

This Calendar Item No. C48 was approved as Minute Item No. 48 by the California State Lands Commission by a vote of 2 to 0 at its 06/07/04 meeting.

CALENDAR ITEM

C48

A 67

S 35

AD 483

06/07/04
W 25306
J. Trout
L. Kiley
P. Griggs

CONSIDER PURCHASE OF A LAND BANK PARCEL BY THE CALIFORNIA STATE LANDS COMMISSION, IN ITS CAPACITY AS THE KAPILOFF LAND BANK TRUSTEE, AT NO MORE THAN FAIR MARKET VALUE, OF APPROXIMATELY 43 ACRES KNOWN AS THE FIELDSTONE PROPERTY, SITUATED IN ORANGE COUNTY, FROM THE HEARTHSTONE RESIDENTIAL CORP. FOR INCLUSION IN THE BOLSA CHICA LOWLANDS RESTORATION PROJECT

PARTIES:

California State Lands Commission, in its capacity as the Kapiloff Land Bank Trustee

Hearthside Residential Corp.
6 Executive Circle, Suite 250
Irvine, CA 92614

BACKGROUND: In 1996, the Commission, along with seven other State and federal agencies (the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the National Marine Fisheries Service, the California Resources Agency, California Coastal Conservancy and the California Department of Fish and Game) signed an Interagency Agreement to buy, plan, design, construct and maintain the Bolsa Chica lowlands to mitigate the impacts of expanding facilities for the Ports of Los Angeles and Long Beach. The Ports of Los Angeles and Long Beach contributed \$79.7 million for the purchase of the Bolsa Chica lowlands and for the Restoration Project (Project), and in exchange, the Ports received environmental mitigation credits. The California Coastal Conservancy contributed an additional \$1,500,000 (which includes a \$500,000 grant from the U.S. Fish and Wildlife Service.) All these funds were placed in the Kapiloff Land Bank Fund for the purpose of completing the Restoration Project. The Restoration Project is directed by a federal/state interagency Steering Committee of representatives of each of the above listed agencies. The U.S. Fish and Wildlife Service will oversee construction of the project. The U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers were the lead agencies pursuant to the National Environmental Policy Act (NEPA) process

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and the Commission acted as Lead Agency for the California Environmental Quality Act (CEQA) review.

At its meeting on February 12, 1997, the Commission authorized the purchase of approximately 880 acres of the Bolsa Chica lowlands from the Signal Bolsa Corporation, a subsidiary of Koll Real Estate Group. At that same meeting, the Commission authorized the acceptance of an approximately 25-acre parcel from the Bolsa Chica Land Trust (the Metropolitan Water District parcel) for inclusion in the Restoration Project.

The Project consists of two key phases. Phase I, which is scheduled to begin later this year, will restore the ecological function of the existing wetland area by increasing tidal influence and open water habitat by dredging a tidal basin within the existing wetlands and connecting it directly to the Pacific Ocean through a tidal inlet. Phase II is scheduled to occur in 2024, or at the time when the oil fields have reached their productive limit and are abandoned.

SUMMARY: The Fieldstone property has always been considered an integral part of the Project. In 1996, both the Calendar Item proposing the Interagency Agreement among the eight cooperating agencies and the Agreement itself, stated that the Commission would endeavor to acquire the Fieldstone property.

The Final Environmental Impact Report/Environmental Impact Statement for the Bolsa Chica Lowlands Restoration Project, certified by the Commission on January 30, 2002, stated:

"The project area consists of 4 parcels: the 880-acre purchase, the 300-acre CDFG [California Department of Fish and Game] Ecological Reserve, the 42-acre Fieldstone property (purchase pending). For the Proposed Project and all restoration alternatives, the Fieldstone property and 25-acre MWD [Metropolitan Water District] parcel are included within the area to be restored." (p. 2-4)

Further negotiations between Commission staff and the property's owner, Hearthside Residential Corporation (Hearthside), to purchase the Fieldstone property were postponed, however, when a toxic substance, PCB (polychlorinated biphenyl), was unexpectedly discovered on the property.

An evaluation of the contamination has been conducted by Hearthside and reviewed by the Department of Toxic Substances Control (DTSC). Studies to date indicate that a probable maximum of 13,000 cubic yards of contaminated material must be removed and disposed of at an approved disposal site to clean up the property to a level acceptable to DTSC and the Restoration Project. The cleanup levels proposed for the

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Project are designed to make the site safe for ecological purposes and are typically much stricter than the standards DTSC uses for human health.

