

STAFF REPORT

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CONSIDER A MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE BOLSA CHICA LAND TRUST RELATING TO THE BOLSA CHICA LOWLANDS RESTORATION PROJECT

PARTIES:

California State Lands Commission

Bolsa Chica Land Trust

BACKGROUND:

The Bolsa Chica Lowlands Restoration Project (Project) created or rehabilitated nearly 600 acres of marine and wetland habitat in Orange County, restoring part of what had historically been a vast estuarine ecosystem. The Project is the largest tidal wetland restoration in Southern California history. Post-restoration monitoring demonstrates the Project has meaningfully increased the availability of tidal habitat, improving southern California fishery resources. In addition, increases in habitat quantity and quality at the Bolsa Chica Lowlands have greatly enhanced its role as a critical stop for migrating birds on the Pacific Flyway.

The Project is an unprecedented cooperative partnership through an Interagency Agreement between the California State Lands Commission, California Department of Fish and Wildlife (CDFW), State Coastal Conservancy, California Natural Resources Agency, U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), National Marine Fisheries Service (NMFS), and the U.S. Environmental Protection Agency (EPA). Local non-governmental organizations, including the Bolsa Chica Land Trust, the Amigos de Bolsa Chica, and the Bolsa Chica Conservancy, provided vigorous grassroots support, advocacy, and involvement key to bringing the Project to fruition. Out of the \$151 million available for the Project, \$101.4 million came from the Ports of Los Angeles and Long Beach in exchange for mitigation credits needed to expand their multi-modal services that included new fill in San Pedro Bay.

The current management structure of the Project is governed by the Interagency Agreement: the Commission holds title to the land,

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administers Project funds, and performs general supervision over the Project. The CDFW provides day-to-day management of the site pursuant to a lease and existing contract with the Commission. Ongoing guidance and approval of expenditures are provided by an oversight committee composed of representatives from the Commission, NMFS, USFWS, EPA, USACE, and CDFW.

The Project restoration design requires the management of an open ocean inlet, water control structures, nest sites, berms and other features to ensure the continued functioning of the wetlands and to protect the biological benefits gained by the restoration investment. Other ongoing management costs include on-site CDFW staff, repairs, maintenance, and consultants, for a total operational cost of up to \$3 million annually. The operations, management, and repair costs have proven to be greater than the original design contemplated, and the original funds set aside for ongoing maintenance of the restored wetland are inadequate to address the long-term sustainability of the restoration as designed.

PROPOSED MEMORANDUM OF AGREEMENT:

The purpose of the proposed Memorandum of Agreement is to memorialize the Parties' agreement and commitment to collaborate in seeking grant funding to implement a study of alternatives for enhanced sustainability of the Project. The sustainability alternatives study contemplated by this agreement would consist of an analysis of existing site conditions to identify alternatives to enhance habitat functions, reduce long-term maintenance costs, and achieve long-term sustainability for the Project. The proposed Memorandum of Agreement further describes the respective authorities and obligations of the Parties in the development and implementation of grant applications and the sustainability alternatives study.

OTHER PERTINENT INFORMATION:

1. In the 2017-18 Fiscal Year approved Budget, the Commission received a one-time budget increase of 1 million dollars to continue the operations and management responsibilities of the Project through the end of the current fiscal year.

2. On December 6, 2016, the Commission authorized the execution of a Memorandum of Intent (MOI) between the Port of Los Angeles and the Commission which memorialized the Parties' intent and commitment to expeditiously pursue establishing a mechanism whereby the Port of Los Angeles contributes \$250,000 per year for 10 years or a one-time payment of \$2,500,000 for enhancement and continued adaptive management of the Project and efforts toward the development and

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approval of a mitigation bank or other mechanism that allows the sale of eelgrass mitigation credits, in exchange for future mitigation credits associated with the creation of eelgrass habitat at the Project. Commission staff are currently working with Port of Los Angeles staff to develop an Implementing Agreement pursuant to the MOI.

3. This action is consistent with Key Action 1.2.4 of the Commission's Strategic Plan to prioritize the use of sovereign lands, where appropriate, for open space, wetlands, riparian habitat and habitat preservation, restoration, and enhancement, including through habitat management plans, mitigation agreements with public agencies, private parties, and other conservation efforts, consistent with applicable law.
4. The authorization to sign the Memorandum of Agreement is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Memorandum of Agreement between the California State Lands Commission and the Bolsa Chica Land Trust

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

1. Authorize the Executive Officer or her designee to execute the Memorandum of Agreement, substantially in the form attached as Exhibit A, between the Commission and the Bolsa Chica Land Trust.
2. Authorize and direct the Executive Officer or her designee to take whatever action is necessary and appropriate to implement the provisions of the Memorandum of Agreement with the Bolsa Chica Land Trust.

Exhibit A
MEMORANDUM OF AGREEMENT
Between the
CALIFORNIA STATE LANDS COMMISSION
and the
BOLSA CHICA LAND TRUST

This Memorandum of Agreement (“MOA”) is entered into between the California State Lands Commission (“Commission”) and the Bolsa Chica Land Trust (“Land Trust”), for mutual benefits to be derived from obtaining grant funding for a sustainability alternatives study for the Bolsa Chica Lowlands Restoration Project (“Project”). The signatories to this MOA may be referred to individually as a Party or together as the Parties.

