

CALIFORNIA COASTAL COMMISSION

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November 1, 1995

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: Tom Crandall, Deputy Director, Coastal and Ocean Resources Division
Larry Simon, Ports Coordinator

SUBJECT: Staff Recommendation on Port of Los Angeles Port Master Plan
Amendment No. 15 (Port Landfill Mitigation Credit Account). For
Commission consideration at meeting of November 16, 1995.

STAFF NOTE:

The Commission staff is recommending that the Commission certify a proposed port master plan amendment submitted by the Port of Los Angeles that would establish a port landfill mitigation credit account, with credits generated by port funding of wetland restoration at the Bolsa Chica Lowlands on the northern Orange County coastline. The staff recommendation on this proposed port master plan amendment is contingent upon the Commission concurring with federal consistency determination CD-90-95 (U.S. Fish and Wildlife Service), the conceptual wetland restoration plan for the Bolsa Chica Lowlands, scheduled for the November 16 Commission meeting and prior to consideration of this amendment. Should the Commission not concur with CD-90-95, consideration of this plan amendment will be postponed to a future Commission meeting. Additional background information regarding the process leading up to the proposed restoration plan for Bolsa Chica is contained in the Staff Note in the CD-90-95 staff report and recommendation.

Port Master Plan Amendment Procedure. California Code of Regulations, Title 14 Section 13636 calls for port master plan amendments to be certified in the same manner as provided in Section 30714 of the Coastal Act for certification of port master plans. Section 13628 of the Regulations states that, upon the determination of the Executive Director that the master plan amendment and accompanying materials required by Section 13628(a) are sufficient, the master plan amendment shall be deemed submitted to the Commission for purposes of Section 30714 of the Coastal Act. The subject amendment was deemed submitted on September 19, 1995. Within 90 days of this submittal date, the Commission, after public hearing, shall certify or reject the amendment, in whole or in

part. If the Commission fails to take action on the amendment submittal within the 90-day period, the proposed amendment is deemed certified. The date by which the Commission must take action, absent a waiver by the Port of the 90-day period, is December 18, 1995.

Section 30714 of the Coastal Act states that the Commission shall either certify the amendment in whole or in part or reject the amendment in whole or in part. The Commission may not modify the amendment as a condition of certification. Section 30714 also states that the Commission shall certify the amendment if the Commission finds both that:

1. The certified portions of the amendment conform with and carry out the policies of Chapter 8 of the Coastal Act.
2. Where the amendment provides for development listed as appealable in Section 30715, such development is in conformity with all the policies of Chapter 3 of the Act.

The proposed amendment establishes a port landfill mitigation credit account through the restoration of wetlands at the Bolsa Chica lowlands on the northern Orange County coastline. The proposed amendment will be evaluated under the policies of Chapter 8 of the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission certify Port of Los Angeles port master plan amendment No. 15, which provides for a port landfill mitigation credit account through the restoration of wetlands at the Bolsa Chica lowlands on the northern Orange County coastline. The staff recommends that the Commission find that the proposed amendment conforms with and carries out the policies of Chapter 8 of the Coastal Act.

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

Certification of Amendment.

The Commission hereby certifies the Port of Los Angeles Port Master Plan Amendment No. 15 and finds, for reasons discussed below, that the amended Port Master Plan conforms with and carries out the policies of Chapter 8 of the Coastal Act. The Commission further finds that the plan amendment will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Previous Commission Action. The Commission certified the Port of Los Angeles Port Master Plan on March 19, 1980 and April 15, 1980. The Commission has reviewed fourteen amendments since that date.

B. Content of Port Master Plan Amendments. California Code of Regulations Title 14, Section 13656 calls for port master plan amendments to be certified in the same manner as port master plans. Section 30711 of the Coastal Act provides, in part, that a port master plan shall include all the following:

1. The proposed uses of land and water, where known.
2. The proposed design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the area of jurisdiction of the port governing body.
3. An estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impact.
4. Proposed projects listed as appealable in Section 30715 in sufficient detail to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.
5. Provisions for adequate public hearings and public participation in port planning and development decisions.

The Commission finds that the proposed port master plan amendment conforms with the provisions of Section 30711 of the Coastal Act. There are adequate details in the port master plan submittal and associated materials for the Commission to make a determination of the proposed amendment's consistency with Chapter 8 policies of the Coastal Act.

The proposed port master plan amendment was determined by the Port of Los Angeles Director of Environmental Management to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article III Section 2(q) of the City of Los Angeles CEQA Guidelines. A public hearing on the proposed master plan amendment was held by the Board of Harbor Commissioners on August 23, 1995. Other than written comments received from Commission staff, the Port received no written or oral comments on the proposed amendment. The Board of Harbor Commissioners approved the proposed amendment on August 23, 1995.

C. Appealable Development. In determining the standard of review for the proposed master plan amendment, Section 30714 of the Coastal Act provides guidance and states in part that:

The Commission shall certify the plan, or portion of a plan, if the Commission finds both of the following:

- (a) The master plan, or certified portions thereof, conforms with and carries out the policies of this chapter.

(b) Where a master plan, or certified portions thereof, provide for any of the developments listed as appealable in Section 30715, the development or developments are in conformity with all policies of Chapter 3 (commencing with Section 30200).

Section 30715 of the Coastal Act provides, in part, that:

(a) ...After a port master plan or any portion thereof has been certified ...approvals of any of the following categories of development by the port governing body may be appealed to the commission:

(1) Developments for the storage, transmission, and processing of liquified natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state or nation. A development which has a significant impact shall be defined in the master plans.

(2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.

(3) Roads or highways which are not principally for internal circulation within the port boundaries.

(4) Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.

(5) Oil refineries.

(6) Petrochemical production plants....

The Commission determines that the proposed port landfill mitigation credit account is not an appealable development under the provisions of Section 30715 of the Coastal Act, and that the standard of review for this proposed amendment is Chapter 8 of the Act.

D. Summary of Proposed Plan Amendment. The Port of Los Angeles proposes to amend its port master plan by obtaining Commission certification that establishment of a port landfill mitigation credit account for permitted port landfill projects is consistent with the Coastal Act. Mitigation credits would be obtained by the Port through funding of wetland restoration at the Bolsa Chica Lowlands, as outlined in an interagency memorandum of agreement (MOA, Exhibit 1). The Port of Los Angeles, in association with the Port of Long Beach and several regulatory and resource agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, California Resources Agency, California Department of Fish and Game, and the State Coastal Conservancy),

identified a 344-acre wetland restoration project at the Bolsa Chica Lowlands that would provide the port with mitigation credits to serve as compensation for marine resource and habitat losses associated with future port landfills. (The conceptual wetland restoration plan for the Bolsa Chica Lowlands is the subject of a federal consistency determination (CD-90-95) submitted by the U.S. Fish and Wildlife Service and scheduled on the Commission's November 16, 1995, agenda prior to this amendment.)

This master plan amendment consists of a description of the establishment and proposed use of the port mitigation credit account outlined in the MOA. The amendment does not propose or seek Commission authorization for any landfill construction within the Port or any restoration activity at Bolsa Chica. Unlike most port master plan amendments that are project-oriented, the subject amendment is procedural in nature and will be utilized only if the subject Bolsa Chica Lowlands are transferred to public ownership and the Ports of Los Angeles and Long Beach fully fund the wetland restoration escrow accounts.

The master plan amendment summarizes the proposed restoration plan as follows:

The parties to the proposed agreement [MOA] have found that a joint project to purchase and restore the Bolsa Chica Lowlands by combining financial and other resources and expertise would be mutually advantageous. As the resource agencies do not have the financial capability to accomplish the wetlands restoration project independently and there is a compelling public interest in protecting and maximizing the habitat values at Bolsa Chica, the parties to the agreement have agreed that the Bolsa Chica Lowlands is an appropriate location to offset future, unavoidable marine habitat losses associated with port landfill projects. In return for the mitigation credits, the Ports would fund the restoration project costs.

The [U.S. Fish and Wildlife Service, FWS] in coordination with the other signatories to the agreement will acquire, restore and enhance the Bolsa Chica Lowlands. The restoration program will include: (1) the acquisition of private property interests in the Bolsa Chica Lowland; (2) planning, design and restoration of wetlands and habitat areas in the Bolsa Chica Lowland, subject to all necessary permits and approvals, including the completion of appropriate environmental analysis; (3) monitoring activities to determine the condition of the restored habitats on a regular basis; and (4) necessary maintenance and land management activities.

The FWS will accept title in fee for the Bolsa Chica Lowland acreage necessary to implement a habitat restoration program. The intent of the program is to provide, in perpetuity, fish and wildlife habitats in the Bolsa Chica Lowland. FWS agrees to assume responsibility for monitoring, maintenance, and management of the restoration program when construction is completed. The habitat mitigation credits from the restoration program will be available as mitigation for landfills to be constructed by the Ports of Los Angeles and Long Beach.

The proposed wetland restoration project outlined in the interagency MOA contemplates the Ports of Los Angeles and Long Beach providing \$61.75 million to fund full tidal restoration, monitoring, and maintenance on approximately 344 acres of the Bolsa Chica Lowlands. Each port would provide \$30.875 million towards the restoration project and receive 227 acres of outer harbor landfill mitigation credits. (In the event the Port of Long Beach chooses not to participate in the MOA, the Port of Los Angeles would have the option of funding the entire restoration account and receiving all 454 acres of mitigation credits.)

A significant feature of the plan amendment is that mitigation credits generated by the restoration project will become available for the Port to use once the restoration account is fully funded by the ports and the acreage necessary to implement the restoration project at Bolsa Chica is in public ownership; both actions are currently estimated to occur in early 1996. At that time the Port would then be able to seek Commission certification (through the master plan amendment process) of port landfill projects with the knowledge that mitigation credits were available to compensate for unavoidable marine resource impacts. Port landfill construction could then proceed prior to the start of mitigation work at Bolsa Chica, a significant departure from past Commission actions requiring mitigation concurrent with landfill construction. The plan amendment states that the 227 acres of mitigation credits in the Port of Los Angeles account would constitute acceptable compensatory marine habitat mitigation for outer harbor port landfill projects that meet all the requirements for certification in the port master plan and that are otherwise approvable.