One critical component of the Project is construction of a subsurface seawater intrusion cutoff wall to prevent seawater from moving under nearby residential areas. Ideally, this cutoff wall would be placed along the farthest inland boundary so that the maximum land area can be restored. Without the inclusion of the Fieldstone property in the Project, the cutoff wall must be routed around the PCB contamination, effectively foreclosing any possibility of including the property in the Project in the future.

The Bolsa Chica Wetlands Steering Committee would like to include the Fieldstone property in the Project. If the Fieldstone property is not purchased at this time, it will not be feasible to integrate it into the Project in the future. The Project is scheduled to begin construction in October 2004, and the location and design of the cutoff wall must be finalized in the immediate future.

Hearthside has agreed to sell the Fieldstone property to the State at a negotiated price not to exceed its fair market value in a clean state and to pay for the cleanup costs. The Project would cause the clean up of the PCBs using the U.S. Fish and Wildlife Service construction contract for the overall Project or by contracting with DTSC under an Interagency Agreement. The cleanup costs, however, would be reimbursed to the Project from Hearthside's sale proceeds as described below. Neither the Project nor the State would, therefore, ultimately be liable for the cost of the cleanup. Legal responsibility for the PCBs during the cleanup and thereafter would remain Hearthside's.

If the Commission decides to acquire the property, it would be held in perpetuity as public trust lands for the benefit of the people of the State of California. The Commission would purchase the property as the "Land Bank Trustee" under the Kapiloff Land Bank Act (California Public Resources Code sections 8600 *et seq.*) Title will be held by the State of California, acting by and through the Commission, as land of the legal character of tide and submerged lands subject to the public trust. The property would be included in the Bolsa Chica Lowlands Restoration Project.

Commission staff is currently conducting an appraisal of the property. The proposed Purchase and Sale Agreement provides for the Commission to deposit into escrow an amount not to exceed the fair market value, as determined by the appraisal, from the Kapiloff Land Bank Fund.

Due to time constraints and contracting requirements of the U.S. Fish and Wildlife Service, it may be necessary to purchase the easement for the cutoff wall that is the subject of Calendar Item 49 before the closing of the proposed transaction to acquire fee title to the Fieldstone property. In that event, the amount deposited into escrow will

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include as a deduction, a credit for any amount paid to Hearthside for the easement for the cutoff wall.

Although the State will be acquiring ownership of the minerals, the property is subject to an Oil and Gas Lease dated June 12, 1940, and recorded on December 12, 1941, in Book 1120 at Page 435 of Official Records for Orange County, California, as amended. The oil and gas royalty interests were severed by assignment long ago and the State will not receive royalties so long as the Lease remains in effect. The lessee quitclaimed the right to use the surface of the property and the subsurface of the property extending downward to a depth of 500 feet in 1971. Currently, the Lease is held by Aera Energy LLC. The existence of the Lease will not affect the use of the property for the Restoration Project since no surface use is permitted.

The Commission and Hearthside would issue separate escrow instructions. The Commission's (Buyer's) escrow instructions would provide for release of the funds only when the escrow agent can: 1) record the deed to the property, 2) issue a CLTA Policy of title insurance, and 3) provide the Commission with a Notice of No Further Action Required issued by DTSC.

Hearthside's (Seller's) escrow instructions would provide for disbursement of the purchase funds: 1) to cover all costs of the cleanup needed for DTSC to issue its Notice of No Further Action Required, and 2) the balance to Hearthside.

OTHER PERTINENT INFORMATION:

1. The Commission certified the Bolsa Chica Lowlands Restoration Project (Project) Final Environmental Impact Report/Environmental Impact Statement, adopted Findings, adopted a Mitigation Monitoring Program, adopted a Statement of Overriding Considerations, and approved the Project on January 30, 2002. The NEPA lead agencies issued the Record of Decision in the second quarter of 2002.

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15025), the staff prepared an EIR/EIS identified as CSLC EIR/EIS No. 712, State Clearinghouse No. 2000071068. Such EIR/EIS was prepared and circulated for public review pursuant to the provisions of the CEQA.

APPROVALS OBTAINED:

U. S. Army Corps of Engineers; Regional Water Quality Control Board; Coastal Commission.

EXHIBIT:

- A. Location and Site Map

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PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

1. RE-ADOPT THE FINDINGS FOR THE 2001 BOLSA CHICA LOWLANDS RESTORATION PROJECT MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15091, AND ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.
2. RE-ADOPT THE MITIGATION MONITORING PROGRAM PREPARED FOR THE 2001 BOLSA CHICA LOWLANDS RESTORATION PROJECT MADE IN CONFORMANCE WITH THE PROVISIONS OF THE CEQA (PUBLIC RESOURCES CODE SECTION 21081.6), AND ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.
3. RE-ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE 2001 BOLSA CHICA LOWLANDS RESTORATION PROJECT MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15093, AND ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

AUTHORIZATION:

1. FIND THAT THE COMMISSION IS ACTING IN ITS CAPACITY AS LAND BANK TRUSTEE UNDER THE KAPILOFF LAND BANK ACT.
2. FIND THAT THE PROPERTY BEING ACQUIRED IS SUBJECT TO A CERTAIN PRE-EXISTING OIL AND GAS LEASE AND RELATED AGREEMENTS AND THEREFORE ADOPT THE FINDINGS CONTAINED IN PUBLIC RESOURCES CODE SECTION 8623:

(1) A REASONABLE ATTEMPT HAS BEEN MADE TO ACQUIRE THE SUBSURFACE RIGHTS WITHOUT SUCCESS, (2) IT IS UNLIKELY THAT THE SUBSURFACE RIGHTS CAN BE ACQUIRED WITHIN THE PROVISIONS OF THIS DIVISION, (3) THE OUTSTANDING SUBSURFACE RIGHTS ARE NOT LIKELY TO UNREASONABLY DAMAGE OR INTERFERE WITH THE CONTEMPLATED PUBLIC TRUST USES FOR THE PARCEL, AND (4) THE PUBLIC BENEFITS

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TO BE DERIVED FROM ACQUISITION ARE SO SUBSTANTIAL THAT ACQUISITION OF THE PARCEL WITHOUT THE SUBSURFACE RIGHTS IS IN THE BEST INTERESTS OF THE STATE FOR THE PUBLIC PURPOSES SET FORTH IN THIS DIVISION.

3. AUTHORIZE THE PURCHASE OF THE FIELDSTONE PROPERTY AS A LAND BANK PARCEL FOR INCLUSION IN THE BOLSA CHICA LOWLANDS RESTORATION PROJECT, AT NO MORE THAN ITS FAIR MARKET VALUE NOT TO EXCEED \$2.2 MILLION AS DETERMINED BY STAFF'S CURRENT APPRAISAL, FROM FUNDS HELD IN THE KAPILOFF LAND BANK FUND.
4. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT FOR THE PURCHASE OF THE FIELDSTONE PROPERTY AS DESCRIBED HEREIN FROM HEARTHSIDE RESIDENTIAL CORP., SUBSTANTIALLY IN THE FORM ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION, AND TO EXECUTE ALL OTHER DOCUMENTS AND TO TAKE SUCH OTHER ACTIONS AS ARE REASONABLY NECESSARY TO COMPLETE THE ACQUISITION, OR TO COMPLETE THE RESTORATION.
5. AUTHORIZE THE EXECUTIVE OFFICER TO ENTER INTO AN INTERAGENCY AGREEMENT WITH THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL TO DEVELOP AND IMPLEMENT A CLEANUP PLAN AS DESCRIBED HEREIN FOR THE FIELDSTONE PROPERTY.
6. AUTHORIZE THE LEGAL STAFF OF THE COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE SUCH OTHER ACTIONS, INCLUDING LITIGATION, TO INSURE THE SUCCESSFUL COMPLETION OF THE PURCHASE AND RESTORATION.

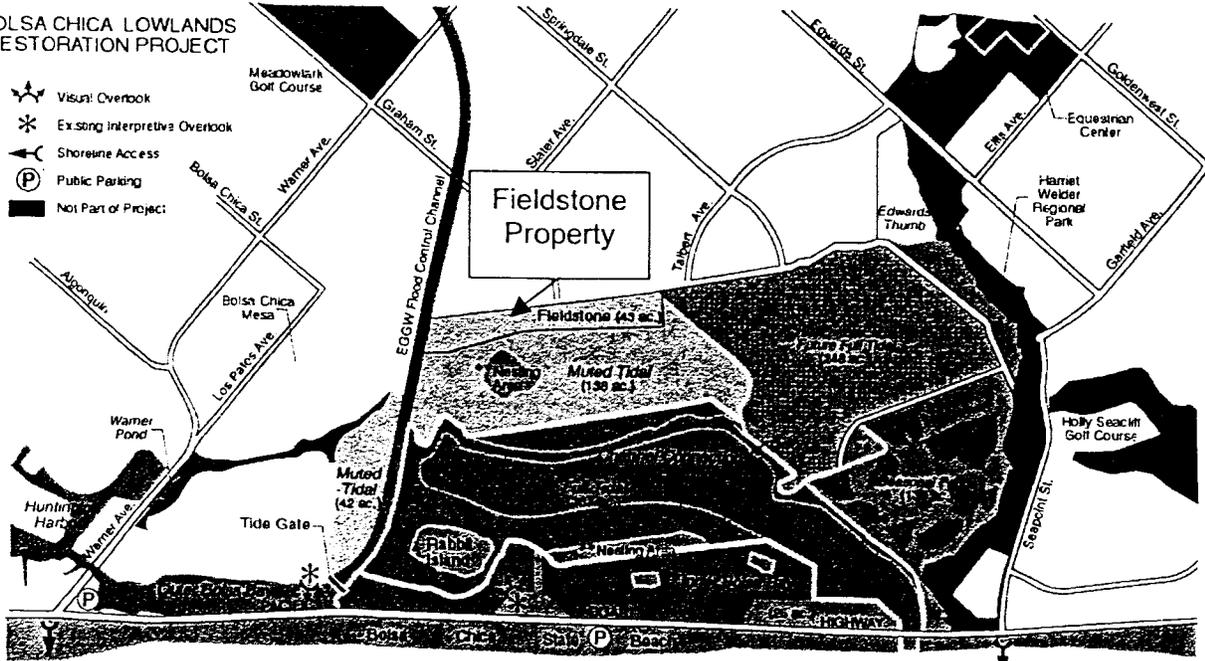
NO SCALE

SITE



BOLSA CHICA LOWLANDS RESTORATION PROJECT

- Visual Overlook
- Existing Interpretive Overlook
- Shoreline Access
- Public Parking
- Not Part of Project



PACIFIC OCEAN

*Inner and Outer Bolsa Bay (210 ac.)
 **Nesting Areas (20 ac.)

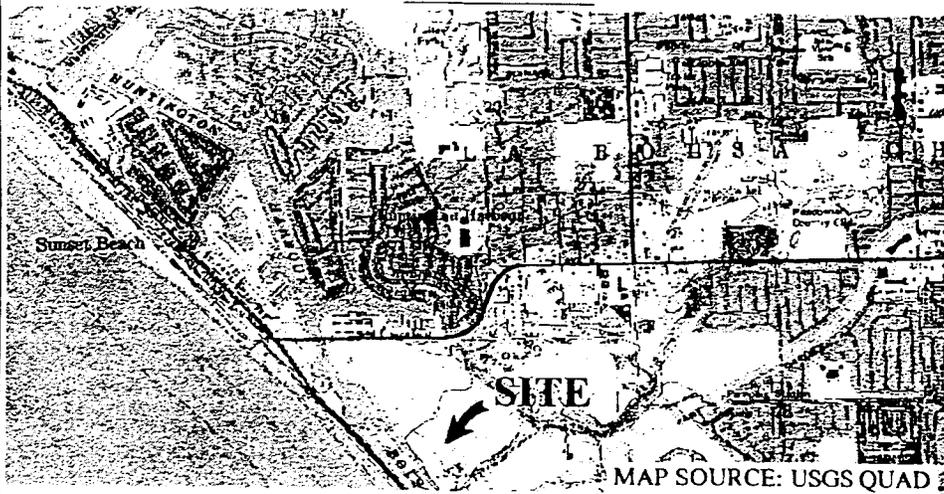
Bolsa Chica Wetlands Steering Committee

July 2003

BOLSA CHICA LOWLANDS RESTORATION PROJECT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A
 W25306
 BOLSA CHICA
 ORANGE COUNTY



This exhibit is solely for purposes of generally defining the property, is based on unverified information, and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject or any other property.

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