Recitals

- A. The State of California, acting by and through the Commission, is the landowner of the areas included in the Project and certified the Final Environmental Impact Report (“FEIR”) and approved the Project on January 30, 2002, with the purpose of restoring wetland and aquatic functions in the Project area, which is one of the few remaining large wetland areas in Southern California, providing a variety of valuable habitats to a variety of fish and wildlife resources and endangered species.
- B. Day-to-day management of the Project is performed by the California Department of Fish and Wildlife (“CDFW”), pursuant to an existing contract and lease with the Commission. The Project is included in the Bolsa Chica Ecological Reserve. Portions of the Project overlap with the Bolsa Chica Basin State Marine Conservation Area, and it is adjacent to the Bolsa Bay State Marine Conservation Area.
- C. The acquisition, creation, and management of the Project was established through and exists subject to the October 4, 1996 agreement (and subsequent amendments) (collectively, “Interagency Agreement”) among the Commission and seven other state and federal agencies, including the United States Fish and Wildlife Service (“USFWS”), the National Marine Fisheries Service (“NMFS”), the United States Army Corps of Engineers (“USACE”), the United States Environmental Protection Agency (USEPA), the California Department of Fish and Game (now CDFW), the California Coastal Conservancy, and the California Resources Agency (now the California Natural Resources Agency), as well as the Cities of Long Beach and Los Angeles, acting by and through their respective Boards of Harbor Commissioners (“Ports”).
- D. Pursuant to the Interagency Agreement, the Commission manages maintenance and budgeting of the Project with the participation of five other state and federal agencies

(NMFS, USFWS, USEPA, USACE, and CDFW, together with Commission, the “oversight committee”)¹.

- E. Management, operations, expenditures, budgeting, and fundraising for the Project is governed by the Interagency Agreement.
- F. The Interagency Agreement provides that Maintenance Account principal may be expended for the purpose of ensuring the preservation of fish, wildlife, and wetland habitat, and that the agencies party to the Agreement will actively seek additional sources of funding in the event Maintenance Account principal is expended.²
- G. The Interagency Agreement provides that the Agreement shall not be construed to prohibit agencies or any other entities from funding restoration of any portion of the Bolsa Chica Lowlands that has not already provided mitigation credits.³
- H. The Land Trust was formed in 1992 and pursues as its mission the acquisition, preservation, and restoration of all of the Bolsa Chica and the education of the public to its natural and cultural wonders.

Terms and Conditions

In consideration of the mutual promises contained in this MOA, the sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. The Parties acknowledge they share the goal of restoring and enhancing the Project, and wish to cooperate and collaborate in seeking grant funding to implement a study of alternatives for enhanced sustainability of the Project.
2. The sustainability alternatives study (Study) contemplated by this agreement would consist of an analysis of existing site conditions to identify alternatives to enhance habitat functions, reduce long-term maintenance costs and achieve long-term sustainability for the Project. Under this MOA, no grant funds will be sought for construction or other on-site work at the Project, or for the implementation of any particular alternative. Any on-site activities to occur related to the Study would be limited to support activities related to the Study, including but not limited to data gathering, visual inspections, or meetings with the oversight committee, their representatives, or the Land Trust. With the exception of Commission staff time, all expenses relating to the preparation and submission of grant applications prepared by the Land Trust and/or its contractors or subcontractors, and for the receipt and administration of grant funding for the Study during the term of this agreement will be borne by the Land Trust. The Commission will have no obligations regarding these expenses.

¹ Pursuant to Section 13 (c)(4) of the Interagency Agreement, as amended by Section 1 (d) of the Third Amendment to the Interagency Agreement.

² Section 13 (c)(4) of the Interagency Agreement, as amended by Section 1 (d) of the Third Amendment to the Interagency Agreement.

³ See Interagency Agreement, Section 8 (d).