The proposed plan amendment next explains how the 454 acres of port landfill mitigation credits arising from the restoration project were calculated. Exhibit B of the MOA provided the initial background information:

Habitat evaluations of Los Angeles/Long Beach outer harbor landfill impacts and tidal wetland mitigations have been previously completed. Subsequently, landfill projects and their mitigation projects have been permitted and undertaken, in consideration of these habitat evaluations. Specifically, Port of Long Beach Pier J landfill is now complete and its mitigation at Anaheim Bay is also complete, including the required biological follow-up monitoring. In addition, a portion of the Port of Los Angeles Pier 400 landfill has been permitted and is under construction, just as its mitigation at Batiquitos Lagoon is permitted and under construction.

The mitigation goal for outer harbor landfills has been and continues to be "no net loss of in-kind habitat value." This means that mitigation habitats may be a different type than that filled, provided it offsets the habitat value for the evaluation species of the filled habitat. Therefore, while the mitigation goal requires a value for value (1:1) tradeoff, the variable habitat benefits of different types of offsetting mitigation works can result in greater or less than acre for acre tradeoffs.

In the case of the Pier J-Anaheim Bay evaluation and project, restoration of tidal flow to non-tidal areas equally offsets the habitat values eliminated by the Pier J landfill and resulted in an acreage tradeoff ratio of 1.32 acres of landfill for each acre of mitigation (inversely, 0.76 acres of mitigation for each acre of landfill). Since the outer LA/LB Harbor biological baseline habitat value is considered to be the same as that established by the baseline studies and the previous habitat evaluations, and since the Anaheim Bay mitigation project type (tidal restoration near the ocean) is similar to the concept type contemplated for Bolsa Chica and its biological benefits have been verified through follow-up investigations, the same habitat evaluation and tradeoff ratio is adopted in this agreement. The complete "Anaheim Bay-Pier J" habitat evaluation report [HEP] is available upon request. The habitat value of one acre of this type of mitigation is higher than the habitat value of one acre of outer harbor water area deeper than 20 feet, so that less than one acre of mitigation is needed to offset one acre of harbor landfill. That is, for each acre of Bolsa Chica restored to full tidal influence near the ocean, 1.32 acres of outer harbor landfill shall be considered mitigated.

Aquatic habitats of the main channels and interior slips of both Los Angeles and Long Beach Harbors (the Inner Harbor) have been documented to be of lower fish and bird diversity and abundance than the outer harbor (from the seaward edge of Terminal Island to the main breakwaters). Consequently, offsetting an acre of inner harbor landfill habitat loss has required less (half) compensation than an acre of outer harbor habitats deeper than 20 feet.

The proposed plan amendment states that the restoration plan outlined in the interagency MOA contemplates approximately 344 acres of full tidal habitat at Bolsa Chica, which would generate 454 acres of outer harbor landfill mitigation credits ($344 \times 1.32 = 454$) to be divided equally between both ports. Once the credits are available for the ports to use, the ports would debit one acre of mitigation credit for each acre of outer harbor landfill constructed. For each acre of inner harbor landfill, the ports would debit one-half acre of mitigation credit, due to less habitat value associated with inner harbor waters. Outer and inner harbor waters are illustrated on Exhibit 2.

E. Conformance with the Coastal Act. In order for the Commission to certify the proposed plan amendment, the Commission must determine that the amendment conforms to the following Chapter 8 policies of the Coastal Act:

Section 30701. The Legislature finds and declares that:

(a) The ports of the State of California, including the Humboldt Bay Harbor, Recreation, and Conservation District, constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry.

(b) The location of the commercial port districts within the State of California, including the Humboldt Bay Harbor, Recreation, and Conservation District, are well established, and for many years such areas have been devoted to transportation and commercial, industrial, and manufacturing uses consistent with federal, state and local regulations. Coastal planning requires no change in the number or location of the established commercial port districts. Existing ports, including the Humboldt Bay Harbor, Recreation, and Conservation District, shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state.

Section 30705.

(a) Water areas may be diked, filled, or dredged when consistent with a certified port master plan only for the following:

(1) Such construction, deepening, widening, lengthening, or maintenance of ship channel approaches, ship channels, turning basins, berthing areas, and facilities as are required for the safety and the accommodation of commerce and vessels to be served by port facilities.

(2) New or expanded facilities or waterfront land for port-related facilities.

(3) New or expanded commercial fishing facilities or recreational boating facilities.

(4) Incidental public service purposes, including, but not limited to, burying cables or pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in biologically sensitive areas.

(6) Restoration purposes or creation of new habitat areas.

(7) Nature study, mariculture, or similar resource-dependent activities.

(8) Minor fill for improving shoreline appearance or public access to the water.

(b) The design and location of new or expanded facilities shall, to the extent practicable, take advantage of existing water depths, water circulation, siltation patterns, and means available to reduce controllable sedimentation so as to diminish the need for future dredging.

(c) Dredging shall be planned, scheduled, and carried out to minimize disruption to fish and bird breeding and migrations, marine habitats, and water circulation. Bottom sediments or sediment

elutriate shall be analyzed for toxicants prior to dredging or mining, and where water quality standards are met, dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms, or in confined coastal waters designated as fill sites by the master plan where such spoil can be isolated and contained, or in fill basins on upland sites. Dredge material shall not be transported from coastal waters into estuarine or fresh water areas for disposal.

(d) For water areas to be diked, filled, or dredged, the commission shall balance and consider socioeconomic and environmental factors.

Section 30706. In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:

(a) The water area to be filled shall be the minimum necessary to achieve the purpose of the fill.

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water.

(c) The fill is constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.

(d) The fill is consistent with navigational safety.

Section 30708. All port-related developments shall be located, designed, and constructed so as to:

(a) Minimize substantial adverse environmental impacts.

(b) Minimize potential traffic conflicts between vessels.

(c) Give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities.

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible.

(e) Encourage rail service to port areas and multi-company use of facilities.

Unlike most port master plan amendments previously reviewed by the Commission, the subject amendment does not propose any development activity or change in land or water uses within the Port of Los Angeles. Instead, the amendment is more procedural in nature and requests that the Commission certify that the mitigation credit account, outlined in the interagency MOA and described in the preceding section of this report, is consistent with the Chapter 8 policies of the Coastal Act. As a result, the project-oriented Chapter 8 policies are for the most part not directly applicable to the proposed amendment. However, Sections 30701(b) and 30708(a) and (d) are relevant in that those policies: (1) encourage existing ports to modernize and construct necessary facilities in order to minimize the creation of new ports in the state; (2) call for minimizing substantial adverse environmental impacts from port-related development; and (3) call for port-related development to provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible.

While the plan amendment proposes no actual development or activity, the implications of finding the amendment consistent with the Coastal Act are significant, for both the port and the Commission. This is because the proposed amendment calls for the port mitigation credits generated by the restoration project to be released to the ports prior to commencement of restoration work and prior to subsequent Commission action on port master plan amendments for landfills that would need the mitigation credits. Therefore, the Commission must determine in this amendment: (1) whether the proposed restoration project at Bolsa Chica (including the number of port mitigation credits generated) would compensate for marine resource losses due to port landfill construction, and (2) whether the proposed timing schedule for release of the mitigation credits prior to the start of restoration work is justified. These determinations are significant because should this amendment be certified by the Commission, and if the Bolsa Chica lowlands are transferred to public ownership and the wetland restoration accounts are funded by the ports, then the issue of marine resource compensation for up to 227 acres of outer harbor landfills in the Port of Los Angeles would not be an issue in the Commission's review of future port master plan amendments for those landfills.

1. Adequacy of Mitigation. In order to certify the proposed plan amendment, the Commission must first determine whether the proposed wetland restoration project at Bolsa Chica would adequately compensate for marine resource losses that would occur from the construction of up to 227 acres of outer harbor landfills. The proposed project was first outlined in the interagency MOA, is summarized in the proposed plan amendment, and is the subject of a federal consistency determination (CD-90-95) submitted by the U.S. Fish and Wildlife Service and concurred with by the Commission earlier today on the November 16, 1995 agenda. (NOTE: Commission review and action on this plan amendment is contingent upon the Commission concurring with CD-90-95. Should concurrence not occur, this proposed plan amendment will be postponed to a subsequent Commission meeting.)

The Commission has reviewed the conceptual wetland restoration plan for the Bolsa Chica Lowlands and determined that, at this conceptual phase, the plan

is consistent with the coastal resource protection policies of the Coastal Act. In that determination, however, the Commission did not address the adequacy of the conceptual plan as mitigation for marine habitat losses associated with port landfill construction. This issue is now ripe for analysis in this plan amendment. As noted earlier in this report, the interagency MOA calls for the ports to receive mitigation credits for their funding of full tidal restoration of approximately 344 acres of the Bolsa Chica lowlands; the MOA then translates this into 454 acres of outer harbor mitigation credits by using the Anaheim Bay-Pier J habitat evaluation report (HEP) and the related mitigation acreage ratio of 0.76:1.0 (mitigation acres to fill acres). The MOA concludes that this amount of restoration is adequate compensatory marine habitat mitigation for 454 acres of otherwise approvable outer harbor landfills.

It is important to note that the Commission was not a signatory to the MOA and was not a participant in the HEP process used to determine mitigation credits for the Bolsa Chica restoration plan. The Commission has long expressed its concerns over the HEP process and results, and is not endorsing the use of that process (and the resulting acreage ratio) as the sole means of calculating Bolsa Chica mitigation credits. Instead, the Commission is taking a more expansive view of restoration and enhancement activities that would occur if the proposed conceptual plan is implemented. (This view is similar to the course of action the Commission followed in its approval of the Port of Los Angeles' Pier 400 landfill project and the associated mitigation component, the Batiquitos Lagoon restoration plan in northern San Diego County. In that action, the Commission credited the Port with restoring and enhancing subtidal, intertidal, saltmarsh, and upland habitat in the Batiquitos Lagoon complex. The Commission took into account the total acreage of restoration and enhancement work (not just full tidal acreage) in calculating the number of port mitigation credits generated by the work.)

The Commission acknowledges that the ports will provide \$61.75 million to fund full tidal restoration on 344 acres of the lowlands. The Commission notes, however, that approximately 40 acres of Rabbit Island located within the "Full Tidal" restoration area outlined in the MOA will remain above tidal influence and were not included in the mitigation credit calculation, but will be enhanced as a result of the port-funded restoration work. In addition, the Commission notes that restoration activities in the "Full Tidal" area are also designed to enhance wetland and biological productivity on approximately 220 acres of adjacent lands described as "Managed Tidal" in the MOA, by admitting seawater onto these lands through culverts or water control structures. Rabbit Island and "Managed Tidal" lands will not be full tidal areas, would not directly provide habitat for fishery resources, and therefore do not qualify for mitigation credits from the state and federal resource agencies.

The Commission, however, believes that the mitigation for port landfills should focus on ecosystem restoration rather than replacement of a specific habitat type. The Bolsa Chica project will result in the restoration, enhancement, and protection of different habitat types, including but not limited to subtidal, intertidal mudflats and marsh, sandflats, and seasonal ponds. While the enhancement of Rabbit Island and the "Managed Tidal" lands resulting from the ports' funding of the full tidal restoration area will not precisely replace lost deep water habitat affected by port landfills, the overall project will result in the restoration and enhancement of an

integrated ecosystem providing habitat for fish, birds, and benthic organisms. The Commission believes that all of the habitats restored and enhanced by the Bolsa Chica project will provide benefits, directly or indirectly, to a variety of natural resources, including, but not limited to fish, birds, wetland plants, and benthic invertebrates.

The conceptual restoration plan for the Bolsa Chica lowlands concurred with by the Commission in CD-90-95 (U.S. Fish and Wildlife Service) would result in significant ecosystem restoration and enhancement. In addition, the plan includes provisions and funding for monitoring and maintenance activities in perpetuity and provides insurance for the success of restoration activities. Therefore, the Commission finds that the approximately 600 acres of the Bolsa Chica lowlands to be restored and enhanced by the port-funded wetland restoration project will adequately compensate for the loss of marine habitat and resources from construction of 454 acres of outer harbor landfills.

2. Mitigation Credit Release. As noted earlier, when reviewing previous master plan amendments for the construction of new port landfills, the Commission has usually found that mitigation for unavoidable adverse project impacts needed to be implemented concurrently with landfill development. It is a policy that has been successfully and cooperatively utilized by state and Federal resource and regulatory agencies and the Ports of Los Angeles and Long Beach in order to ensure that: (1) the length of time between the loss of marine habitat at landfill construction sites and completion of wetland and tidal restoration projects is minimized, and (2) necessary port landfill and terminal construction projects can move forward in a timely manner. Certification of the proposed amendment would represent a significant modification of that policy and allow construction of Commission-certified port landfills (up to a limit of 227 acres in the Port of Los Angeles) prior to construction of a mitigation project.

The Commission finds that in this particular circumstance, certification of the proposed amendment and allowing landfill construction to proceed prior to the start of mitigation at Bolsa Chica is consistent with the resource protection policies of Chapter 8 of the Coastal Act. The proposed amendment is a key factor in a complex public and private sector undertaking to resolve longstanding land use and coastal resource protection conflicts at Bolsa Chica. The potential transfer of approximately 1000 acres of the Bolsa Chica lowlands to public ownership and the willingness of the Ports of Los Angeles and Long Beach to provide \$61.75 million for full tidal restoration of approximately 344 acres of the lowlands (and related enhancement of approximately 264 acres of the lowlands) in exchange for port landfill mitigation credits is an opportunity that calls for the Commission to look beyond its standard port landfill mitigation policies and consider an action that matches the significance and potential public and coastal resource benefits associated with the proposed Bolsa Chica acquisition and restoration plan.

Therefore, the Commission finds that: (1) the types of marine habitat losses that would occur with up to 227 acres of future Port of Los Angeles landfill construction (otherwise consistent with the Chapter 8 policies of the Coastal Act) are well-documented, significant, and must be mitigated by the Port; (2) the proposed Bolsa Chica restoration project, as outlined in the interagency MOA and consistency determination CD-90-95 (U.S. Fish and Wildlife Service), and for the reasons described above, would provide adequate mitigation for up

to 227 acres of Port of Los Angeles landfills; (3) restoration funds provided by the Ports of Long Beach and Los Angeles would be used to restore and enhance public trust resources located on public trust lands which are and will remain within the permit jurisdiction of the Commission; and (4) the comprehensive and significant coastal resource benefits arising from the Bolsa Chica project outweigh and take precedent over the lesser, but nevertheless still significant, marine habitat losses that will go unmitigated for a multi-year period of time until the Bolsa Chica restoration project is completed and functioning. The amendment would encourage the ports to modernize and expand as necessary, and would minimize adverse landfill impacts on marine habitat by contributing to the implementation of the restoration project at Bolsa Chica, which would provide numerous beneficial uses consistent with the public trust. In conclusion, the Commission finds that the proposed schedule for release of port landfill mitigation credits from the Bolsa Chica restoration project, as described in the proposed plan amendment, conforms with and carries out the port development and coastal resource protection policies of Chapter 8 of the Coastal Act.

F. CEQA. CEQA requires less environmentally damaging alternatives to be considered and the imposition of mitigation measures to lessen significant adverse effects that may result from the proposal. The proposed port master plan amendment will itself not generate any significant adverse effects on the environment. Impacts on the environment may be generated by new port landfills authorized by future port master plan amendments that would use the mitigation credits contained within this plan amendment. Therefore, as discussed in the findings above, the proposed amendment request is consistent with the California Coastal Act and will not result in significant environmental effects within the meaning of the California Environmental Quality Act.

**AGREEMENT AMONG THE
CITY OF LOS ANGELES, CITY OF LONG BEACH,
CALIFORNIA DEPARTMENT OF FISH AND GAME, CALIFORNIA COASTAL
CONSERVANCY, CALIFORNIA STATE LANDS COMMISSION,
UNITED STATES ARMY CORPS OF ENGINEERS,
NATIONAL MARINE FISHERIES SERVICE,
UNITED STATES FISH AND WILDLIFE SERVICE, AND
ENVIRONMENTAL PROTECTION AGENCY
TO
ESTABLISH A PROJECT FOR THE PURPOSE OF WETLAND RESTORATION
AND COMPENSATION OF MARINE HABITAT LOSSES
INCURRED BY PORT DEVELOPMENT LANDFILLS
WITHIN THE HARBOR DISTRICTS OF THE CITIES OF
LOS ANGELES AND LONG BEACH
AT THE BOLSA CHICA LOWLANDS**

THIS AGREEMENT, dated _____, 1995, is entered into by the UNITED STATES OF AMERICA, acting by and through the FISH AND WILDLIFE SERVICE, UNITED STATES DEPARTMENT OF THE INTERIOR ("FWS"), the NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE ("NMFS"), the CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY ("USACE"), and the ENVIRONMENTAL PROTECTION AGENCY ("EPA"); by the STATE OF CALIFORNIA ("State"), acting by and through the DEPARTMENT OF FISH AND GAME ("CDFG"), the COASTAL CONSERVANCY ("Conservancy"), and the STATE LANDS COMMISSION ("SLC"); and by the CITIES OF LONG BEACH and LOS ANGELES, acting by and through their respective BOARDS OF HARBOR COMMISSIONERS ("BOARDS").

I. WHEREAS, the BOARDS are empowered by their respective State Tideland Grants to foster the orderly and necessary development of the Ports of Los Angeles and Long Beach, consistent with the public trust for navigation, commerce, recreation, and fisheries, including the development of new land in the Harbor Districts of the Cities of Los Angeles and Long Beach by landfill, and these developments contribute significantly to the local, regional and national economies by accommodating maritime commerce; and

II. WHEREAS, the FWS and the CDFG have as their primary mandates, in this matter, the conservation, protection, and enhancement of fish and migratory birds and their habitats, including the planning of biological loss avoidance, minimization, and compensation; and the NMFS has as its primary mandate the conservation, protection, and enhancement of marine fisheries resources and their habitats, including the planning of biological loss avoidance, minimization, and compensation; and

III. WHEREAS, the USACE has as its primary mandate the responsibility to

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ensure adequate and proper mitigation of impacts associated with construction of Federally authorized projects, as well as its regulatory authority pursuant to the Clean Water Act and Rivers and Harbors Act, with permit processing procedures including the 404(b)(1) analysis and public interest review; and the EPA has as its primary mandate protecting the environment, including restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters; and

IV. WHEREAS, the SLC is vested with all residual jurisdiction and authority over tidelands which have been granted to governmental subdivisions, is authorized by Pub. Res. Code §8625(c) to accept money into the Land Bank Fund for mitigation projects which provide open space, habitat for plants and animals, and public access, and holds title to 327.5 acres within Bolsa Chica, portions of which are the subject of this Agreement; and

V. WHEREAS, the Conservancy has among its primary mandates the protection, acquisition, and restoration of coastal resources, planning and implementation of coastal wetland restoration projects, and promotion of coastal dependent economic development consistent with the California Coastal Act of 1976; and

VI. WHEREAS, port development landfills and coastal wetland restoration are subject to State and Federal environmental evaluation pursuant to, among others, the California Environmental Quality Act, National Environmental Policy Act, and Coastal Zone Management Act and subject to State regulation pursuant to the California Coastal Act and Federal regulation pursuant to the Clean Water Act and the Rivers and Harbors Act, as well as the State and Federal Endangered Species Acts (ESA); and

VII. WHEREAS, the BOARDS anticipate the need for the construction of new landfills that will permanently eliminate marine fish and wildlife habitat and other aquatic functions that FWS, NMFS, USACE, EPA, and CDFG recommend be compensated by creation or restoration of equivalent functions that would be maintained on a permanent basis; and

VIII. WHEREAS, the parties intend that compensation for the unavoidable, authorized losses of marine habitat and aquatic functions be provided to the extent possible in advance of or concurrently with the habitat losses predicted from harbor landfills; and

IX. WHEREAS, the parties concur that advance planning of appropriate compensatory mitigation requires a procedure whereby a) habitat gains and losses are identified, b) completion of mitigation is reasonably assured, and c) credits and debits are accounted; and

X. WHEREAS, the parties concur that creation or restoration of habitat and aquatic functions within the Harbor Districts to offset large-scale functional losses from the landfills envisioned in this Agreement within the Harbor Districts (onsite mitigation) is not feasible in that adequate areas for appropriate mitigation do not presently exist within the geographical boundaries of the Harbor Districts; and

XI. WHEREAS, USACE, NMFS, CDFG, EPA, and FWS are of the collective opinion that compensation for unavoidable significant adverse impacts upon the marine ecosystem from Harbor District projects should emphasize the creation of shallow water, tidally influenced coastal embayment habitats to the extent practical, consistent with competing ecological priorities as set out below; and

XII. WHEREAS, implementation of the compensatory mitigation procedure for

acquisition, restoration and maintenance of such shallow water, tidally influenced lands in consideration of payment by the Harbor Districts of money as mitigation for loss of such lands in the Harbor Districts due to harbor development would be consistent with regulatory mandates for environmental protection and would be consistent with public trust restrictions on the use of Harbor District revenues, provided that title to the acquired lands and any capital improvements thereon is subject to a public trust easement in favor of the State to ensure that the acquired lands are used only for fish and wildlife habitat protection in perpetuity; and

XIII. WHEREAS, Bolsa Chica is considered a unique public resource because it represents one of the few remaining large wetland areas in southern California, because portions of it provide a variety of valuable habitats to a variety of fish and wildlife resources and endangered species, and because the potential to increase its value to fish and wildlife through restoration and enhancement to a variety of habitat types is high, and

XIV. WHEREAS, given these unique resource values, there is a compelling public interest in maximizing the habitat values for a variety of fish and wildlife resources at Bolsa Chica, including but not limited to endangered species, and Bolsa Chica is an appropriate location to offset future, unavoidable habitat losses within the Harbor Districts, including allowing offset credit for some creation, restoration, and enhancement of habitat types different from those affected by the Harbor Districts' projects and some deviation from accepted port mitigation practices; and

XV. WHEREAS, implementation of the compensatory mitigation procedure at Bolsa Chica is in the best interest of the people of the State in that mitigation at Bolsa Chica best promotes public trust purposes by restoring lands to the character of tide and submerged lands, appropriately locating the mitigation in consideration of public trust needs, and addressing the specific impacts of the Harbor Districts' landfill projects, and in that the SLC will hold a public trust easement in the property, ensuring that it will only be used for public trust purposes of fish and wildlife habitat protection in perpetuity; and

XVI. WHEREAS, the current private owners of lands in Bolsa Chica are pursuing necessary approvals to construct a housing development in a portion of the wetlands; and

XVII. WHEREAS, if the unrestored Bolsa Chica low-elevation lands between the Huntington Mesa and Bolsa Chica Mesa, said low-elevation lands being those generally depicted in the figure which is an enclosure to Exhibit A of this Agreement (the "Bolsa Chica Lowlands"), should become available for restoration, then the FWS, CDFG, SLC, EPA, USACE, NMFS, and Conservancy contemplate a project for physical alteration of the Bolsa Chica Lowlands to restore fish and wildlife habitat by restoring tidal influence, recontouring portions of the wetland, maintaining the wetland as altered, and other actions as generally and conceptually described in the "Concept Plan for Fish and Wildlife Habitat Restoration at Bolsa Chica" (the "Concept Plan"), attached hereto as Exhibit "A" and incorporated herein by this reference; and

XVIII. WHEREAS, acquisition of the property in the Bolsa Chica Lowlands which is not owned by the State would facilitate public agency implementation of the Concept Plan; and

XIX. WHEREAS, none of the parties, independently, has the necessary financial resources to accomplish the purchase of property and restoration of wetlands and habitat

areas in the Bolsa Chica Lowlands; and

XX. WHEREAS, the parties find that a joint project to purchase property and restore and maintain wetlands and habitat areas in the Bolsa Chica Lowlands (the "Project") by combining financial and other resources and expertise would assist the parties in carrying out their missions, and would be mutually advantageous; and

XXI. WHEREAS, the parties have determined that entering into this Agreement does not constitute an adoption of the Project or a commitment to carry out the Concept Plan as those terms are used in the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA"), and the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq. ("NEPA"), and that prior CEQA and NEPA compliance is a condition precedent to any party being committed to carry out any obligations set forth in this Agreement for which such compliance is required; and

XXII. WHEREAS, on _____, 1995, the Conservancy authorized the preparation of preliminary and final designs, environmental documents, permit applications and other preconstruction activities necessary to implementation of a resource enhancement plan, pursuant to Chapter 6 of Division 21 of the Public Resources Code and the terms and conditions of this Agreement, subject to the condition that final design and environmental documentation be completed and approved prior to the implementation of the Plan; and

XXIII. WHEREAS, the parties have determined that (1) FWS is the appropriate agency to hold fee title to the property to be acquired in the Bolsa Chica Lowlands, (2) the SLC is the appropriate agency to hold a public trust easement in the property to be restored and maintained with the funds identified in Sections 7(a), 9(c)(2), and 9(c)(3), (3) the Conservancy is the appropriate agency to take the lead to design the wetland restoration in consultation with FWS, CDFG, NMFS, USACE, and EPA, and to administer funds for that purpose, (4) the Conservancy is the appropriate lead agency for preparation of CEQA documents, (5) FWS and USACE are the appropriate co-lead agencies for preparation of NEPA documents, (6) the Conservancy is the appropriate agency to oversee construction measures, and (7) FWS is the appropriate agency to manage, operate, maintain and monitor the Project upon completion of construction; and

XXIV. WHEREAS, EPA, NMFS, CDFG, SLC, and BOARDS shall cooperate with USACE, FWS, and Conservancy in processing applications for permits and approvals for the Project. By participating in this Agreement, no participating agency waives or yields to any other party to the Agreement any regulatory authority or duty that is necessary to the proper exercise of that agency's discretion or otherwise imposed by law.

NOW, THEREFORE, IT IS AGREED THAT:

1. Short Description of Project. In entering into this Agreement, the parties generally intend to carry out the acquisition, restoration, and enhancement of the Bolsa Chica Lowlands in substantial conformance with the goals of the Concept Plan, except as compliance with NEPA, CEQA, ESA, or 404 (b)(1) Guidelines may require otherwise. The Project shall include: (1) the acquisition of property in the Bolsa Chica Lowlands (as described in Section 2 below); (2) planning, design and restoration of wetlands and habitat areas in the Bolsa Chica Lowlands, subject to all necessary permits and approvals and upon

completion of appropriate environmental analysis pursuant to Section 4 below; (3) monitoring activities to determine the condition of the restored habitats on a regular basis, and (4) necessary maintenance and land management activities. The Project does not intend any modification of the CDFG Ecological Reserve Property of Outer Bolsa Chica currently under full tidal influence or Inner Bolsa under muted tidal influence. The Project does include restoration of degraded, unrestored Bolsa Chica Lowlands owned by SLC and within the CDFG Ecological Reserve.

Consistent with the general goals and project description set forth above, and subject to such modifications (if any) as are determined to be necessary to mitigate adverse environmental impacts of the Project, the parties agree that the Project shall provide mitigation for new landfills to be constructed by the BOARDS as described in Section 10.

2. Property Acquisition. (a) Utilizing funds from the Escrow Account, as provided for under Section 9(c)(1), and any other necessary funds secured from other sources, FWS or, at its option, a designee of its choice, will endeavor to acquire title in fee to all property in the Bolsa Chica Lowlands that is not owned by the State. The SLC will receive and accept a public trust easement, as set forth in Section 2(b), in the property to be restored and maintained with the funds identified in Sections 9(c)(2) and 9(c)(3). Funds identified in Sections 9(c)(2) and 9(c)(3) shall only be used for the purposes described therein and under no circumstances shall be used for acquisition purposes. In the event that title to at least 900 acres in the Bolsa Chica Lowlands cannot be transferred to the FWS or designee of its choice by March 29, 1996, FWS shall notify all the parties that this Agreement shall be terminated and all the funds deposited by the BOARDS in the SLC's Land Bank Fund pursuant to Section 7(a) below, whether still held in the Land Bank Fund or already transferred to the Escrow Account in accordance with Section 9(b), including interest earned thereon, shall be returned to the BOARDS, and all funds, if any, deposited directly to the Escrow Account pursuant to Section 7(b), including interest earned thereon, shall be returned to the party which provided the funds. FWS and BOARDS may agree to extend this March 29, 1996, acquisition deadline upon notice to the other parties to this Agreement, in which event the BOARDS' monies and other parties' monies will not be returned, notwithstanding the immediately preceding sentence. However, if title to at least 900 acres in the Bolsa Chica Lowlands cannot be transferred to the FWS or designee of its choice by the mutually agreed upon extension date, and a further extension is not agreed to by the FWS and the BOARDS, then the BOARDS' monies and, if applicable, other parties' monies, including interest earned thereon, will be returned to the BOARDS and the other parties.

(b) Fee title to any property acquired and to the capital improvements constructed thereon, as well as all other capital improvements constructed as part of the Project, shall be vested in the United States and held for the benefit of the People of the United States without regard to the source of the monies used for their acquisition or construction, but subject to a public trust easement for purposes of ecological restoration and preservation, scientific study, open space, and fish and wildlife habitat protection in favor of the State of California, acting by and through the SLC. The parties agree that the Project shall provide, in perpetuity, fish and wildlife habitats in the Bolsa Chica Lowlands consistent with the Concept Plan.

3. Lead Agency for Restoration Plan Design. The Conservancy shall be the lead agency for refining the Concept Plan to a Final Design Plan (the "Final Plan"). The Conservancy shall consult closely with FWS, CDFG, NMFS, USACE, and EPA in preparing any necessary studies, designs, and engineering, in order to develop the Final Plan.

4. Lead Agency for NEPA/CEQA Compliance and Permits. FWS and USACE shall be co-lead agencies for compliance with the National Environmental Policy Act ("NEPA") and FWS shall be responsible for obtaining all permits and approvals necessary for the Project's implementation, in consultation with the Conservancy. The Conservancy shall be the lead agency for compliance with the California Environmental Quality Act ("CEQA"). The parties agree to prepare and process joint NEPA and CEQA documents.

5. Lead Agency for Project Construction. The completion of any sediment sampling, appropriate archaeological survey, environmental documentation, design and engineering services, and construction, shall be the responsibility of FWS and Conservancy in consultation with CDFG, NMFS, EPA, and USACE, and shall be in substantial conformance with the Final Plan. Construction of the Project is expressly conditioned upon obtaining all necessary permits and approvals; compliance with all legally imposed conditions of such permits and approvals; and approval of the Final Plan, and authorization of its implementation pursuant to this Agreement, by FWS and the Conservancy, including approval of all necessary environmental documentation and findings. The Conservancy shall have no obligation to commence construction activities unless and until funds have been deposited in the Restoration Account as provided in Section 9(c)(2), and unless and until at least 900 acres in the Bolsa Chica Lowlands have been acquired pursuant to Sections 2 and 9(c)(1) of this Agreement. The Conservancy shall have no obligation to provide any additional funding.

If, after completion of the Final Plan and all necessary environmental documentation, the Conservancy does not authorize its implementation, or if the Conservancy at any time finds that it is unable to proceed, then the Conservancy shall transfer the balance of funds in the Restoration Account described in Section 9(c)(2) to FWS for the purpose of completing the restoration of the Bolsa Chica Lowlands or other appropriate site pursuant to Section 10 below.

6. Project Maintenance and Management Responsibility. (a) Upon transfer of fee title to the United States or its designee, subject to a public trust easement to the SLC as provided in Section 2, of property in the Bolsa Chica Lowlands, FWS agrees to assume responsibility for monitoring, maintenance, and management of the Project, as further defined in Section 13, for the primary purpose of preserving in perpetuity fish, wildlife, and wetland habitat values to the extent funds are available pursuant to the Maintenance Account identified in Section 9(c)(3) below, or other appropriated funds. FWS also agrees to manage the Project as a unit of the National Wildlife Refuge System pursuant to Title 50 of the Code of Federal Regulations.

(b) FWS and CDFG agree to cooperate in their management and maintenance of, respectively, the Project property and the existing Ecological Reserve.

7. Project Funding. Funding for the Project shall be provided as follows:

(a) The BOARDS are responsible for providing the sum of \$61,750,000, which sum shall constitute the entirety of their financial obligation under this Agreement. The BOARDS shall each provide one-half of this sum. The BOARDS shall be obligated to deposit the said sum to the SLC's Land Bank Fund only after the California Coastal Commission's adoption of findings satisfactory to the BOARDS supporting its approval of this Agreement, but not later than February 29, 1996. The parties shall present this Agreement to the Coastal Commission for its approval after signature by all parties. The Coastal Commission's findings shall reflect its approval of the use of the mitigation credits for Port landfills consistent with the conditions of this Agreement.

(b) The parties acknowledge that the sum to be provided by the BOARDS is not sufficient to fully fund the Project. Therefore, other sources of funding are being sought for the Project. All sources of other non-Federal funding shall, if and when received, be deposited directly to the Escrow Account to be established pursuant to Section 9(a) below. If any Federal funding is forthcoming, it shall either be deposited to the said Escrow Account or, if not so deposited, then obligated and encumbered for the Project by the involved Federal agency.

(c) Nothing in this Agreement shall be construed to prohibit other agencies or entities, including USACE or the Conservancy, from funding restoration of those portions of the Bolsa Chica Lowlands that do not provide mitigation for the BOARDS' projects.

8. Project Schedule. All parties hereto shall perform their obligations hereunder with all due diligence so as to facilitate progress and completion of the Project in substantial conformance with the Concept Plan. All parties desire that the implementation of the Project shall be undertaken in an expeditious manner. All parties recognize that some BOARD projects may involve impacts to fish and wildlife resources in advance of some of the compensatory mitigation provided by the Project. However, all parties anticipate that the BOARDS will use the mitigation credits generated by the Project over a number of years. All parties recognize that the BOARDS may undertake port projects which affect fish and wildlife resources only after fee title to at least 900 acres in the Bolsa Chica Lowlands has been transferred to FWS or its designee, subject to a public trust easement to the SLC as provided in Section 2, to assure its preservation and restoration. So long as port projects involving fills are not in wetland as defined in FWS/OBS 79/31, the parties agree that the BOARDS shall be entitled to use the mitigation credits as set forth in Section 11. Project construction shall be deemed complete by unanimous agreement of all the parties.

9. Accounts, Disbursements, and Use of Funds. Accounts shall be created, disbursements made, and funds utilized for the Project only as set forth below.

(a) Escrow Account. Upon execution of this Agreement, an Escrow Account shall be opened with a title company or financial institution which is mutually agreed upon by the BOARDS and FWS. Funds for the Project shall be deposited into said Escrow Account in accordance with Sections 7 and 9(b), or, if applicable, obligated and encumbered by the involved Federal agency in accordance with Section 7(b).

(b) Disbursements. All the parties agree that there shall be no disbursements from

the Land Bank Fund to the Escrow Account or from the Escrow Account for any purpose until FWS verifies to the other parties in writing that sufficient funds are available in the SLC's Land Bank Fund, the Escrow Account, and from obligated encumbrances of Federal funds to accomplish acquisition of at least 900 acres in the Bolsa Chica Lowlands and to fully fund the other accounts described in Sections 9(c)(2) and 9(c)(3). Within five (5) business days of notification by the FWS that sufficient funds are available, the \$61,750,000 deposited by the BOARDS in the SLC's Land Bank Fund, together with interest earned thereon, shall be disbursed by the SLC from the Land Bank Fund to the Escrow Account.

(c) Use of Escrow Account Funds. Funds deposited into the Escrow Account from all sources shall be disbursed and used only for the following purposes:

(1) **Land Acquisition.** If needed by the FWS, funds shall be disbursed from the Escrow Account to the FWS or the designee of its choice for purchase of the property in the Bolsa Chica Lowlands specified in Section 2(a) by the FWS or its designee.

(2) **Restoration Activities.** At least \$57,750,000 shall be disbursed from the Escrow Account to the Conservancy. Such funds, and the interest earnings thereon, shall be held in trust and used, subject to subsections (d), (e), and (i) below, only for purposes of planning, design, and construction of the Full Tidal and ocean inlet portions of the Project, together with any mitigation measures or other necessary actions directly related to the Full Tidal and ocean inlet portions of the Project. Such costs of planning, design and construction include (but are not necessarily limited to) the costs of refining the Concept Plan, preparation of environmental documents, processing of permits and other regulatory approvals necessary to construction of the Project; preparation of working drawings, specifications, and bid documents; actual costs of construction; and directly related administrative costs. All funds disbursed from the Escrow Account to the Conservancy, and all interest earnings thereon, shall be deposited and held by the Conservancy in a separate Restoration Account. The Restoration Account shall be a Special Deposit Fund Account in the California State Treasury if, and only if, the Conservancy shall first obtain authorization from the State Pooled Money Investment Board to pay into the Restoration Account all interest accruing to the monies deposited in the Restoration Account. If payment of interest is not authorized, the funds disbursed to the Conservancy under this Section 9(c)(2) shall not be deposited in the State Treasury, but instead the Restoration Account shall be an interest-bearing account or accounts acceptable to the Conservancy and FWS.

(3) **Maintenance Activities.** \$4,000,000 shall be disbursed from the Escrow Account to an annuity account or other restricted endowment fund (the "Maintenance Account") in a financial institution selected by FWS. The FWS shall annually withdraw the accrued interest to pay the costs of long-term maintenance, monitoring, and management of the Project as described in Section 13 below. Account principal shall be available as necessary only for the purpose of ensuring the preservation of fish, wildlife and wetland habitat values in the event of a natural disaster or other catastrophic event of a non-recurring nature which would otherwise significantly reduce or eliminate such values.

(d) Disbursement of funds from the Escrow Account to the Restoration and

Maintenance Accounts, as set forth above in Sections 9(c)(2) and 9(c)(3), shall be expressly contingent upon acquisition of at least 900 acres in the Bolsa Chica Lowlands. If title to at least 900 acres cannot be obtained by the FWS or its designee in accordance with Section 2(a) for any reason, then all funds deposited in the Escrow Account by the SLC or any other party shall be returned to the SLC and those parties, together with any accrued interest, and the SLC shall in turn immediately return to the BOARDS the sum, together with any accrued interest, that they had originally deposited in the SLC's Land Bank Fund.

(e) Withdrawals by the Conservancy from the Restoration Account established pursuant to subsection (c)(2) above shall be made in accordance with a work program and budget prepared by the Conservancy in consultation with USACE, FWS, NMFS, and CDFG. All contracts entered into for the purpose of the Project using Restoration Account funds shall contain a termination clause such that the contract is terminable on thirty (30) days notice without any further obligation other than to pay for reasonable, noncancellable costs incurred by the contractor prior to the date of notice to terminate and for services already provided. The Conservancy shall provide the FWS, NMFS, and CDFG with quarterly reports of its expenditures during the period of project planning and construction, and with a final accounting of expenditures upon completion of project construction. At project completion, any unexpended construction funds provided under Section 9(c)(2) will be conveyed to the "Maintenance Account" provided under Section 9(c)(3) and will be used by FWS for operations and maintenance pursuant to Section 13, and may be used, in consultation with CDFG, NMFS, and Conservancy, to complete coastal ecosystem restoration projects at Bolsa Chica.

(f) Withdrawals by the FWS from the Maintenance Account established pursuant to subsection (c)(3) above shall be made following completion of construction of the Project in accordance with a work program and budget prepared by the FWS in consultation with the Conservancy, CDFG, and NMFS. The FWS shall provide NMFS and CDFG with quarterly reports of its expenditures for monitoring, maintenance and management of the Project through year five following completion of the full tidal and ocean inlet portion of the Project, and of any withdrawals of the principal amount, including the justification therefor.

(g) All records, invoices, vouchers and ledgers, correspondence and all written documents of any kind developed during the course of the Project which document the expenditure of these funds by any party for Project purposes shall be retained for a period of four (4) years following completion of construction and shall be available to the extent provided under applicable law (such as the Public Records Act and Federal Freedom of Information Act), for audit by any party to this Agreement.

(h) Nothing in this section shall be deemed a waiver of the attorney client privileges of any party. If this Agreement or a related project results in a legal challenge in which any party to this Agreement is challenged, each party shall bear its own legal fees and expenses.

(i) To preserve the monies in the Restoration Account for environmental restoration, legal fees and expenses shall not be payable or reimbursable from the Restoration Account, except for Conservancy costs directly related to litigation concerning the Project, which may be paid from the Restoration Account in an amount not to exceed \$500,000.

10. Mitigation Credits Created by Project. The Project is expected to create habitat value, as determined in Exhibit B, sufficient to offset 454 acres of landfill in the outer harbor areas of the Harbor Districts. This is based on implementation of the Concept Plan as described in Exhibit A. The Concept Plan calls for a new ocean inlet and habitat areas subject to full tidal action in the following approximate proportions: not less than 50 percent below -3 feet Mean Lower Low Water (MLLW), 35 percent between -3 and +2.5 feet MLLW, and 15 percent between +2.5 and +5.5 feet MLLW. If implementing the Final Plan at Bolsa Chica as developed pursuant to Sections 3 and 4 would not generate sufficient habitat values to warrant the granting of all 454 acres of landfill mitigation credit, USACE, FWS, NMFS, CDFG, EPA, and Conservancy shall, with good faith and due diligence, identify, plan, design, and implement an appropriate tidal restoration project at another location within the Southern California Bight to generate sufficient additional credits using unexpended funds of Section 9. Prior to the expenditure of Section 9(c)(2) funds at another location, the parties agree that the lands to be restored with Section 9(c)(2) funds at this other location will be made subject to a public trust easement in favor of the State of California, acting by and through the SLC as described in Section 2.

11. Use of Mitigation Credits. If transfer to the FWS or its designee of fee title, subject to a public trust easement in the SLC as provided in Section 2, to at least 900 acres in the Bolsa Chica Lowlands has been completed, the Restoration Account provided by Section 9(c)(2) of this Agreement has been fully funded, and the Maintenance Account provided by Section 9(c)(3) has been fully funded, then the BOARDS shall be entitled to immediately use up to 454 acres of outer harbor landfill mitigation credits to offset impacts of permitted projects. Half of said credits are allocated to each of the two BOARDS, and neither BOARD shall use more than its allocation of credits without express written permission of the other BOARD. One acre of inner harbor landfills (inner and outer harbor areas are shown in Exhibit C) shall be debited from this account at half the rate of outer harbor landfills since the inner harbor has less habitat value per acre than the outer harbor. Should biological surveys indicate that revision of the inner harbor definition shown in Exhibit C is warranted, then the BOARDS, CDFG, NMFS, and USACE may mutually agree to modify Exhibit C accordingly. Each BOARD shall maintain complete records and produce on demand for the other parties a current account of credits expended and remaining. If either BOARD is prevented from using its credits or has credits in excess of its landfill needs, then such BOARD may sell and transfer such credits to the other at the cost (prorated as necessary) each paid into the Escrow Account.

Projects within the Harbor Districts that may be regulated by any party to this Agreement, and which may require compensatory mitigation of marine habitat losses, shall be considered when submitted by the BOARDS. Nothing in this Agreement shall alter or replace the obligation of any party to follow the normal procedures and requirements for processing permits for projects proposed by the BOARDS. If a port landfill project for which BOARDS are seeking permits has followed said normal procedures and is otherwise approvable, the parties to this Agreement acknowledge that the biological mitigation credits established by this Agreement will constitute acceptable compensatory mitigation, provided a positive balance of credits established herein exists.

The parties agree that they have had their respective counsel review this Agreement, the applicable laws and regulations within their respective jurisdictions and authorities which govern dredge and fill projects in coastal waters, and, as to the Port of Los Angeles (POLA), the "Deep Draft Navigation Project EIR/EIS" and related documentation. Based on this review and consistent with the above paragraphs, the parties concur that BOARDS' deposit of the funds described above in Section 7(a) for the acquisition, preservation, and restoration of Bolsa Chica Lowlands satisfies all applicable requirements for the use of these credits. All the parties concur that the mitigation credits which POLA receives will fulfill the requirements for up to 227 acres for Phase II of POLA's Pier 400 project, as discussed in the above referenced Deep Draft Navigation Project EIR/EIS, so long as the Coastal Commission and other permit agencies issue permits for such Phase II Pier 400 development. The agencies further agree that such permit may not be denied solely on the basis that POLA intends to use the mitigation credits received pursuant to this Agreement to mitigate the Phase II Pier 400 landfill.

12. Endangered Species Considerations. All parties agree that construction of the Project will be scheduled and completed taking into account any State or Federal endangered species which may utilize the Project area. Terms and conditions of a Biological Opinion for the Project, prepared pursuant to section 7 of the Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), shall be implemented.

13. Allowable Maintenance, Monitoring, and Management Costs. It is agreed that any funds from the Maintenance Account shall be used only to pay all costs, commencing at the time the first property in the Bolsa Chica Lowland is acquired, associated with monitoring and maintenance of all physical Project features described in Exhibit A, including removal of any blockage that may occur in the ocean inlet, and direct management and support costs necessary to maintain the Project's habitat values. It is further agreed that, following Project completion, the FWS shall carry out biological monitoring to document the fish and wildlife value of the Project throughout years one through three, year five, and year ten, all costs of said monitoring to be covered with funds from the Maintenance Account.

14. Term and Termination/Withdrawal. (a) This Agreement shall be effective as of the date first written above, which is the last signature date of the Agreement, and shall continue in full force and effect until fully performed, except as otherwise provided herein. This Agreement shall be terminated (1) by action of the FWS at any time prior to the transfer of title to property in the Bolsa Chica Lowlands if FWS notifies the other parties that available funds are insufficient, or that FWS or its agent, or the SLC, is otherwise unable to obtain the minimum of 900 acres which is necessary to implement the Project by March 29, 1996; or (2) if the BOARDS have not funded the SLC's Land Bank Fund pursuant to Section 7(a) above by February 29, 1996.

(b) If any agency, including but not limited to one of the parties, any court, or any new or existing legislation prevents BOARDS from using the credits granted by this Agreement in the manner provided by this Agreement (including provisions of Section 10), then either BOARD shall be entitled, upon thirty (30) days advance written notice to the

parties, to withdraw from this Agreement and recover its share of the unexpended balance of funds remaining in the accounts established pursuant to Section 9 of this Agreement. Such withdrawal will only be allowed to occur prior to the award of contracts for the major construction elements (defined as a value of at least \$5,000,000) of the Project or of any BOARD landfill that would have been mitigated by the Project. If only one BOARD withdraws its funds, the other BOARD shall have the right to purchase all of the mitigation credits of the withdrawing BOARD by depositing, in accordance with Sections 7(a) and 9, within 90 calendar days of the other BOARD'S withdrawal an amount of money equal to the amount withdrawn, in which event this Agreement shall terminate with respect to the rights and obligations of the withdrawing BOARD but shall otherwise continue in full force and effect. If one BOARD withdraws and the other does not purchase the other BOARD'S mitigation credits, this Agreement will be terminated, unexpended funds deposited by the BOARDS shall be returned to the BOARDS in an amount proportionate to their respective contribution, and no mitigation credits shall be allowed. In the event of a BOARD withdrawal pursuant to this Section, the unexpended balance of funds to which a BOARD is entitled shall be limited to those funds for which no reasonable, noncancellable obligations have been incurred as of the date a BOARD'S notice is received by the party controlling the funds, and interest accruing to such unexpended balance as of the date of withdrawal. This provision supplements the BOARDS' withdrawal rights set forth in Sections 2 and 7.

15. Substantial Conformance. The term "in substantial conformance", as used herein, shall mean not differing in any way that results in a reduction in habitat values anticipated from the Project and not in conflict with the requirements of state and federal law.

16. Communications Points of Contact.

Port of Los Angeles
P.O Box 151
425 S. Palos Verdes St.
San Pedro, CA 90733
(310) 732-3497

Port of Long Beach
P.O. Box 570
925 Harbor Plaza
Long Beach, CA 90802
(310) 590-4156

Fish and Wildlife Service
2730 Loker Ave. W.
Carlsbad, CA 92008
(619) 431-9440

National Marine Fisheries Service
501 W. Ocean Blvd
Long Beach, Ca 90802
(310) 980-4043

Corps of Engineers
P.O. Box 2711
300 N. Los Angeles St.
Los Angeles, CA 90053-2425
(213) 894-2314

Environmental Protection Agency
75 Hawthorne
San Francisco, CA 94105
(415) 744-1969


State Coastal Conservancy
1330 Broadway
Oakland, CA 94612
(510) 286-4180

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
(916) 547-1850

California Department of Fish and Game
330 Golden Shore
Long Beach, CA 90802
(310) 590-5174

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

CITY OF LOS ANGELES
by its BOARD OF HARBOR COMMISSIONERS

8-29-95 
date EXECUTIVE
DIRECTOR

CITY OF LONG BEACH
by its BOARD OF HARBOR COMMISSIONERS

8-29-95 
date EXECUTIVE
DIRECTOR

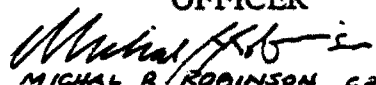
CALIFORNIA DEPARTMENT OF FISH AND GAME

date DIRECTOR


STATE COASTAL CONSERVANCY

date EXECUTIVE
OFFICER


U.S. ARMY CORPS OF ENGINEERS

28 Aug 95 
date MICHAEL R. ROBINSON, COL, EN
DISTRICT U.S. ARMY
ENGINEER


NATIONAL MARINE FISHERIES SERVICE, NOAA

8-29-95 
date for REGIONAL
DIRECTOR

U.S. FISH AND WILDLIFE SERVICE

8/23/95 
date REGIONAL
DIRECTOR

ENVIRONMENTAL PROTECTION AGENCY

8/25/95 
date REGIONAL
ADMINISTRATOR

CALIFORNIA STATE LANDS COMMISSION

date EXECUTIVE
OFFICER

EXHIBIT A

CONCEPT PLAN FOR FISH AND WILDLIFE HABITAT RESTORATION AT BOLSA CHICA

Bolsa Chica Restoration Goals:

The goal of the Bolsa Chica restoration plan is to provide for the retention of existing fish and wildlife resources, and as much as desirable and feasible, the enhancement thereof. Further, it is intended that the ecosystem resulting from the implementation of the plan be naturalistic, biologically diverse, productive, and estuarine in nature. That is, it shall be predominantly salt water influenced, but incorporating biologically beneficial freshwater influence. In addition, the acreage of waters and wetlands in the lowland shall not be diminished.

Specific Objectives of the Bolsa Chica Restoration Plan:

The specific objectives of the Bolsa Chica restoration plan are that:

- @ overwintering habitat value for migratory shorebirds, seabirds, and waterfowl shall not be diminished and shall be enhanced where feasible.**
- @ nesting habitat for migratory shorebirds and seabirds shall not be diminished and shall be expanded where feasible.**
- @ habitat value for estuarine fishes shall not be diminished and shall be expanded and diversified where feasible.**
- @ nesting and foraging conditions for State and Federal endangered species shall not be adversely impacted. Also, implementation of the plan shall especially contribute to the recovery of these species: light-footed clapper rail, California least tern, western snowy plover, and Belding's savannah sparrow.**
- @ the mix of habitat types shall include perennial brackish ponds, seasonal ponds/salt flats, pickleweed dominated flats, cordgrass dominated intertidal zone, unvegetated intertidal mudflat, subtidal seawater volume with low residence times.**
- @ modifications to the hydraulic regime, necessary to achieving the above objectives, shall emphasize minimalized requirements for manipulations and maintenance, no degradation of existing flood protection levels.**
- @ interests of contiguous property owners will be protected.**

- @ once completed, **maintenance and management** of the area shall be to maximize native, estuarine fish and wildlife habitat value of the Bolsa Chica lowland, in perpetuity, to include active removal and exclusion of detrimental, nonnative biota.
- @ allowable **public uses** shall include passive and non-intrusive recreation activities, focused on peripheral areas, interpretive foci, and trails.
- @ **total removal of oil extraction activities** and their past effects shall be conducted in a phased, cost effective, and environmentally sensitive manner.
- @ **monitoring and evaluation** of the success of biological objectives shall be conducted.

Description of the Bolsa Chica Restoration Concept Plan:

No change is contemplated to the Full Tidal part of Outer Bolsa Chica or the muted tidal portion of the State Ecological Reserve. No rerouting of the Garden Grove-Wintersburg Flood Channel is contemplated although relocating the existing flapgate outlet about 0.5 miles upstream is contemplated. An area of about 120 acres in the southeasterly corner of the Bolsa Chica Lowlands is also contemplated to be left unchanged and is depicted on the enclosed figure as Seasonal Ponds.

Reestablishing additional areas of full tidal habitat in the Bolsa Chica Lowlands is considered highly desirable for biological diversity and productivity reasons. Bolsa Chica was historically full tidal and had its own ocean inlet. Improving tidal influence is widely recognized as the principle method of restoring missing components of this coastal wetland ecosystem. However, engineering and biological constraints are expected to limit the size and location of contemplated tidal restoration. Some of the areas planned for full tidal restoration already have existing wetlands values, the loss of which will be compensated either through enhancing these values when full tidal action is restored (designated Full Tidal areas), or by introducing managed tidal waters into other areas of the site (designated Managed Tidal areas).

Preliminary engineering indicates that significant increases in the tidal prism (the volume of seawater between the high and low tides) necessary to achieve the biological benefits in the lowland cannot be conveyed through the existing channels of outer Bolsa Chica, through Huntington Harbour and Anaheim Bay without damaging tidal flats and incurring erosion and safety problems. Therefore, an ocean inlet, to reestablish the historic connection to the sea, is contemplated. At Bolsa Chica State Beach, further beach erosion or water quality problems will be avoided and human recreational access, public safety access, and the public transportation thoroughfare requirements will be fully protected.

The enclosed figure depicts a contemplated ocean inlet connecting to an area shown as Full Tidal (approximately 384 gross acres). Levee reinforcements are contemplated to be necessary primarily along the inland side of this area, as the Ecological Reserve dike and

flood channel levees may already be sufficient for the purpose. A full tidal range (extreme tides are about +7.5 to -1.5 feet Mean Lower Low Water, MLLW) would be expected in this entire area. Most of this area, but for the upland sand dune area known as Rabbit Island, already lies between +3 and -3 feet MLLW. Excavation within the contemplated Full Tidal area would be the minimum necessary to achieve: an inlet bottom depth and subtidal slough (shown as a thin dashed line) about -4 feet MLLW. The areas adjacent to this shallow subtidal slough would become intertidal mudflats and vegetated saltmarsh, especially cordgrass. Some deposition of dredge spoil in these areas may be appropriate in order to achieve sufficient acreage at tidal elevations suitable for cordgrass (+2.5 to +4 feet MLLW). Oil wells, water injection wells, well pads and access roads would all be removed from within the Full Tidal area.

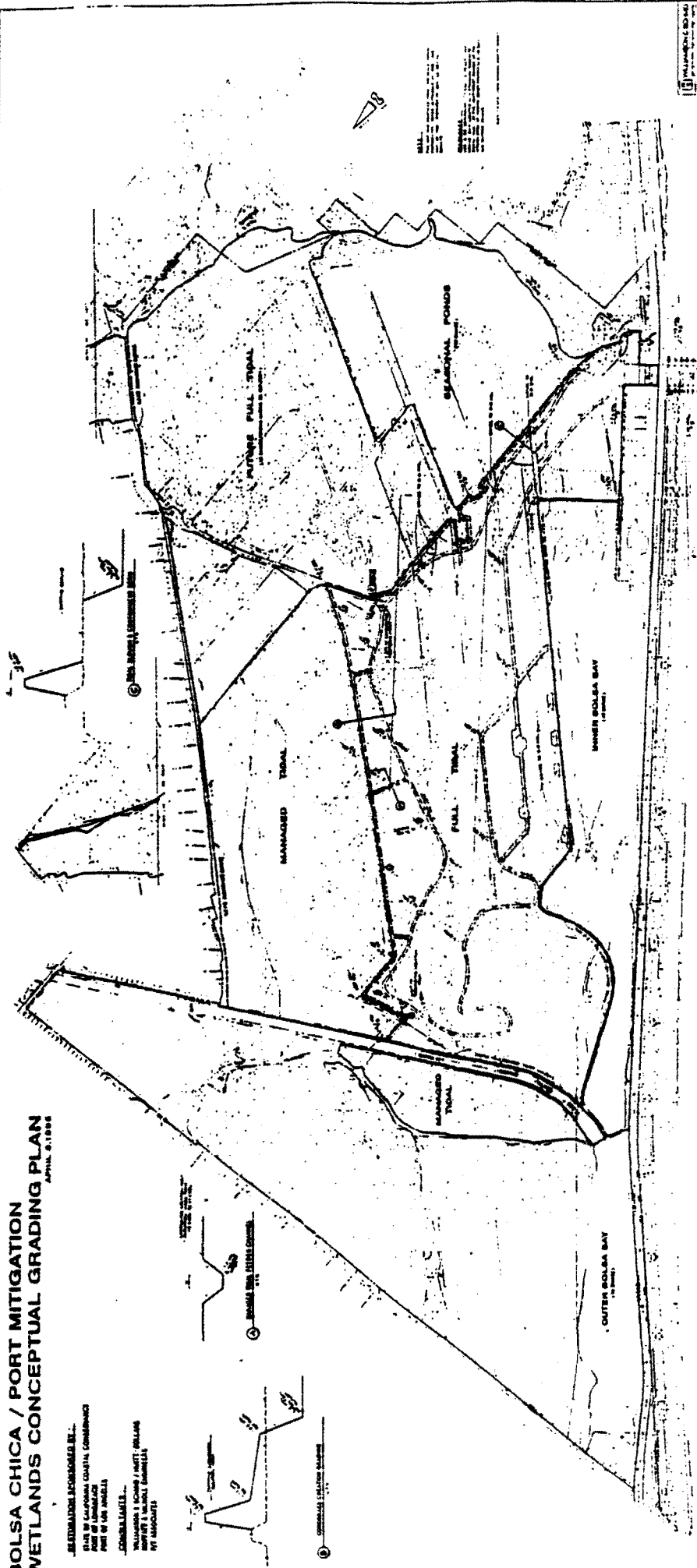
Two adjacent areas depicted on the enclosed figure as Managed Tidal (about 220 gross acres) are not contemplated to be physically modified directly but would have seawater readmitted to them in an intermittent or very muted manner through culverts or water control structures through the reinforced levee or flood channel levee. Pickleweed dominated saltmarsh and shallow saltponds-saltflats are the contemplated habitat types. Existing pickleweed in this managed tidal area as well as the tidal and muted tidal portions of the Ecological reserve would remain intact and well exceed 200 acres in extent. Oil well pads and roads could be removed or revegetated upon inactivation of the wells in this area.

The remaining area depicted on the enclosed figure is labelled as Future Full Tidal (about 275 gross acres). This area includes the highest concentrations of active oil wells but much of the lowest elevations in the lowland. It is therefore contemplated that upon depletion of the oil field in 15-20 years and removal of the wells and any contamination, it may be feasible to simply breach the dike and allow a large portion of it to become slough, tidal flats, and saltmarsh without extensive earthwork.

Enhancement of suitable nesting areas for Belding's savannah sparrow would be achieved in the Managed Tidal areas, while other existing valuable areas are retained intact in the Muted Tidal and Seasonal Pond areas. Seasonal pond habitats in all areas would not be less than 150 acres. Significant enhancement of suitable nesting habitat for the light-footed clapper rail would be achieved in the cordgrass expansion part of the Full Tidal area. Nesting area for the California least tern and western snowy plover would be achieved by creation and retention of sparsely vegetated sandflat and saltflat areas protected from disturbance or water inundation.

**SOLSA CHICA / PORT MITIGATION
WETLANDS CONCEPTUAL GRADING PLAN**
APRIL 2, 1994

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- PCH Bridge
- oil access bridge
- beach access

EXHIBIT B

EXPLANATION OF THE PROPOSED HABITAT VALUE TRADEOFF RATIO

Habitat evaluations of Los Angeles/Long Beach outer harbor landfills impacts and tidal wetland mitigations have been previously completed. Subsequently, landfill projects and their mitigation projects have been permitted and undertaken, in consideration of these habitat evaluations. Specifically, Port of Long Beach Pier J landfill is now complete and its mitigation at Anaheim Bay is also complete, including the required biological follow-up monitoring. In addition, a portion of the Port of Los Angeles Pier 400 landfill has been permitted and is under construction, just as its mitigation at Batiquitos Lagoon is permitted and under construction.

The mitigation goal for outer harbor landfills has been and continues to be "no net loss of in-kind habitat value". This means that mitigation habitats may be a different type than that filled, provided it offsets the habitat value for the evaluation species of the filled habitat. Therefore, while the mitigation goal requires a value for value (1:1) tradeoff, the variable habitat benefits of different types of offsetting mitigation works can result in greater or less than acre for acre tradeoffs.

In the case of the Pier J-Anaheim Bay evaluation and project, restoration of tidal flow to non-tidal areas equally offsets the habitat values eliminated by the Pier J landfill and resulted in an acreage tradeoff ratio of 1.32 acres of landfill for each acre of mitigation (inversely, 0.76 acres of mitigation for each acre of landfill). Since the outer LA/LB Harbor biological baseline habitat value is considered to be the same as that established by the baseline studies and the previous habitat evaluations, and since the Anaheim Bay mitigation project type (tidal restoration near the ocean) is similar to the concept type contemplated for Bolsa Chica and its biological benefits have been verified through follow-up investigations, the same habitat evaluation and tradeoff ratio is adopted in this agreement. The complete "Anaheim Bay-Pier J" habitat evaluation report is available upon request. The habitat value of one acre of this type of mitigation is higher than the habitat value of an acre of outer harbor water area deeper than 20 feet, so that less than one acre of mitigation is needed to offset one acre of harbor landfill. That is, for each acre of Bolsa Chica restored to full tidal influence near the ocean, 1.32 acres of outer harbor landfill shall be considered mitigated.

Aquatic habitats of the main channels and interior slips of both Los Angeles and Long Beach Harbors (the Inner Harbor) have been documented to be of lower fish and bird diversity and abundance than the outer harbor (from the seaward edge of Terminal Island to the main breakwaters). Consequently, offsetting an acre of inner harbor landfill habitat loss has required less (half) compensation than an acre of outer harbor habitats deeper than 20 feet.

The Concept Plan contemplates about 344 acres of full tidal habitats, which would offset the habitat value loss of about 454 acres of outer harbor landfill (more inner harbor landfill

acres). For example, 1.0 acres of restoration offsets 1.32 acres of outer harbor or 2.64 acres of inner harbor. Conversely, 1.0 acres of outer harbor landfill cost 0.76 acres of mitigation; an inner harbor landfill acre costs about 0.38 mitigation acres.

Port of Los Angeles outer harbor landfills		Bolsa Chica Restored Full Tidal Habitat
227 acres		172 acres
Port of Long Beach inner harbor landfills		
60 acres		23 acres
outer harbor	<u>197 acres</u>	<u>149 acres</u>
Total harbor landfill	484 acres	mitigated by restoring 344 acre

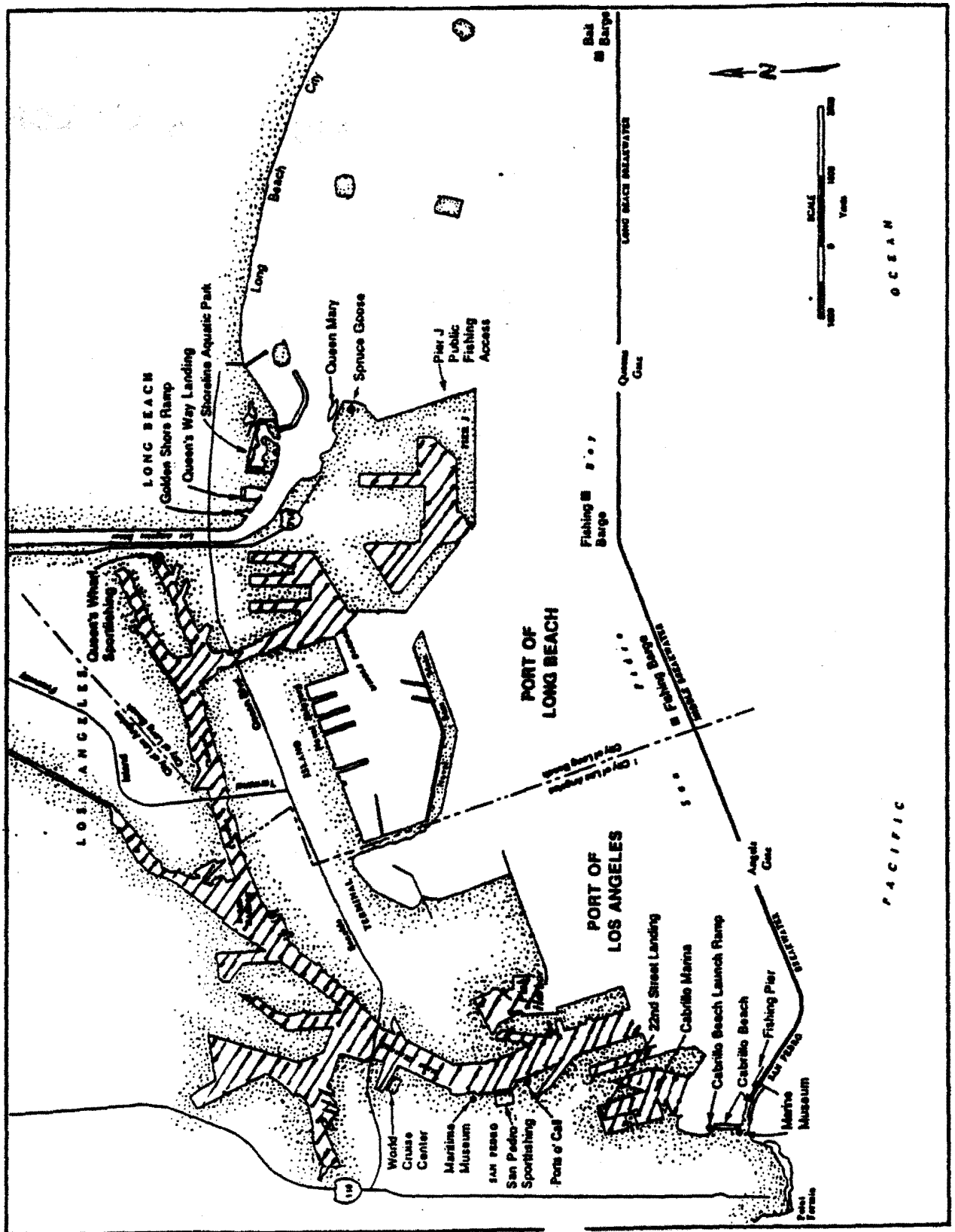


EXHIBIT C INNER HARBOR AREAS (CROSS HATCHED)

EXHIBIT NO. 2
 APPLICATION NO.
 POLA #15