summa Corporation ignored environmentalists and alienated other community groups that were concerned about, among other things, the proposed project’s environmental impacts.

Although the Summa Corporation received approvals in September 1984 to develop the property, two significant lawsuits followed. In late 1984, the Friends of Ballona Wetlands filed a lawsuit claiming that the Summa Corporation violated the California Coastal Act by not setting aside enough acreage to preserve the coastal wetlands. About a year later, local community groups collectively known as the Venice Town Council filed suit challenging the Los Angeles City Council’s approval of the Playa Vista environmental impact report (EIR). The Venice Town Council alleged that the EIR, which the City Council approved in November 1985, failed to adequately consider the traffic and sewage impacts and other problems that the proposed development would create. These lawsuits coincided with a Los Angeles County grand jury report that claimed that the transportation plan for the proposed development was not adequate to meet the increased traffic attributable to the project. These lawsuits led to increased opposition to and political pressure against the proposed development. When a new city councilmember unseated an incumbent on an anti-Playa Vista platform, the project was stalled indefinitely.

The Summa Corporation’s arrogance and, at best, indifference to community and environ-

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58 See id.
60 See Stremfel, supra note 54, at 34.
62 See Rainey, supra note 61, at B1. The Summa Corporation had agreed to set aside 175 acres for wetlands preservation, while the Friends of Ballona Wetlands claimed that 325 acres were necessary. Id.
63 See id.
65 See Rabin, supra note 59, at A1.
mental concerns led to its inability to construct the proposed development. The situation had degenerated to the point where many thought that Playa Vista would never be constructed.

In 1989, after years of unresolved litigation, the Summa Corporation sold Playa Vista in part to Maguire Thomas Partners, a major real estate developer in Southern California. Maguire Thomas adopted a very different approach from the Summa Corporation in attempting to develop the property. Maguire Thomas reached out to environmentalists and community members to try to build consensus on what type of development would be politically tenable. Maguire Thomas held scores of community outreach meetings to listen to the concerns of community members and to attempt to address them in reconceiving the proposed development. Community stakeholders expressed reservations about traffic, air pollution, the wetlands, as well as other environmental concerns, and sought to redesign the development to address these concerns. In addition, Maguire Thomas approached the Friends of Ballona Wetlands, agreed to set aside more acreage for wetlands preservation in exchange for their support of the project, and ultimately settled the lawsuit that had been filed years earlier. In incorporating community concerns into the project and settling the lawsuit, Maguire Thomas established a very different relationship with community groups and opponents, and its actions signaled a cultural change within Playa Vista that was deeply rooted in environmental consciousness.

In response to community feedback and input from the Friends of Ballona Wetlands and other environmental groups, Maguire Tho-

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60 See id. (quoting Summa Corporation president John Goolsby, commenting on how company officials realized after the fact that they should have approached the project differently: “If we learned a lesson, it is to be more sensitive to the concerns of the community.”).

61 See Picker, supra note 61, at 59–60.


63 See id.


65 See Rabin, supra note 59, at A1.

mas proposed a revised development that was significantly scaled back in comparison to the one advanced by the Summa Corporation. The new proposal—an anti-urban sprawl community that provided mixed-use design centered around pedestrian-friendly streets, public parks, and open spaces—was also far more environmentally friendly than its previous iteration. Even after the release of the revised project plan, Maguire Thomas continued to meet with environmentalists and community members to solicit further feedback and make additional adjustments to the development. Despite some residual opposition in the community, Maguire Thomas’s collaborative approach earned it the respect and good will of many involved in the Playa Vista development process. In 1990, the Los Angeles City Council unanimously approved the revised plan for development of Playa Vista.

Shortly thereafter, two significant forces again derailed the building of Playa Vista. Southern California experienced a significant recession that particularly affected the real estate market. The recession impacted Maguire Thomas’s financial ability to move forward with the development of Playa Vista. In addition, the revised EIR for Playa Vista, released in late 1992, drew additional critics and opposition from those who claimed that the EIR failed to properly address the significant increase in traffic attributable to the new development. At public hearings conducted to discuss the adequacy of the EIR, environmentalists voiced concerns regarding traffic mitigation, flood precautions, stormwater runoff, and other such concerns. In addition, City Councilmember Ruth Galantar publicly opposed the project in its current state because of the inadequacies of the EIR in properly addressing the environmental impacts.

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74 See Rabin, supra note 59, at A1.
75 See id.
76 See Moran, supra note 70, at B1.
77 See Picker, supra note 61, at 60.
78 Id.
79 Id.
Maguire Thomas reacted to the opposition and criticism by making concessions to address the environmental impacts. Among them was a promise to increase the amount of park space in the development, and to install and maintain filters and catch basins to filter stormwater created by the development. These changes earned the endorsement of Councilmember Galantar, who joined a broad array of civic, labor, and business groups in supporting the project. But opposition to the project did not subside. An environmental group called Save Ballona Wetlands filed a lawsuit alleging that the EIR failed to adequately consider the traffic, air pollution, and other environmental consequences of the proposed development. The court found, however, that the City properly followed the California Environmental Quality Act in approving the EIR for Playa Vista. In addition, in early 1994, the Friends of Ballona Wetlands agreed to abandon their lawsuit against the City of Los Angeles and the State of California when Maguire Thomas agreed to dedicate $12.5 million to restore the saltwater marsh on the property and to abandon the proposed highway that would have run through the wetlands.

Despite these advances, Maguire Thomas still faced significant hurdles to beginning construction. Maguire Thomas was having problems funding the Playa Vista project. In addition, another environmental group, the Wetlands Action Network, filed a lawsuit alleging that the U.S. Army Corps of Engineers performed an inadequate as-

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84 Id. Other concessions included a promise to limit the amount of office space in future phases of the development if the corporation could not reduce rush hour traffic in the area, a commitment to set aside fifteen percent of the residential housing for affordable housing, and an agreement to reduce the maximum height of buildings in the development from nine to six stories. Id.
86 See id.
89 See Piker, supra note 61, at 60–61.
90 See id. at 62.
91 See id. (noting the dissipation of the Maguire Thomas partnership and the reticence of investors to invest in the project because of the string of lawsuits that Playa Vista faced).
essment of the development. Due to financial strains, Maguire Thomas sold its controlling interest in Playa Vista to a group of investors led by Morgan Stanley and Goldman Sachs. These investors formed a new entity called Playa Capital Company LLC for the purpose of building Playa Vista. Finally, bulldozers and graders cleared the property and construction began.95

B. The Project Today: A Model of Environmental Consciousness

Despite additional delays resulting from lawsuits and methane gas concerns, construction continued, and in May of 2002, Playa Vista welcomed its first residents. Phase one of the revised project that Maguire Thomas and Playa Capital proposed, advanced, and built in collaboration with environmentalists and other community stakeholders has proven to be one of the most environmentally conscious large-scale developments in the country. The anti-urban sprawl plan highlights a pedestrian-oriented, mixed-use design, where people can work, live, and recreate. Playa Vista has received recognition for this innovative design. In 1999, the project received the Ahwahnee Award in recognition of its higher-density, mixed-use design. In 2001, the U.S. Environmental Protection Agency awarded Playa Vista one of its Clean Air Awards for “creating a community where residents [were] able to manage their household needs without getting into their

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92 See Wetlands Action Network, 222 F.3d at 1109. While the Wetlands Action Network prevailed in the district court, the U.S. Court of Appeals for the Ninth Circuit overturned the decision on appeal. Id. at 1122. Nevertheless, the time and money spent on this lawsuit further delayed construction of the project. See Picker, supra note 61, at 62.
93 See Picker, supra note 61, at 62-63.
94 See id. at 63.
95 See id. at 64.
96 After an extensive study of the methane gas issues related to the property, the City of Los Angeles Department of Building and Safety required the installation of gas mitigation systems that consisted of a membrane shield under the buildings, vents, and a series of alarms. Martha Groves, Playa Vista Buyers Will Test Capability of Methane Shield, L.A. TIMES, Jan. 6, 2003, at A1, available at 2003 WLNR 15115733.
99 See id.
100 See id.
101 Id. The Ahwahnee Award recognizes developments that are “designed with housing, jobs and daily shopping and recreation venues within easy walking distance. . . . [A]nd as many mass transit connections as possible.” Id.
cars.” The reconceived development has also reduced the original traffic projections. Playa Vista provides bus services for traveling to different points within the development and a clean fuel shuttle service for traveling to the nearby beaches. Playa Vista also partnered with Global Electric Motors, a DaimlerChrysler company, to provide incentives for residents to purchase or lease zero-emission electric vehicles.

Playa Vista has also focused on recycling in its construction. The project has had a ninety percent average recycling rate during construction thus far. Many buildings either have been constructed from materials that contain a high percentage of recycled content or from certified sustainably grown lumber. In 2005, the State of California’s Waste Reduction Management Program recognized Playa Vista for its use of recycled materials in construction. Residential units also contain one built-in bin for waste and one for recycling.

The residential units are twenty-eight percent more energy efficient than California’s 1998 Title 24 Building Energy Efficiency Standards require. Playa Vista ensured such sustainable development when it adopted its Residential Sustainable Performance Guidelines in 1999, which require all builders in the development to adhere to environmentally responsible principles. In addition, the development uses solar power to heat community swimming pools.

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104 Id.


106 Id.


108 Playa Vista, Recycling, supra note 105. The waste generated from the development is sent to a materials recovery facility where it is sorted, processed, and, to the degree possible, recycled. Id.


The drastically scaled-back version of Playa Vista, compared with the original plan of the Summa Corporation, is underscored by its incorporation of parks and other open space uses. Approximately seventy percent of the original planned development area, for a total of more than 750 acres, is now, or will be, devoted to parks and open space. This dramatic increase in open space occurred because, in addition to the original acreage that Maguire Thomas and Playa Capital agreed to set aside for wetlands restoration and preservation, Playa Capital sold 192 acres to the State of California for $140 million. The Trust for Public Law, a nonprofit organization, assisted in negotiating the deal. Playa Capital also agreed to waive its right to purchase and eventually develop sixty-four acres adjacent to the Playa Vista property. This concession brought the total amount of Playa Vista land that had been deeded to either the public or to environmental groups for restoration and preservation of the wetlands to more than 600 acres.

Playa Vista has also restored most of the Ballona freshwater marsh. The restoration and preservation of these wetlands will serve a variety of environmental purposes and benefits, including habitat creation and maintenance, flood control, and stormwater quality management. The California Stormwater Quality Association recognized Playa Vista’s wetlands restoration work by naming the project its Stormwater BMP (Best Management Practice) Implementation Project of the Year.

Phase two of the Playa Vista project has also been significantly scaled-back from Summa Corporation’s original proposal. Phase two

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112 See More than 750 Acres of Parks Available for Recreation at Playa Vista, http://www.playavista.com/living/parks.php (last visited Apr. 29, 2008) (noting that more than 750 acres of parks and open space will be available for recreation in the development).
114 See id.
115 See id.
116 See id.
117 See Playa Vista, Good Neighbor, supra note 61 (stating that twenty-four of the 26.1 acres of Ballona freshwater marshes have been restored to date).
encompasses 111 acres of the Playa Vista property and will contain 2600 residential units; 175,000 square feet of office space; 150,000 square feet of retail space; and additional environmental benefits such as a riparian corridor and restoration of the Westchester bluffs on the southern portion of the property. With phases one and two combined, Playa Vista will have fifty-five percent fewer residential units and seventy percent less retail square footage than originally envisioned. The Los Angeles City Council approved phase two on September 22, 2004, but the City of Santa Monica and some environmental groups filed a lawsuit claiming that the EIR for phase two failed to sufficiently analyze the impacts that the phase would have on the treatment of wastewater generated by the project, increase in traffic congestion, and disruption to Native American burial sites. So, the saga of Playa Vista continues.

CONCLUSION: LESSONS LEARNED

Much can be gleaned from the Playa Vista experience. In many localities, the model of a developer pushing a development through a city council with little, if any, regard for community or environmental concerns seems to be on the decline. The Summa Corporation’s travails, which are by no means unique, suggest as much. Indeed, the collaborative approach that Maguire Thomas and Playa Capital took with environmentalists and other community stakeholders may signal a paradigm shift in how developers approach discretionary land use approval processes.

The story of Playa Vista also demonstrates how some developers are surpassing the environmental mitigation requirements of their respective localities in proposing greener developments. Maguire Thomas and Playa Capital may have been motivated by political forces to obtain the discretionary land use approvals to build the project. They may also have been focused on the emerging market for greener development. But one need only peruse Playa Vista’s website to see that the company has fully embraced sustainable development and environmental consciousness. Indeed, much of Playa Vista’s marketing and advertising campaign centers around its green development.

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121 See id.
125 See id. The website displays one of its marketing slogans on its main page, “Can Playa Vista Residents Really Run For Miles Without Leaving Their Front Yard?”
addition, its website contains information regarding the project’s sustainable design, including details of the energy-efficiency and recycling aspects of the development. Playa Vista’s decision to exceed the environmental requirements imposed by the City of Los Angeles and make environmental consciousness a part of how it defines the development demonstrates that developers may be becoming more green for altruistic reasons, in addition to the more business-driven reasons detailed above. Regardless, the case of Playa Vista and similar trends in land-use development suggest that we will likely see more developers becoming proactively and voluntarily green in their projects—a significant shift from traditional approaches in Euclidean Zoning.