3. The Commission's staff representative (Commission representative), or that individual's designated representative(s) (such as on-site Project staff or consultants), will make good faith efforts to cooperate with the Land Trust in providing information needed for grant applications, management, and reporting obligations. In the event grant monies are awarded during the term of this MOA as the result of an application submitted by the Land Trust for the Project, the Commission representative or that individual's designated representative(s) will make good faith efforts to provide Project site access and information needed for grant management and reporting obligations. "Good faith efforts" may not be construed as requiring the Commission to disclose any information exempt from disclosure to the public pursuant to the Public Records Act (California Government Code section §§ 6250 et seq.), the Freedom of Information Act (FOIA; Title 5, United States Code section §§ 552 et seq.), laws pertaining to privilege or privacy, or other laws.
4. The Commission representative and representatives from the oversight committee will have the right to participate in development of, and review of, all grant applications and related materials before submission, in the best interests of the Project.
5. The Commission representative, on behalf of the oversight committee, will have final approval over the content and submission of any and all grant applications and related materials. The Land Trust may not submit any application without the express written approval of the Commission representative.
6. In the event grant monies are awarded during the term of this MOA as the result of an application submitted by the Land Trust for the Study, the Commission representative and representatives from the oversight committee will have the right to participate in all decisions; and in coordination with the Land Trust, the Commission representative, will retain authority for final approval regarding:
 - a. expenditure of such grant monies obtained;
 - b. all aspects of any and all work to be performed using such grant monies;
 - c. the selection and management of any and all consultants, contractors, or subcontractors hired to perform any and all work funded by such grant monies;
 - d. direct management oversight of any and all consultants and/or contractors receiving grant monies as compensation;
 - e. any contracts for any and all work and/or activities contemplated to be funded by such grant monies.
7. In the event grant monies are awarded during the term of this MOA as the result of an application submitted by the Land Trust for the Study on behalf of the Project, the Commission representative, on behalf of the oversight committee, must be notified of, and afforded an opportunity to attend (either in-person or by phone), any and all meetings (except those meetings that are purely internal to the Land Trust) related to grant expenditures, and/or related to any activities whatsoever funded by grant monies, including but not limited to those meetings with the following entities:

- a. the on-site oilfield operator (currently California Resources Corporation (“CRC”))
 - b. any consultants or contractors;
 - c. any local, state, or federal government entities;
 - d. any third parties.
8. Portions of the Project were purchased subject to existing leases or are under lease to CRC for production of oil and gas, and the Commission took title to the property comprising the Project subject to these prior-existing leases and related agreements, including but not limited to the February 13, 1997 Operating Assurances Agreement between the Commission and CalResources LLC (“OAA Agreement”). For the purposes of this MOA, the Commission will be CRC’s point of contact pursuant to Article 11, Paragraph C of the OAA Agreement, which provides that in the event the Commission enters into an agreement with at third party related to Project lands, the Commission will remain actively involved and will be CRC’s contact regarding all Project issues.
9. Unless agreed otherwise in a writing signed by all parties to this MOA, the Commission will receive, and maintain control and ownership of on behalf of the oversight committee, all work products, studies, research analysis and findings, data, and intellectual property of any type that is produced, associated with, or derived from work of any kind funded by grant monies obtained during the term of this MOA. However, the Commission will share work products, studies, research analysis and findings, data with the Land Trust as needed to satisfy reporting obligations.
10. The Parties agree that they are not entering into a joint venture or partnership and that the Land Trust is not acting as the agent of the Commission.
11. Contracts related to state agencies and activities on State lands are subject to numerous state and federal laws, regulations, policies and guidelines, including but not limited to the California Public Contract Code, California Labor Code, and California Department of General Services regulations and policies, among others. Although this MOA is not anticipated to conflict with any state or federal law, regulation, policy, or guideline, in the event of such a conflict, this MOA may be subject to revision. In the event of any such conflict or revision, the Land Trust indemnifies and holds the State harmless from any damages, liability, or expenses incurred as a result by the Land Trust or its contractors or subcontractors. The Commission will provide the Land Trust prompt notice of any conflict that arises.
12. Activities at the Project may be affected by the annual budget approval process provided for in the Interagency Agreement. The Commission does not foresee any conflicts between the Interagency Agreement and this MOA. However, in the event any conflict arises, the Interagency Agreement will prevail.
13. For the purposes of this agreement, the terms “grant funding,” “grant funds,” and “grant monies” are synonymous.

14. This MOA is effective on the date of the last signature, and is deemed to be retroactive to March 1, 2017.
15. Modifications to this MOA may be proposed by either Party and will become effective upon the signed, written agreement of the Parties.
16. This MOA may be terminated by the Land Trust or the Commission following 60 days advance written notification to the other; otherwise it will terminate as of June 1, 2019. The MOA term may be extended by a signed, written agreement of the Parties.
17. This MOA is governed by the laws of the State of California, without reference to its conflicts of laws principles.
18. For the purposes of this MOA, the designated representatives for the respective Parties will be:

Wendy Hall, California State Lands Commission

Kim Kolpin, Bolsa Chica Land Trust

A Party may change its designated representative by delivering a written notice to the other Party as provided in Paragraph 19, below.

19. Any notices required by this Agreement must be in writing, and may be given either personally, by regular U.S. Mail, or by Federal Express, UPS or other similar couriers providing overnight delivery. Such notices or communications will be given to the Parties at the addresses set forth below, unless the Party provides advance written notice that the information below has changed:

If to Commission (Commission Representative):

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202
Attention: Wendy Hall

Telephone: 916-574-0994

With a Courtesy Copy to:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202
Attention: Lucinda Calvo, Esq.

Telephone: 916-574-1866

If to Land Trust:

Bolsa Chica Land Trust
5200 Warner Avenue, Suite 108
Huntington Beach, California 92649
Attention: Kim Kolpin

Telephone: (714)-846-1001

20. This MOA may be executed in counterparts, each of which, when executed and delivered, is an original and all of which together constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

California State Lands Commission:

By: _____

Name:

Title:

Date:

Bolsa Chica Land Trust:

By: _____

Name:

Title:

Date: