

MINUTE ITEM

This Calendar Item No. 90 was approved as Minute Item No. 90 by the California State Lands Commission by a vote of 3 to 0 at its 08/21/96 meeting.

CALENDAR ITEM

90

A 67

08/21/96

W 25306

S 35

R . Ludlow

AUTHORIZATION FOR THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION, THE CALIFORNIA DEPARTMENT OF FISH AND GAME, THE CALIFORNIA COASTAL CONSERVANCY, THE CALIFORNIA RESOURCES AGENCY, THE UNITED STATES FISH AND WILDLIFE SERVICE, THE NATIONAL MARINE FISHERIES SERVICE, THE UNITED STATES ARMY CORPS OF ENGINEERS, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE HARBOR COMMISSIONS OF THE CITIES OF LONG BEACH AND LOS ANGELES FOR FACILITATION OF WETLANDS ACQUISITION AND RESTORATION AT THE BOLSA CHICA LOWLANDS IN ORANGE COUNTY, CALIFORNIA.

SUMMARY

Utilizing an initial budget of \$67,750,000, the Proposed Agreement between four state agencies, four federal agencies and the Ports of Long Beach and Los Angeles, serves as a road map and an allocation of responsibilities for the ultimate acquisition, restoration and management of most of the Bolsa Chica Lowlands, the largest remaining restorable wetland area in Southern California, and the granting to the Ports of the offset credits necessary to implement their respective 21st century expansion plans.

The agreement contemplates the acquisition by the State Lands Commission of approximately 905 acres of the Bolsa Chica Lowlands and the restoration of this property. Most of the initial funding will come in equal shares from the Ports of Long Beach and Los Angeles in return for the vesting of offset credits. Under the plan the State Lands Commission, acting as the Kapiloff Land Bank Trustee, will purchase 880 acres of the Lowlands using Port funds, accept an additional 25 acres by grant from the Metropolitan Water District and then hold title to the acquired property as Public Trust Lands. In addition, the State Lands Commission will also be a co-lead agency for preparation of the CEQA/NEPA documents necessary for restoration activities and act as the banker for the funds allocated to do the restoration work and the financing of long-term management costs.

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The Proposed Agreement gives the State Lands Commission the option to go forward with the acquisition of the Lowlands and participation in their restoration and management, but does not obligate it to do so at this time. That decision point will not occur until later in the year after an environmental assessment and appraisal have been completed and Coastal Commission approval obtained. If the State Lands Commission does give final approval, the closing would take place at the end of December 1996.

BACKGROUND

The Ports of Long Beach and Los Angeles need to acquire offset credits in order to obtain the necessary State and Federal authorizations to go forward with their expansion plans. State and federal regulatory agencies are of the collective opinion that compensation for the unavoidable significant adverse impacts upon the marine ecosystem from the Port projects can best be offset by the creation of shallow water, tidally influenced coastal embayment habitats. However, no suitable lands remain within the boundaries of the Port Districts for this purpose. The area closest to the Ports that presents the greatest opportunity for the Ports to create the necessary habitat is the Bolsa Chica Lowlands.

The Bolsa Chica Lowlands is a remnant of a large wetland area that once stretched along the Orange County coast adjacent to the present City of Huntington Beach. This wetland area was historically a marsh interlaced with full tidal channels radiating from an ocean inlet. Eventually the natural ocean inlet was blocked. Vast areas of the wetlands were filled and ultimately devoted to housing. For over 50 years the remaining wetlands have been included in an operating oil field. Tidal circulation throughout most of the site has been eliminated and fill was placed on certain areas for use as drilling pads, service roads and levees. Although the lowlands was thus divided and cut off from tidal influence, much of the land between the drill sites and levees still supports wetland habitat, albeit primarily seasonal in nature. In 1973 the State Lands Commission acquired 327 acres of the remaining historic wetlands in settlement of long-standing title claims. 300 acres were leased to the Department of Fish and Game for operation as a State Ecological Reserve, of which approximately 194 acres have been restored to muted tidal influence.

The vast majority of the privately-held Lowlands is owned by the Signal Bolsa Corporation, a wholly-owned subsidiary of Koll Real Estate Group (Koll). Of the 930 such acres owned by Koll, a minimum of 880 acres is proposed to be acquired by the State Lands Commission. Most of this property is presently an active oil and gas field

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under lease to CalResources Limited Liability Company, a subsidiary of Shell Oil, which operates over 200 oil wells and support facilities on the lease.

At its May 1996 meeting the State Lands Commission authorized the Executive Officer to enter into the necessary contracts and interagency agreements to facilitate a pre-acquisition environmental assessment of the Bolsa Chica Lowlands. The results of this survey will be used by the signatories to the Proposed Agreement to evaluate the level, location and nature of existing contamination, if any, allocate responsibility for the cleanup, evaluate the effect of the cost of the cleanup on the restoration budget, and in general assist in the decision whether or not to proceed with the acquisition of the property.

PROPOSED AGREEMENT

The Proposed Agreement contemplates the acquisition, restoration, and long-term management of the Bolsa Chica Lowlands. It is a complex and expensive project that requires the cooperation of state and federal agencies, the Ports of Long Beach and Los Angeles, the private land owner, and the oil company lessee.

The project is being made possible by the Ports' need to expand their facilities in order to remain competitive into the 21st century. Expansion of Port facilities contemplates the filling of 454 acres of submerged lands and the resulting destruction of existing marine habitat. In order to accomplish this, each Port is required to obtain a permit from the United States Army Corps of Engineers and seek approval from the Coastal Commission for the necessary amendments to their Port Master Plans. Neither the Corps Permit nor Coastal Commission approval can be obtained without the concurrence of the state and federal regulatory agencies that are parties to the Proposed Agreement. These agencies, in the exercise of their independent jurisdiction, require offsetting mitigation for the loss of marine habitat by the creation or restoration of equivalent habitat values that will be maintained on a permanent basis. The Bolsa Chica Lowlands is the closest property where appropriate mitigation can be implemented.

The final decision on whether or not to proceed with the project will not be made until later this year. The environmental assessment, which is presently under way, must be completed and evaluated by the parties to the Proposed Agreement. The property appraisal must be finished, and the terms of purchase and sale agreed to between the State Lands Commission and Koll. In addition, the Coastal Commission will have had to act to express its agreement with the initial federal consistency determination, to

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approve the Ports' Master Plans and to adopt findings which reflect its approval of the use of the mitigation credits for the Ports' landfills. A minimum of 60 days must elapse from the date of the Coastal Commission's final action before acquisition of the Lowlands can occur. It is anticipated that the Coastal Commission will make its decision at its October 7, 1996 meeting. In any event, each of the federal and state agencies that are parties to the Proposed Agreement will have to make a final decision on whether or not to proceed by December 16, 1996, and each Port will have had to notify the State Lands Commission that it was satisfied with the Coastal Commission's actions, that all preconditions to the vesting of mitigation credits have been waived or satisfied and that the State Lands Commission should proceed to close the transaction.

A Concept Plan for the restoration of the Bolsa Chica Lowlands has been prepared and incorporated into the Proposed Agreement. It is the initial stages of this Plan that support granting the Ports their necessary mitigation credits. Specifically it is contemplated that a tidal inlet would be created leading into a 384-acre full tidal basin adjacent to a 220-acre muted or managed tidal area. Eventually the remainder of the property would be restored to full tidal, salt marsh and seasonal ponds. However, this remaining area includes the highest concentration of active oil and gas production facilities and must await depletion of the oil field over the next 15 to 20 years before restoration can begin.

Implementation of the Plan calls for the Ports to each contribute \$33,375,000 and the Coastal Conservancy to contribute \$1,000,000, for a total of \$67,750,000. These funds will be held by the State Lands Commission acting as Kapiloff Land Bank Trustee. The funds will be used by the Commission to acquire approximately 880 acres of Lowlands from Koll with an additional 25 acres being granted by the Metropolitan Water District. This property will be held in perpetuity by the Commission as Public Trust Lands for purposes of ecological restoration and preservation, scientific study, open space, and fish and wildlife habitat protection. The Commission will also endeavor, over time, and subject to available funding, to acquire the remaining Lowlands property including the 41-acre Fieldstone parcel.

Immediately upon acquiring the Lowlands property the Proposed Agreement directs the State Lands Commission to set aside \$5,000,000 of the Project funds. Interest earned on this money will be used to finance the management of the property after it has been restored. Although the Agreement allows the Commission to manage the property after restoration, it may choose instead to have a third party fulfill this function. In that event the Agreement gives the California Department of Fish and Game and the U.S. Fish

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and Wildlife Service a right of first refusal.

After acquisition of the Lowlands by the State Lands Commission and the setting aside of funds to support monitoring and management of the restored property, the Proposed Agreement calls for the Coastal Conservancy to prepare a restoration feasibility plan, based upon the Concept Plan, in sufficient detail to be used in the NEPA/CEQA process. A joint environmental document will be prepared, with the State Lands Commission serving as lead agency for CEQA and the Army Corps of Engineers and the U.S. Fish and Wildlife Service as co-lead agencies for NEPA. It is during this phase of the Project that the public, and local governmental agencies, will help shape the Final Restoration Plan. After conclusion of the CEQA/NEPA process the Coastal Conservancy will prepare the Final Restoration Plan, making those adjustments in the Plan that the CEQA/NEPA process revealed as being appropriate and desirable. The ultimate decision on the shape of the Final Restoration Plan will be made by the State Lands Commission, the Army Corps of Engineers and the U.S. Fish and Wildlife Service in their capacities as co-lead agencies in the CEQA/NEPA process. However, the Agreement requires that the Final Restoration Plan remain as consistent as possible with the Concept Plan.

Utilizing the Final Restoration Plan, the State Lands Commission will be responsible for obtaining all necessary federal, state and local permits for the construction of the restoration features component of the project. The U.S. Fish and Wildlife Service will be responsible for the actual construction.

All aspects of the project including acquisition, planning, environmental compliance, permitting, construction, monitoring and management, will be paid for with project money deposited in the Commission's Kapiloff Land Bank Fund. In essence, the State Lands Commission, acting as Kapiloff Land Bank Trustee, will be the project's banker and as such will be required to make periodic accountings of all income and expenditures for the project to the other parties to the Agreement.

CONCLUSION

For almost 30 years the State Lands Commission has been involved in the effort to preserve the Bolsa Chica Lowlands. In 1973 it was successful in acquiring 327 acres, the majority of which has been restored. Recently the Orange County Board of Supervisors and the Coastal Commission approved a change in Orange County's Local Coastal Plan that would allow the construction of housing on nearly 18 percent of the remaining Bolsa Chica Lowlands.

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The acquisition and restoration of an additional 905 acres would be in lieu of most of this proposed development and preserve for the people of this state one of the last remaining wetland areas in Southern California. If not acquired, this invaluable ecological resource may be lost.

In addition, the credits that the Ports will receive will result in substantial economic benefits to the Southern California economy. Based on estimates supplied by the Port of Long Beach, each acre of new landfill for container operations supports 250 to 450 jobs in the five-county Los Angeles Basin. For the 454 acres of fill supported by the mitigation credits from this project, a range of 110,000 to 200,000 jobs would be created with a payroll of \$2.8 to \$4.8 billion and a resulting increase of \$360 to \$660 million in state and local tax revenues.

For the foregoing reasons, it is recommended that the State Lands Commission authorize the Executive Officer to execute the Proposed Agreement for Wetlands Acquisition and Restoration at the Bolsa Chica Lowlands.

AB 884:

N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21065 and 14 Cal. Code Regs. 15378.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL. CODE REGS. 15378.
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT, SUBSTANTIALLY IN THE FORM ON FILE WITH THE COMMISSION, BETWEEN THE CALIFORNIA STATE LANDS COMMISSION, THE

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CALIFORNIA DEPARTMENT OF FISH AND GAME, THE CALIFORNIA COASTAL CONSERVANCY, THE CALIFORNIA RESOURCES AGENCY, THE UNITED STATES FISH AND WILDLIFE SERVICE, THE NATIONAL MARINE FISHERIES SERVICE, THE UNITED STATES ARMY CORPS OF ENGINEERS, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE HARBOR COMMISSIONS OF THE CITIES OF LONG BEACH AND LOS ANGELES FOR FACILITATION OF WETLANDS ACQUISITION AND RESTORATION AT THE BOLSA CHICA LOWLANDS IN ORANGE COUNTY, CALIFORNIA.

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