MINUTE ITEM
This Calendar Item No. C53 was approved as Minute Item No. 53 by the California State Lands Commission by a vote of 3 to 0 at its 8-8-05 meeting.

CALENDAR ITEM
C53

A 67

S 35

08/08/05
W 25306
J. Trout
P. Griggs

CONSIDER ACCEPTING FUNDS NOT TO EXCEED $25 MILLION INTO THE KAPILOFF LAND BANK FUND, BY THE CALIFORNIA STATE LANDS COMMISSION, IN ITS CAPACITY AS THE KAPILOFF LAND BANK TRUSTEE, FROM THE PORTS OF LOS ANGELES AND LONG BEACH FOR THE BOLSA CHICA LOWLANDS RESTORATION PROJECT IN RETURN FOR ADDITIONAL MITIGATION CREDITS NECESSARY FOR PORT PROJECTS; AND, REQUEST AUTHORITY FOR THE EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT TO THE 1996 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 TO ACCEPT THE FUNDS AND PROVIDE FOR MITIGATION CREDITS.

SUMMARY: Staff recommends that the Commission, acting as the Kapiloff Land Bank Trustee, approve an amendment to the 1996 interagency "Agreement to Establish a Project for Wetlands Acquisition and Restoration at the Bolsa Chica Lowlands in Orange County, California, for the Purpose, Among Others, of Compensating for Marine Habitat Losses Incurred by Port Development Landfills Within the Harbor Districts of the Cities of Los Angeles and Long Beach, California." The amendment would provide for additional funds for restoration from the Ports of Long Beach and Los Angeles in return for additional mitigation credits the Ports need for further development. The credits would come from restoration of muted tidal areas that the Ports received no credits for in the earlier Agreement. The four federal and four state agencies, and both ports will be required to approve the amendment.

BACKGROUND: The Bolsa Chica Lowlands Restoration Project (Restoration Project) has been before the Commission numerous times since the original 1996 Agreement was approved (August 21, 1996). In 1997, the Commission approved the purchase of

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880 acres of private land in the Bolsa lowlands for the purpose of mitigating for development at the ports of Long Beach and Los Angeles. Mitigation was to include planning, design, and restoration construction on 566 acres of that land. A joint federal/state EIR/EIS was approved and certified by the Commission on January 30, 2002. The preferred plan adopted by the Commission includes restoring 367 acres to the full range and influence of the tide, opening an inlet to the Pacific Ocean for the property which requires a bridge for Pacific Coast highway, creating 200 acres of muted tidal area, establishing three nesting islands for birds, and other related work including abandonment of 64 oil wells.

Work on the Restoration Project began on November 1, 2004, and should be complete by the third quarter of 2006. The U.S. Fish & Wildlife Service awarded the restoration contract and is administering day-to-day operations. Kiewit Pacific Corporation is the general contractor.

The Ports of Los Angeles and Long Beach were given mitigation credits for the full tidal basin area of the Bolsa Chica Lowlands in the previous Agreement. At that time, no credits were given to areas that were proposed for restoration under a muted tidal regime. That decision was based on the common understanding that the muted tidal areas would most likely be fed by a limited number of small culverts. Under that scenario, the areas would have a new connection to tidal action, but the connection would be limited, providing little if any significant benefits to fishery values. However, during the development of the final design, the culvert plans were modified to significantly increase the tidal influence of the muted tidal areas. The plans now include larger culverts and limited grading to enhance the movement and exchange of tidal waters.

As a result, the biological benefits will be significantly increased from the better flushed muted tidal areas. While not achieving the expected values associated with the full tidal area, the muted tidal areas are expected to perform as well as the State Ecological Reserve at Bolsa Chica. The Ports will receive credits that are proportional to the expected benefits of the muted tidal areas.

STATUS OF FUNDING TO COMPLETE THE RESTORATION PROJECT: The funds currently available to complete the Restoration Project are inadequate to pay the projected expenses of the Project. Overall, the total project cost is estimated to be $125 million including property acquisition. With the current funds there is an estimated deficiency of $5 to $10 million, depending on contracting change orders resulting from unexpected conditions and costs from impacts to oil and gas operations.

The additional funds from the Ports under the proposed amendment to the Agreement are expected to fulfill this shortfall. It is anticipated that $11,400,000 from each Port may be obtained in exchange for the additional mitigation credits. It is expected that any funds not used for construction will be placed in the Operations and Maintenance account for the Restoration Project or the account for future restoration of the Future Full Tidal Area.

OTHER PERTINENT INFORMATION:

1. The funds from the Ports would be deposited into the Kapiloff Land Bank Fund as mitigation funds under Public Resources Code sections 8600 *et seq.*

2. The Commission certified the Bolsa Chica Lowlands Restoration 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/REQUIRED:

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

The U.S. Fish and Wildlife Service will submit for California Coastal Commission approval an amended Federal Consistency Determination for the Restoration Project consistent with the additional acres of mitigation credits to be granted to the Ports.

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, PUBLIC RESOURCES CODE SECTIONS 8600 *ET SEQ*.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AN AMENDMENT TO THE 1996 INTERAGENCY AGREEMENT FOR THE BOLSA CHICA RESTORATION PROJECT AS DESCRIBED HEREIN, IN SUBSTANTIALLY THE SAME FORM AS ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

3. AUTHORIZE THE ACCEPTANCE INTO THE KAPILOFF LAND BANK FUND AN AMOUNT NOT TO EXCEED $25,000,000 FROM THE PORTS OF LONG BEACH AND LOS ANGELES, PLUS

SUCH OTHER FUNDS AS MAY FROM TIME TO TIME BECOME AVAILABLE FOR THE RESTORATION PROJECT AND THE EXPENDITURE OF THOSE FUNDS FOR THE PURPOSE OF RESTORATION AND MANAGEMENT OF THE BOLSA CHICA LOWLANDS.

4. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE ALL OTHER DOCUMENTS AND TO TAKE ANY OTHER ACTIONS CONSISTENT WITH THIS AUTHORIZATION.