

## CALIFORNIA COASTAL COMMISSION

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STAFF RECOMMENDATION  
ON COASTAL CONSERVANCY ENHANCEMENT PLAN

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Conservancy Project No. CP-1-96  
Staff: LJS-SF  
File Date: September 9, 1996  
60th Day: November 8, 1996  
Commission Meeting: Oct. 8, 1996

APPLICANT: California State Coastal Conservancy

PROJECT LOCATION: Bolsa Chica Lowlands, Orange County (Page 3 of Exhibit 1)

PROJECT DESCRIPTION: State Coastal Conservancy participation in an interagency effort to purchase, restore, and enhance the Bolsa Chica Lowland wetland complex in Orange County. The Enhancement Plan would allow the Conservancy to contribute funding for lowlands acquisition and outlines the role the Conservancy would play in developing the final wetland restoration plan for the Lowlands.

SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Determination CD-115-96 (U.S. Fish and Wildlife Service, Bolsa Chica Lowlands Project).
2. Port of Los Angeles Master Plan Amendment No. 15 (Port Landfill Mitigation Credit Account).
3. Port of Long Beach Master Plan Amendment No. 8 (Port Landfill Mitigation Credit Account).
4. Agreement To Establish A Project For Wetlands Acquisition And Restoration At The Bolsa Chica Lowlands In Orange County, California, For The Purpose, Among Others, Of Compensating For Marine Habitat Losses Incurred By Port Development Landfills Within The Harbor Districts Of The Cities Of Los Angeles And Long Beach, California (1996).

STAFF NOTE:

The Commission staff is recommending that the Commission grant its approval in concept to the Coastal Conservancy's proposed Enhancement Plan for the Bolsa

Chica Lowlands in Orange County. The Conservancy prepared this plan to provide it with the necessary administrative and statutory context for contributing \$1 million toward the acquisition of the Bolsa Chica Lowlands. The Conservancy Enhancement Plan is based on the negotiated interagency Project Agreement (which includes a Concept Plan for wetland restoration) that proposes to acquire most of the Bolsa Chica Lowlands and restore and enhance a significant portion of this wetland complex. The Conservancy Enhancement Plan is not a competing plan to the Project Agreement and Concept Plan contained in the U.S. Fish and Wildlife Service's consistency determination CD-115-96 (also scheduled on the Commission's October 8, 1996, agenda, prior to this item), but instead outlines the role that the Conservancy would play in the implementation of the Project Agreement. Because the Enhancement Plan and the Project Agreement propose the same property acquisition and wetland restoration plan, the proposed findings contained in this staff recommendation rely in large measure on the analysis and findings contained in the staff recommendation on CD-115-96 (U.S. Fish and Wildlife Service). The Commission's approval in concept of the Conservancy Enhancement Plan would be consistent with Commission concurrence with CD-115-96, and would assist in moving forward the Project Agreement and Concept Plan for restoration of the Bolsa Chica Lowlands. 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-115-96 staff report and recommendation.

The Conservancy Enhancement Plan is attached to this staff recommendation as Exhibit 1. The Conservancy included the interagency "Project Agreement" (including the "Concept Plan" for wetland restoration at Bolsa Chica) as Attachment 1 to its Enhancement Plan.

The Commission reviews a Conservancy Enhancement Plan when it affects more than one jurisdiction or when the plan affects lands over which the Commission has jurisdiction under Section 30519(b) of the Coastal Act, which includes public trust lands. The proposed acquisition and restoration of the Bolsa Chica Lowlands will use Port funds and will have the effect of impressing those areas of Bolsa Chica with the public trust. Therefore, the Conservancy is submitting its proposed Enhancement Plan to the Commission.

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#### CONSERVANCY PROJECT PROCEDURE:

The California State Coastal Conservancy submitted the Bolsa Chica Lowlands Enhancement Plan to the Commission on September 9, 1996, for its review and approval as required by Section 31258 of the Coastal Conservancy Act of 1976. Under Section 31258, following completion of a coastal resource enhancement plan, the Conservancy forwards the plan to the Commission for determination of plan conformity with the policies and objectives of the Coastal Act. Section 31258 provides that the Commission has 60 days to review the plan and transmit its findings to the Conservancy. If no findings are made prior to November 8, 1996, the Enhancement Plan is deemed to be approved and consistent with the Coastal Act.

Under the Coastal Act and the Coastal Conservancy Act, the Commission's task is to conduct a conceptual review of the Enhancement Plan and indicate to the Conservancy what provisions, if any, must be included in a final project or

plan to find it consistent with the Coastal Act. The submitted Enhancement Plan is not an application for a coastal development permit, and prior to the Conservancy implementing the Enhancement Plan, a coastal development permit for that plan must be reviewed and approved by the Coastal Commission or its successor public agency.

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I. STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

APPROVAL.

The Commission hereby grants its approval in concept for the Bolsa Chica Lowlands Enhancement Plan, finding that the plan is in conformity with the provisions of Chapter 3 of the California Coastal Act.

II. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Project Description. The Enhancement Plan (Exhibit 1) prepared by the Conservancy to authorize its participation in the acquisition and restoration of the Bolsa Chica Lowlands is based on the interagency Project Agreement (Exhibit 2), which was negotiated by the following ten federal, state, and local agencies: U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, Army Corps of Engineers, California Department of Fish and Game, State Lands Commission, State Coastal Conservancy, Resources Agency, Port of Los Angeles, and Port of Long Beach.

The Conservancy Enhancement Plan:

...reviews the history and site conditions on the Bolsa Chica lowlands; describes the Project Agreement, including the wetland restoration goals and objectives proposed in the Agreement; recommends acquisition of lowlands in order to protect and enable restoration of fish and wildlife habitat and provide public access compatible with habitat priorities; and explains how the acquisition is consistent with the Conservancy's enabling legislation and with the Coastal Act.

The Conservancy's Enhancement Plan describes the key provisions of the Project Agreement as follows:

The Conservancy will provide \$1 million to the State Land Commission for lowlands acquisition. The Ports of Los Angeles and Long Beach will each provide \$33.375 million for the purposes of acquiring lowlands, refining restoration design, completing environmental review, implementing restoration, and providing long-term maintenance and management of the lowlands.

The State Lands Commission will acquire at fair market value fee title to a minimum of 880 acres of Bolsa Chica Lowlands currently owned by the Signal Bolsa Corporation, a subsidiary of Koll Real Estate Group.

The Coastal Commission will approve a consistency determination from the U.S. Fish and Wildlife Service for the Project Agreement, and port master plan amendments for the mitigation credit account.

After Coastal Commission approval, but prior to land acquisition, each of the parties to the Project Agreement will determine whether the project should go forward. Any one of the signatory agencies can prevent the project from continuing.

The Project Agreement includes a Concept Plan for restoration of 384 acres of full tidal wetlands with a habitat value to compensate for the impacts of 454 acres of outer harbor fill in the Ports of Los Angeles and Long Beach. An additional 220 acres will be restored as managed tidal wetlands. Additional details on the proposed wetland restoration and enhancement are contained in the interagency Concept Plan.

\$5 million will be set aside for maintenance, monitoring, and management of the lowlands.

The Conservancy will facilitate refinement of the Concept Plan for wetland restoration in consultation with the other parties to the Project Agreement. The agreement acknowledges that a number of engineering issues remain to be resolved in the design, environmental review, and permitting processes.

The State Lands Commission will be the lead agency for CEQA review, and the U.S. Fish and Wildlife Service and the Corps of Engineers will be co-lead agencies for the NEPA review.

Following completion of environmental review, the Service will submit a second, more detailed consistency determination to the Coastal Commission.

The Service will be responsible for managing construction of the restoration project, but may carry out this responsibility by engaging the services of the Conservancy or the State Lands Commission.

The Conservancy's responsibilities under the Project Agreement, should it go forward, are as follows:

- Provide \$1 million towards lowlands acquisition.

- Assist in refining the concept plan for restoration of the lowlands in consultation with federal, state, and local agencies and community groups.

- Assist in resolving outstanding engineering and environmental issues, including flood control, the tidal inlet, project impacts on area beaches and groundwater levels in adjacent residential areas, provision of public access to the lowlands, and preservation of existing wildlife habitat.

- Assist in the NEPA and CEQA environmental review processes, and assist the U.S. Fish and Wildlife Service in construction management, if requested.

Because the interagency Project Agreement is the basis for the Conservancy Enhancement Plan, implementation of the Enhancement Plan depends upon the successful resolution by the signatory agencies of several outstanding issues described in the Project Agreement. Most significant is the adequacy of funding for both acquisition and restoration of the lowlands at Bolsa Chica. Currently, there is a potential funding shortfall of as much as \$16 million between the available funding and interest income and the estimated purchase, implementation, and maintenance costs of the project. A second unresolved issue is the extent and degree of potential contamination of the site and the responsibility for clean-up costs. Unless these two issues are resolved to the satisfaction of all the signatories to the Project Agreement, the project will not be implemented. The Project Agreement states that:

...each of the parties is to notify the [State] Lands Commission by the middle of December 1996 as to whether or not the acquisition should go forward. A "veto" by any party would halt the project. One of the principal criteria that the State and Federal parties will be using to determine whether or not the project should go forward is the amount of funding that will be available for construction of restoration measures.

Implementation of the proposed Enhancement Plan is contingent upon decisions that will not be made until at least two months after Commission action on the Enhancement Plan. As a result, the Conservancy acknowledges that even with Commission granting its approval in concept of this Enhancement Plan, the Plan will not go forward unless adequate funding for acquisition and restoration is demonstrated to the satisfaction of all the signatory parties to the Project Agreement. However, Commission action on the Conservancy Plan at this time, notwithstanding the present uncertainties regarding the Project Agreement, is necessary in order for the Conservancy to be able to demonstrate to the other signatory parties prior to the mid-December deadline that it has the ability (through a Commission-approved Enhancement Plan) to contribute \$1 million for land acquisition. Therefore, Commission granting its approval in concept of the Enhancement Plan at this time will assist in moving forward the proposed acquisition and restoration of the Bolsa Chica Lowlands.

B. Environmentally Sensitive Habitats and Resources. The interagency Project Agreement and Concept Plan, and therefore the Conservancy Enhancement Plan, include provisions for restoration and enhancement of wetland resources. The Coastal Act provides:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and

entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(7) Restoration purposes.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The concern that the Commission has over the protection of wetland resources is in part based on the ecological importance of this habitat type. Wetlands provide highly diverse and productive habitat to a wide variety of plants and animals. The wetlands of the Bolsa Chica lowland are important resources to the state and the nation, and comprise one of the largest remaining coastal wetland complexes in southern California. The lowland complex is comprised of

a mix of habitat types: pickleweed, brackish marsh, salt grass, cord grass, open water/channel non-tidal, open water/bay, open water/flat unvegetated, and uplands. The biological health and productivity of those habitat types varies widely across the lowlands from poor to excellent, with most of the area in need of significant restoration and enhancement.

The proposed interagency Concept Plan for wetland restoration at Bolsa Chica notes that although the entire 1,300-acre lowland area is significantly diminished from its historic size and value, sections of the lowland still possess high biological value, despite the presence of oil extraction activities within the lowland. Due in part to its large size, the potential for ecosystem enhancement, and its regional significance, the signatories to the Project Agreement believe that stemming further habitat loss and restoring and enhancing fish and wildlife habitats at Bolsa Chica is both highly feasible and desirable (Exhibit 2).

The Conservancy Enhancement Plan states that:

The principal purpose of the proposed acquisition of the Bolsa Chica Lowlands is to protect existing natural resources and to enable restoration of fish and wildlife habitat. As described in more detail [in the Project Agreement and Concept Plan], the lowlands support the remnants of a tidal, brackish, and freshwater marsh system that, prior to the turn of the century, encompassed the lowlands and adjacent areas. Non-tidal wetlands which support certain species usually associated with the marine environment -- Belding's savannah sparrow and the snowy plover -- exist among the oil field levees and equipment. One of the objectives in designing restoration measures will be to protect these and other existing marine resources. The potential also exists to restore historic tidal wetlands that occupied much of the lowlands. Restoration of this type of marine resource will be another of the objectives of the design process.

The acquisition of lowlands will enable the restoration and protection of environmentally sensitive habitat areas. During the design process, measures will be proposed to provide for the protection and improvement of existing fish and wildlife resources, including environmentally sensitive habitat areas within the adjacent Ecological Reserve.

The Commission recognizes that the Conservancy Enhancement Plan, and the interagency Project Agreement and Concept Plan, are initial steps in a phased review of the proposed restoration of the Bolsa Chica lowlands. The Conservancy acknowledges that further review by the Commission will be necessary after a detailed, final restoration plan is selected upon completion of an Environmental Impact Statement/Report. Therefore, the Commission is only evaluating whether the submitted conceptual Enhancement Plan is consistent with the applicable Chapter 3 policies of the Coastal Act, and is not making any final determination on restoration plans or activities at the Bolsa Chica lowlands.

Several of the restoration activities proposed in the restoration plan would constitute filling, dredging, and diking of wetlands, and the Commission must evaluate these proposed activities using the three tests of Section 30233 of

the Coastal Act. The first test requires that the Commission find that the proposed activities are an allowable use. Section 30233(a)(7) describes projects that are for restoration purposes as an allowable use. The purpose of the Enhancement Plan and Concept Plan is to restore and enhance the wetlands of the Bolsa Chica lowlands in order to protect fish and wildlife resources and habitat, and that the biological diversity and value of the restored wetland complex will be significantly improved over present conditions. Therefore, the Commission finds that the dredging, diking, and filling proposed in the Enhancement Plan are for restoration purposes, and thus are an allowable use pursuant to Section 30233(a)(7).

The second and third tests require the Commission to find that the proposed project is the least damaging feasible alternative and includes feasible mitigation, respectively. In order to assess the plan's consistency with these tests, the Commission will use policies of Section 30230, 30231, 30233(c), and 30240 to determine if the project, at a minimum, maintains the biological productivity and functional capacity of the habitat. The Commission must then consider whether the plan will result in any adverse effects on the environment and whether those effects can be avoided by project alternatives and/or mitigation.

The Commission finds that the Enhancement Plan will lead to the enhancement and restoration of functional capacity and biological productivity of the lowlands, and the phased abandonment and removal of oil extraction activities and equipment. Implementation of the plan will convert an area that has been diked off and isolated from tidal waters into a contiguous complex of subtidal, intertidal, and salt marsh/flat/pond habitats. The return of tidal influences to both the proposed "Full Tidal" and "Managed Tidal" areas (at differing degrees) will in turn greatly improve the diversity and productivity of plant and animal species using these areas. In addition, the plan calls for the retention of seasonal ponds at the southeast corner of the lowlands and the protection of those species dependent on this habitat type. As noted in the interagency Concept Plan for wetland restoration, some of the areas planned for full tidal restoration possess some existing wetland values, and as a result, any losses will be fully compensated either through enhancing these values when full tidal action is restored, or by introducing managed tidal waters into other areas of the lowlands. The Commission agrees that the conceptual wetlands restoration plan will enhance species diversity and use of the lowlands by wetland-dependent species, and thus enhance the biological productivity of the area.

The expected improvements to species diversity and utilization indicate that the project will also enhance the functional capacity of the Bolsa Chica lowlands. However, to fully determine if the functional capacity will be enhanced, the Commission must evaluate the wetland's ability to be self-sustaining. The plan proposes to reintroduce tidal waters to the central portion of the lowlands (the proposed "Full Tidal" area) by constructing an ocean inlet at the southern end of the lowlands. In addition, tidal waters will be readmitted through culverts or water control structures to areas designated "Managed Tidal." By manipulating the current hydrologic regime, modifying portions of the lowland topography, and replanting wetland vegetation in order to mimic a more natural, tidally-influenced coastal wetland, the Bolsa Chica lowlands should become self-sustaining. The plan



does not call for the rerouting of the Garden Grove-Wintersburg Flood Control Channel, which could generate significant changes to the hydrology of the Bolsa Chica Lowlands. However, the plan does state that due to potential public safety and flood control concerns, this issue will be addressed during the preparation of the EIS/R and the final restoration plan. Lastly, because of the complexity of wetland restoration, the restoration plan includes provisions for monitoring, maintenance, and remediation activities in order to ensure that the restoration project achieves its objectives.

The Commission finds that implementation of the conceptual restoration plan would enhance the biological productivity and functional capacity of the Bolsa Chica lowlands and would lead to a significant improvement to wetland habitats and fish and wildlife resources within the lowlands. The Commission also finds that implementation of the conceptual restoration plan would improve the quality and quantity of habitat, and will not be environmentally damaging. Because the Enhancement Plan will not have significant adverse effects on the environment, additional alternatives analysis and mitigation requirements, pursuant to Section 30233(a) of the Coastal Act, are not required to find the proposed filling, dredging, and diking consistent with the marine resource policies of the Coastal Act.

In conclusion, the Conservancy Enhancement Plan (based on the interagency Concept Plan for wetland restoration) for the Bolsa Chica lowlands includes provisions for substantial restoration and enhancement of wetlands and fish and wildlife resources. The Commission recognizes that the Enhancement Plan is conceptual in nature and will require additional Commission review upon completion of a final restoration and construction plan. However, the Commission finds that the present plan outlines wetland restoration activities that would beneficially affect coastal resources in a manner that is consistent with the marine resource and habitat protection policies of the Coastal Act.

C. Shoreline Structures and Development. The Coastal Act provides:

Section 30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253. New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs....

The interagency Project Agreement and Concept Plan, and therefore the Conservancy Enhancement Plan, call for the construction of an ocean inlet to reintroduce tidal waters to the central portion of the Bolsa Chica lowlands. Construction of the inlet will require dredging, excavation, dredge material disposal, two jetties, a revetment, and shore protection measures. The Concept Plan states that:

The wetland restoration plan will neither create nor contribute to significant erosion of the beach. All suitable sand excavated would be placed on the ocean beach, as would sand excavated from the inlet channel during maintenance. Bank protection measures, such as rip rap, may be necessary inside the inlet structure. Such structural features will be fully considered during EIR/S preparation and final consistency determination.

Because of the conceptual nature of the interagency Concept Plan for wetland restoration and the Conservancy's Enhancement Plan, the Commission is unable at this time to fully evaluate the the aforementioned activities and structures for consistency with the referenced Coastal Act policies. The Conservancy acknowledges in its Enhancement Plan that additional Commission review (through a second consistency determination or a coastal development permit) will be necessary once a final restoration plan is selected after completion of the environmental impact statement/report for the restoration project.

However, the Commission is able to find at this time that an ocean inlet will be required for successful wetland restoration of the Bolsa Chica lowlands at the scale envisioned in the Enhancement Plan. The volume of seawater necessary to achieve the restoration objectives in the lowlands cannot be conveyed through existing channels through Anaheim Bay, Huntington Harbour, and outer Bolsa Bay without damaging existing tidal flats and causing erosion, and, as a result, construction of an ocean inlet is required. The Commission agrees. The Commission also concurs that at the conceptual level, an ocean inlet can be constructed and maintained at the proposed location without generating significant, adverse effects on other coastal resources (namely sand supply, beach erosion, visual resources, and public safety) through appropriate design, monitoring, and mitigation (i.e., sand management, beach nourishment). However, the Commission will have the opportunity to review in a second consistency determination or a coastal development permit the specifics of the ocean inlet, its associated features, and any mitigation measures necessary to bring this component of the project into conformance with the Coastal Act. Therefore, the Commission finds that the proposal in

the Conservancy Enhancement Plan for an ocean inlet to reintroduce tidal waters to the Bolsa Chica lowlands for the purposes of wetland restoration and enhancement is consistent with the shoreline structure and development policies of the Coastal Act.

D. Public Access and Recreation. The Coastal Act provides:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby....

Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....

Section 30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The Enhancement Plan states that

The Bolsa Chica Lowlands Enhancement Plan recommends acquisition of lowlands for the purpose of protecting existing fish and wildlife habitat, enabling restoration of habitat, and enabling compatible public access. The acquisition is proposed to be undertaken in the context of the multi-party acquisition and restoration effort that is described above and in Attachment 1 to this enhancement plan. Also, as described above, one of the types of allowable uses described in the Concept Plan

is passive public access that is compatible with fish and wildlife habitat. Compatible facilities are likely to include trails and interpretive facilities that would augment the existing facilities. The specific type and location of public access facilities will be determined in the design, environmental review, and permitting processes.

The acquisition that is recommended in the Bolsa Chica Lowlands Enhancement Plan would be undertaken for natural resource protection and restoration purposes and to enable compatible public use. Compatible recreational uses will be determined in the design, environmental review and permitting process, but are likely to include such activities as hiking and bird-watching. More active uses within the lowlands, such as boating and windsurfing, can be considered in the planning process, but only to the extent compatible with the primary wildlife habitat functions. The design of the habitat restoration will also consider the effect of restoration on existing recreational and recreation support uses nearby, such as surfing, beach maintenance and other beach and nearshore activities.

Currently, public access and recreation are not available on the privately-owned lands in the Bolsa Chica lowlands. The interagency Project Agreement and Concept Plan for wetland restoration, upon which the Conservancy Enhancement Plan is built, include provisions for public access and recreation within the constraints of protecting fish and wildlife resources and habitats. In addition, the Concept Plan calls for the retention and protection of existing public recreational uses of Bolsa Chica State Beach. During the development of the final restoration plan (including plans for construction of the ocean inlet and jetties), efforts to minimize and mitigate the loss of sandy beach from these structures will be focused on avoiding significant, adverse effects on public access to and recreational use of Bolsa Chica State Beach.

The Commission recognizes that the Conservancy Enhancement Plan is conceptual in nature and will require additional Commission review upon completion of a final restoration and construction plan. However, the Commission finds that the Enhancement Plan is based on the interagency Project Agreement and Concept Plan, both of which contain a commitment to include features that would enhance public access and recreational opportunities in the Bolsa Chica lowlands, and protect existing public access to and recreational use of Bolsa Chica State Beach. Therefore, the Commission finds that the Conservancy Enhancement Plan is consistent with the public access and recreation policies of the Coastal Act.


#### E. Approval in Concept.

The Commission grants its approval in concept to the Bolsa Chica Lowlands Enhancement Plan. The project proponent (be it the Coastal Conservancy or another entity) must apply for and receive a coastal development permit from the Commission before implementing the Enhancement Plan. At that time, the permit applicant will need to demonstrate that the Enhancement Plan is fully consistent with the Chapter 3 policies of the Coastal Act.

# **BOLSA CHICA LOWLANDS ENHANCEMENT PLAN**

*Prepared by Staff of the Coastal Conservancy*

*August 1996*

EXHIBIT NO. 1
APPLICATION NO.
CP-1-96
 California Coastal Commission P. 1

# **BOLSA CHICA LOWLANDS ENHANCEMENT PLAN**

*Prepared by Staff of the Coastal Conservancy*

*August 1996*

## **PREFACE**

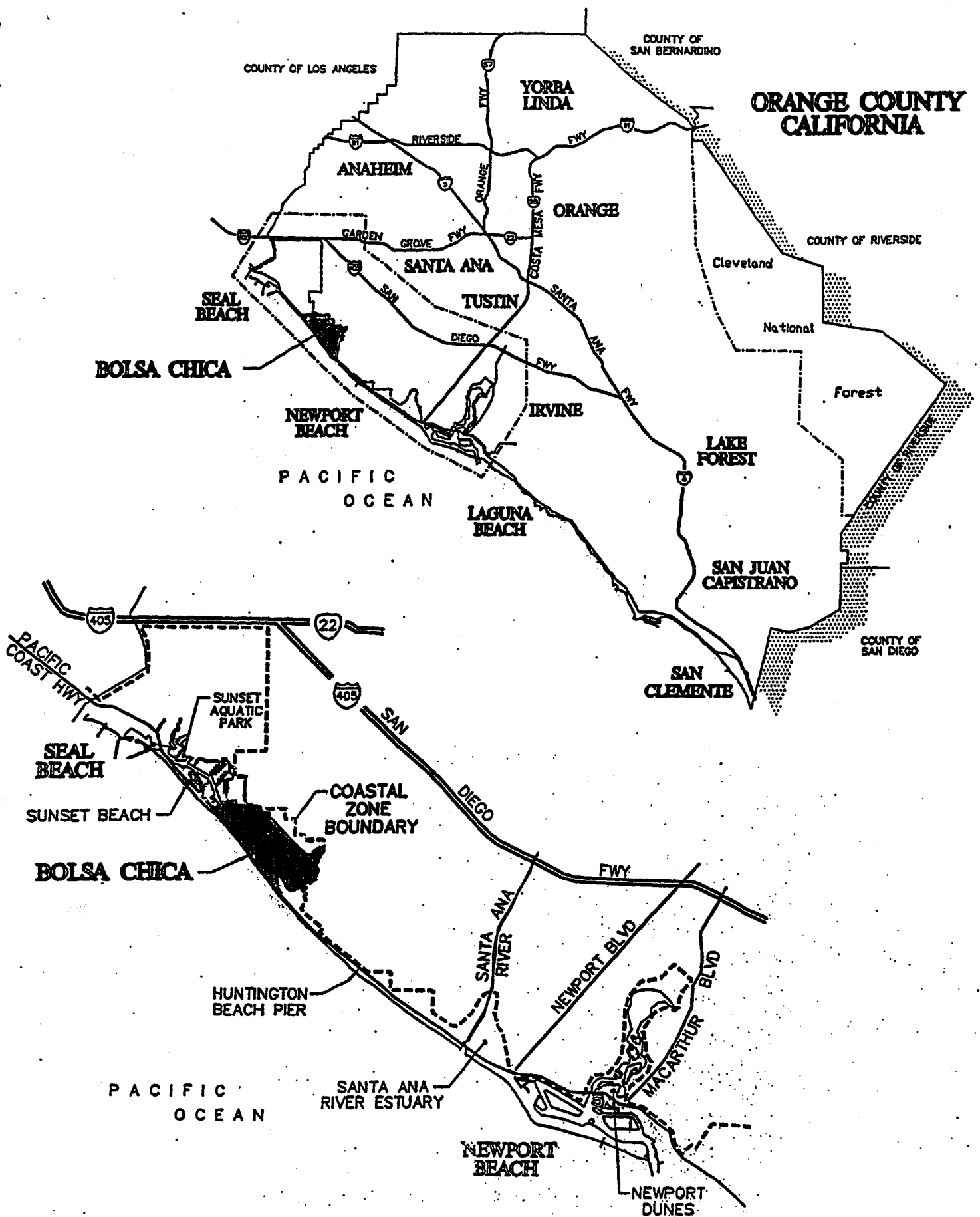
### **Purpose of Plan**

The Bolsa Chica Lowlands Enhancement Plan has been prepared by staff of the Coastal Conservancy in order to provide the necessary administrative context, consistent with Chapter 6 of Division 21 of the Public Resources Code, to enable the Conservancy to participate in acquiring Bolsa Chica lowlands in coastal Orange County. Under the provisions of Chapter 6, acquisition constitutes an implementing action that requires prior approval by the Conservancy of an enhancement plan that recommends acquisition as a measure to protect or enhance threatened or disturbed natural resources. In accordance with Chapter 6, the Conservancy will also forward the enhancement plan to the Coastal Commission for a determination of conformity with the policies and objectives of the Coastal Act.

With this enhancement plan, the Conservancy will be able to participate in a multi-agency effort to acquire and restore wetlands at Bolsa Chica and to provide mitigation credit to the Ports of Los Angeles and Long Beach in exchange for project funding. That effort is described below in the section of this enhancement plan titled "Proposed Multi-Party Acquisition and Restoration," and in the text of the agreement among the parties to the effort, which is attached to this plan for informational purposes as Attachment 1.

### **Anticipated Submittals for Coastal Commission Action**

The Coastal Commission will be asked to review this enhancement plan pursuant to Chapter 6 of Division 21 of the Public Resources Code for conformity with the Coastal Act. Concurrently, the U.S. Fish and Wildlife Service and the Ports, respectively, are expected to ask the Coastal Commission to consider taking other actions needed to move the acquisition and restoration effort forward; these actions are review of a federal consistency determination which will describe the conceptual wetland restoration measures which are envisioned by the parties to the project, subject to further environmental review and approvals; and amendment of master plans for the Ports of Los Angeles and Long Beach, which are proposed to receive mitigation credit suitable to compensate for future fills in San Pedro Harbor in consideration for funding wetland restoration at Bolsa Chica.



Source: 1996 Recirculated Draft  
Environmental Impact Report

Figure 1 Location Map

## **SITE CONDITIONS**

### **Physical and Biological Conditions**

The area known as Bolsa Chica is a complex of approximately 1600 acres of lowlands and uplands that lies inland of Pacific Coast Highway in Orange County, surrounded by the City of Huntington Beach (Figure 1). The lowlands are the subject of this enhancement plan.

The lowlands consist of about 1200 acres of low-lying land, with extensive disturbed wetlands that are divided by levees and dotted by oil well pads, and another 150 acres that have been restored to tidal action and are managed by the Department of Fish and Game ("the Department") as an Ecological Reserve. The uplands are found on the levees and pads amid the wetlands and on the mesas at the northwest and southeast ends of the wetlands.

The Bolsa Chica lowlands are a remnant of a 2300-acres wetland complex that once stretched along the Orange County coast behind coastal beaches and dunes and reached inland along numerous stream channels. The historic Bolsa Chica wetlands predominantly comprised tidal wetlands, with some areas of brackish and freshwater marsh.

As a consequence of blockage of the natural ocean connection around the turn of the century, tidal circulation to most of the site was curtailed. Subsequent oil field development resulted in fill being placed on wetlands, fragmentation of wetlands by levees, isolation of most of the wetlands from freshwater runoff, and subsidence of two or more feet.

Nevertheless, the lowlands among the levees and oil wells at Bolsa Chica support extensive wetland habitat. The U.S. Environmental Protection Agency's 1989 jurisdictional determination identified approximately 900 acres of existing "waters of the United States" distributed throughout the lowlands. The U.S. Fish and Wildlife Service ("the Service") and the Department report that the State listed endangered Belding's savannah sparrow nests in some pickleweed areas at Bolsa Chica. The Service reports that the federally-listed threatened western snowy plover nests and rears young in some of the salt flats and around some of the seasonal ponds.

The Department of Fish and Game has also restored approximately 150 acres to tidal influence. The restored area appears to be functioning very well, supporting high numbers and diversity of shorebirds on tidal mudflats, as well as foraging and breeding habitat for high numbers of seabirds the muted tidal areas.

The Bolsa Chica lowlands are suspected to contain some hazardous materials and other contaminants principally due to its history of use as an oil field. The Coastal



Conservancy and other parties have pooled resources to fund an investigation intended to conclude early this fall to determine the distribution and concentration of any such materials.

### **Land Use**

An active oil field and facilities for offshore oil extraction operated by CalResources Limited Liability Company, a subsidiary of Shell Oil, occupy much of the lowlands. Chevron Oil and its subsidiary, the Huntington Beach Company, operate facilities on a small portion of the lowlands. The remainder of the lowlands are occupied by the Ecological Reserve, a flood control channel and vacant land.

### **Ownership**

Signal Bolsa Corporation, a wholly-owned subsidiary of Koll Real Estate Group owns the vast majority of the lowlands, approximately 930 acres (Figure 2). The state owns almost 310 acres. Approximately 42 acres are owned by the Fieldstone Company. Orange County owns an easement along the flood control channel. Recent newspaper articles report that the Metropolitan (Los Angeles) Water District is dedicating 25 of its 31 acres of lowlands to the state for wetland restoration purposes.

## **CURRENT PROPOSALS FOR DISPOSITION OF THE BOLSA CHICA LOWLANDS**

### **Certified Local Coastal Program**

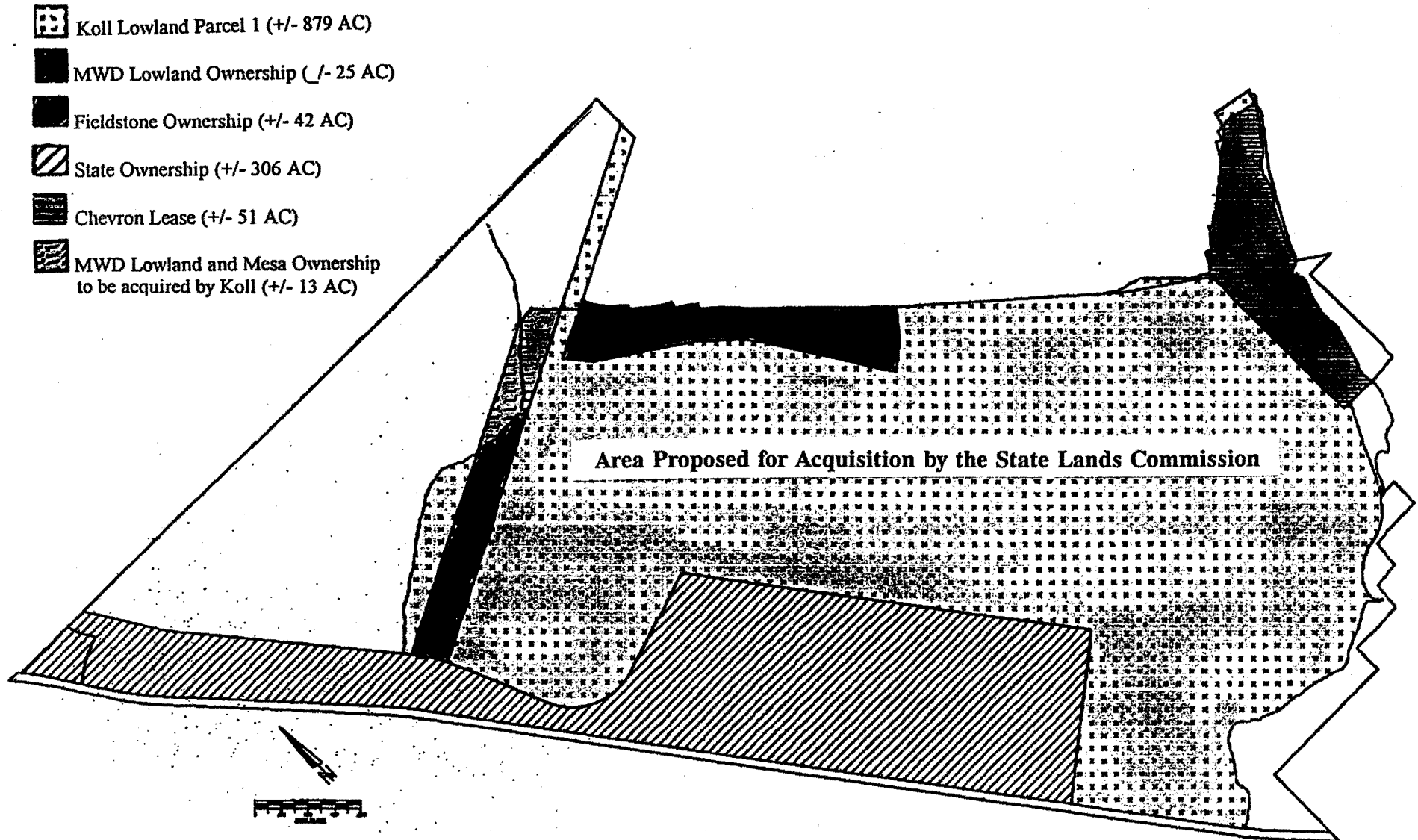
In January 1996, the Coastal Commission certified Orange County's Local Coastal Program (LCP) for Bolsa Chica. With respect to the lowlands, the LCP provides for residential development on approximately 180 acres where a mosaic of uplands and wetlands currently exists. The LCP further requires that, in the event that lowland housing is undertaken, the rest of the lowlands currently in private ownership be protected and restored.

### **Proposed Multi-Party Acquisition and Restoration**

#### *Overview*

The Ports of Los Angeles and Long Beach ("the Ports") and 8 State and federal agencies are working together to accomplish an alternate approach to protecting and restoring the Bolsa Chica lowlands. Under the terms of an agreement negotiated among these entities (the "Project Agreement," Attachment 1) a minimum of 880 acres will be purchased by the State and held for wildlife habitat protection and restoration purposes. Some 600 acres of tidal and managed wetland will be restored

**Figure 2 BOLSA CHICA LOWLAND OWNERSHIP**



Source: Koll Real Estate Group

within several years. The remaining 280 acres will be held for future restoration. Residential development will be precluded on all but 42 acres of lowlands. Under the terms of the agreement, the Ports will provide the funding that will enable much of the acquisition and restoration and they will receive mitigation credit for the restoration that will enable them to undertake modernization and expansion that is important to the State's economy. The effectiveness of the agreement for providing the mitigation credit is contingent upon proposed future Coastal Commission actions.

The following is a summary of the key provisions of the Project Agreement:

- The Conservancy will provide \$1,000,000 to the State Lands Commission ("the Lands Commission") for lowlands acquisition. The Ports will each provide to the Lands Commission \$33,375,000 for the purposes of acquiring lowlands, refining wetland restoration design for the lowlands, completing environmental review of the wetland restoration design, implementing the portion of the plan for which the ports would receive mitigation credit to offset fills in San Pedro Harbor, and providing long-term maintenance and management.
- The Lands Commission will endeavor to acquire fee title to a minimum of 880 acres of Bolsa Chica lowlands which are currently owned by Signal Bolsa Corporation, a subsidiary of Koll Real Estate Group ("Koll"). (The purchase price is the subject of current negotiations, but will not exceed fair market value.) Failure to acquire at least 880 acres of the lowlands will cause the Project Agreement to terminate.
- Prior to any acquisition of land by the Lands Commission, the Service will submit a consistency determination for the project to the Coastal Commission. Concurrently, the Ports will submit master plan amendments. If the Coastal Commission acts to express disagreement with the consistency determination or does not approve the master plan amendments, the Project Agreement will terminate.
- After the Coastal Commission acts, but prior to any acquisition of land, each of the parties to the Project Agreement will determine whether the project should go forward. Any party to the agreement can prevent the project from continuing.
- A "Concept Plan" that is incorporated into the Project Agreement as its Exhibit A provides a conceptual basis for projecting that restoration of an approximately 384-acre area as a full tidal basin with associated vegetated and unvegetated wetlands and submerged habitat will result in habitat value appropriate to compensate for the impacts of 454 acres of fill proposed by the ports for placement in Outer San Pedro Harbor to improve port operations. (Credit for more acres of fill would be available if the fill occurred in the Inner

Harbor, with its lesser habitat value.) In order to offset the anticipated impact of tidal basin restoration on existing disturbed wetlands, an additional 220 acres will be restored as managed tidal wetlands. Thus, approximately 604 acres are to be restored under the terms of this agreement.

- Upon acquisition of a minimum of 880 acres, the Project Agreement stipulates that 454 acres of mitigation credit will vest with the ports and be available for their immediate use.
- Following acquisition of a minimum of 880 acres, and before wetland restoration refinement begins, \$5,000,000 will be set aside for maintenance, monitoring, and management of the lands acquired. Up to \$3,000,000 of any other funds remaining after construction is completed and any claims are settled may also be dedicated for maintenance, monitoring, and management. These activities will be the responsibility of the Lands Commission, which may enter into an agreement with the Department or the Service to carry them out.
- The Conservancy will facilitate refinement of the wetland restoration design in consultation with the other State and federal parties to the Project Agreement and with other interested parties. The Conservancy's administrative and consultant costs can be paid out of project funds held by the Lands Commission. The agreement acknowledges that a number of engineering issues--including location of a tidal inlet, tidal basin depth, and configuration of an adjacent flood control channel--remain to be resolved in the design, consultation, environmental review process, and permitting process.
- Following completion of environmental review, the Service will prepare and submit a second, more detailed consistency determination to the Coastal Commission for review.
- The Service will be responsible for managing construction of restoration measures, but may carry out this responsibility by engaging the services of the Conservancy or Lands Commission.

### *Lowland Restoration*

The Project Agreement includes a "Concept Plan" that provides guidance about how the wetlands should be restored (Exhibit A to Attachment 1). According to the agreement, a detailed wetland restoration plan that addresses various engineering matters and issues of concern to Orange County and the public will be prepared following acquisition of a minimum of 880 acres of the lowlands. The refined plan will then be subject to environmental review and possible additional refinement during the permit process.

The Concept Plan contains the following habitat restoration goals and objectives that are intended to be used in developing the detailed plan:

Bolsa Chica Restoration Goals:

The goal of the Concept Plan for the Bolsa Chica Lowlands Project (the "Project") is to provide for the retention of existing fish and wildlife resources and, to the extent 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 Concept Plan:

The specific objectives of the Concept Plan for the Bolsa Chica Lowlands Project 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 Lowlands 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.

#### *Execution of the Conservancy's Responsibilities*

Under the terms of the Project Agreement, the Conservancy will refine the Concept Plan for restoration of the Bolsa Chica lowlands in close consultation with local agencies, state and federal resource and regulatory agencies, and community groups. The refinement will draw upon the years of study and design that have been undertaken by agencies, landowners, consultants, and private citizens. Every effort will be made to avoid duplicating past efforts.

Restoration of Bolsa Chica will be very complex. The following are among the engineering and design issues which must be addressed during refinement of the Concept Plan: the relationship of the Wintersburg Flood Control Channel to a restored tidal basin; the location of a new tidal inlet, the effects of creating a new tidal channel on area beaches and surfing; the effect of restoration on the ground water level in the adjacent residential area; and preservation of valuable existing wildlife habitat.

After the plan has been refined, the Conservancy will assist in the environmental review process by providing additional details, studies, and interpretation, as needed. Upon completion of environmental review, the Conservancy will prepare for approval

a final plan that reflects any changes that are determined appropriate pursuant to environmental review.

Under the terms of the Project Agreement, the Service may engage the assistance of the Conservancy or the Lands Commission with managing construction of restoration measures, which is anticipated to begin in late 1999. If the Conservancy is proposed to assist with construction management, then staff would return to the Conservancy Board for approval of the final restoration plan, authorization to implement the plan in accordance with the terms of the Project Agreement and adoption of CEQA findings.

The Conservancy's proposed \$1 million funding contribution is for land acquisition. Under the terms of the Project Agreement, wetland restoration, not land acquisition, is the basis for awarding mitigation credit to the Ports. Thus, the Conservancy's funds are not being used to provide mitigation credit to the Ports.

#### **BOLSA CHICA LOWLANDS ENHANCEMENT PLAN RECOMMENDATION**

As explained in the Preface above, this Bolsa Chica Lowlands Enhancement Plan has been prepared to provide the necessary administrative context for the Conservancy to authorize the disbursement of funds for acquisition of lowlands at Bolsa Chica.

The sole recommendation of this enhancement plan is that lowlands at Bolsa Chica now in private ownership (Figure 2) be acquired by or on behalf of the public for the purpose of protecting existing fish and wildlife habitat, enabling fish and wildlife habitat restoration, and enabling compatible public uses.

While this enhancement plan itself makes no recommendations about specific habitat restoration measures, the "Proposed Multi-Party Acquisition and Restoration" section above describes the context in which acquisition is envisioned to take place, as does the guidance for restoration that is provided by the "Concept Plan."

#### **CONSISTENCY OF THE BOLSA CHICA LOWLANDS ENHANCEMENT PLAN WITH THE CONSERVANCY'S ENABLING LEGISLATION**

Acquisition of the Bolsa Chica lowlands will be undertaken pursuant to Chapter 6 of the Conservancy's enabling legislation (Public Resources Code Sections 31251-31270).

Pursuant to Section 31251, the Conservancy may award grants to state agencies for the purpose of enhancement of coastal resources which, because of natural or

human-induced events have suffered loss of natural and scenic values. Consistent with Section 31251, the Conservancy will provide funds to the State Lands Commission for the purpose of acquiring approximately 880 acres of the Bolsa Chica lowlands. The lowlands are the site of extensive wetlands that existed prior to the turn of the century when the tidal connection was blocked to impound water for a duck-hunting club. The wetland habitat suffered a subsequent and further loss of natural and scenic values when an oil field was developed on the lowlands.

With respect to Section 31252, the certified Bolsa Chica Local Coastal Plan (LCP) provides for protection of most of the lowlands and for restoration of wetland habitat in the event that certain lowland residential development is undertaken. The Project Agreement provides for protection and restoration of a larger area of wetlands. The LCP would require the landowner to restore and dedicate or transfer title to wetlands as a condition of building housing on a portion of the lowlands. The Project Agreement provides for public agency acquisition of most of the area identified for housing, and thus, also provides for public agency funding of wetland restoration.

Consistent with Section 31253, the level of Conservancy funding for this acquisition has been determined through consideration of the total amount of funding available for coastal resource enhancement projects and the relative urgency of the project.

Consistent with Section 31258, staff will forward this Bolsa Chica Lowlands Enhancement Plan to the Coastal Commission for a determination of conformity with the Coastal Act.

Consistent with Section 31260, the Conservancy will provide a portion of the state agency land-acquisition costs.

Consistent with Section 31264, State agencies with resource management responsibility in the project area, and Orange County, will have an opportunity to comment on the Enhancement Plan.

#### **CONSISTENCY OF THE BOLSA CHICA LOWLANDS ENHANCEMENT PLAN WITH THE COASTAL ACT**

The Coastal Conservancy's participation in the acquisition of lowlands at Bolsa Chica is expected to comport with the Coastal Act (Division 20 of the Public Resources Code) in numerous respects, including:



*Article 2: Public Access (Sections 30210-30214)*

The Bolsa Chica Lowlands Enhancement Plan recommends acquisition of lowlands for the purpose of protecting existing fish and wildlife habitat, enabling restoration of habitat, and enabling compatible public access. The acquisition is proposed to be undertaken in the context of the multi-party acquisition and restoration effort that is described above and in Attachment 1 to this enhancement plan. Also, as described above, one of the types of allowable uses described in the "Concept Plan" is passive public access that is compatible with fish and wildlife habitat. Compatible facilities are likely to include trails and interpretive facilities that would augment the existing facilities. The specific type and location of public access facilities will be determined in the design, environmental review, and permitting processes.

*Article 3: Recreation (Sections 30220-30224)*

The acquisition that is recommended in the Bolsa Chica Lowlands Enhancement Plan would be undertaken for natural resource protection and restoration purposes and to enable compatible public use. Compatible recreational uses will be determined in the design, environmental review and permitting process, but are likely to include such activities as hiking and bird-watching. More active uses within the lowlands, such as boating and windsurfing, can be considered in the planning process, but only to the extent compatible with the primary wildlife habitat functions. The design of the habitat restoration will also consider the effect of restoration on existing recreational and recreation support uses nearby, such as surfing, beach maintenance and other beach and nearshore activities.

*Article 4: Marine Environment (Sections 30230 and 30231)*

The principal purpose of the proposed acquisition of the Bolsa Chica lowlands is to protect existing natural resources and to enable restoration of fish and wildlife habitat. As described in more detail above, the lowlands support the remnants of a tidal, brackish, and freshwater marsh system that, prior to the turn of the century, encompassed the lowlands and adjacent areas. Non-tidal wetlands which support certain species usually associated with the marine environment--Belding's savannah sparrow and the snowy plover--exist among the oil field levees and equipment. One of the objectives in designing restoration measures will be to protect these and other existing marine resources. The potential also exists to restore historic tidal wetlands that occupied much of the lowlands. Restoration of this type of marine resource will be another of the objectives of the design process.

*Article 5: Land Resources (Sections 30240, 30241, and 30244)*

The acquisition of lowlands will enable the restoration and protection of environmentally sensitive habitat areas. During the design process, measures will be proposed to provide for the protection and improvement of existing fish and wildlife

resources, including environmentally sensitive habitat areas within the adjacent Ecological Reserve.

*Article 6: Development (Sections 30250-302252 and 30255)*

The acquisition of lowland will result in the protection and improvement of the scenic and visual quality of this area. The acquisition will enable the restoration and enhancement of the natural condition of the lowlands and will prevent urban development on the lands acquired. Expanded passive public trails which would make the improved scenic and visual qualities accessible to the public will be considered during the design process.

AGREEMENT TO ESTABLISH A PROJECT  
FOR WETLANDS ACQUISITION AND RESTORATION  
AT THE BOLSA CHICA LOWLANDS IN ORANGE COUNTY, CALIFORNIA,  
FOR THE PURPOSE, AMONG OTHERS, OF  
COMPENSATING FOR MARINE HABITAT LOSSES INCURRED BY  
PORT DEVELOPMENT LANDFILLS WITHIN THE  
HARBOR DISTRICTS OF THE CITIES OF  
LOS ANGELES AND LONG BEACH, CALIFORNIA

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_, 1996, 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"), the RESOURCES AGENCY ("RA"), 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 (collectively, "BOARDS").

RECITALS

I. WHEREAS, the BOARDS are empowered by their respective State Tidelands 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 in this matter the responsibility to 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 CONSERVANCY has as its primary mandate in this matter 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

V. WHEREAS, the RA has as its primary mandate in this matter the coordination and oversight of various departments, boards, and commissions related to natural resource management, including the CDFG, CONSERVANCY, and Coastal Commission; and

VI. WHEREAS, the SLC is vested with all residual jurisdiction and authority over tidelands which have been granted to governmental subdivisions, is authorized by Public Resources Code §8625(c) to accept money into its 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 of the 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" or the "Lowlands"); and

VII. 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 are subject to State regulation pursuant to the California Coastal Act, to Federal regulation pursuant to the Clean Water Act and the Rivers and Harbors Act, and to State and Federal regulations pursuant to the State and Federal Endangered Species Acts (collectively, "ESA"); and

VIII. 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, RA, and CDFG recommend be compensated by creation or restoration of equivalent aquatic functions and habitat values that would be maintained on a permanent basis; and

IX. 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 losses of habitat and functions predicted from harbor landfills; and

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

XI. WHEREAS, the parties concur that creation or restoration of habitat values and aquatic functions within the Harbor Districts to offset large-scale losses of habitat values and aquatic functions from the landfills envisioned in this Agreement within the Harbor Districts (i.e., 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

XII. WHEREAS, the USACE, NMFS, CDFG, EPA, RA, 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

XIII. WHEREAS, allowing the BOARDS to provide monies for acquisition, restoration, and maintenance of such shallow water, tidally influenced coastal embayment habitats in order to effect 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 State public trust restrictions on the use of Harbor District revenues so long as title to the acquired lands and any capital improvements thereon is held by the SLC to ensure that the acquired lands are used only for fish and wildlife habitat protection in perpetuity; and

XIV. WHEREAS, the Bolsa Chica Lowlands are considered a unique

public resource because they represent one of the few remaining large wetland areas in southern California, because portions of the Lowlands provide a variety of valuable habitats to a variety of fish and wildlife resources and endangered species, and because the potential to increase the Lowlands' value to fish and wildlife through restoration and enhancement to a variety of habitat types is high; and

XV. WHEREAS, given these unique resource values, there is a compelling public interest in maximizing the habitat values and aquatic functions for a variety of fish and wildlife resources at the Bolsa Chica Lowlands, including but not limited to endangered species; and

XVI. WHEREAS, the Bolsa Chica Lowlands are 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

XVII. WHEREAS, implementation of a compensatory mitigation procedure at the Bolsa Chica Lowlands is in the best interests of the people of the State in that such mitigation 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, by addressing the specific impacts of the Harbor Districts' landfill projects, and by ensuring that the Lowlands will only be used for public trust purposes of fish and wildlife habitat protection in perpetuity; and

XVIII. WHEREAS, nearly all of the Bolsa Chica Lowlands not already owned by the SLC are owned by three other entities; and

XIX. WHEREAS, the Signal Bolsa Corporation, a wholly owned subsidiary of the Koll Real Estate Group, Inc., owns approximately 930 acres in the Bolsa Chica Lowlands, making it the largest of the landowners in the Lowlands, and has indicated a willingness to sell to the SLC, under certain terms and conditions, approximately 880 acres of the property which it owns in the Bolsa Chica Lowlands; and

XX. WHEREAS, should it become possible to acquire a minimum of approximately 880 acres of the unrestored Bolsa Chica Lowlands from the Signal Bolsa Corporation, the FWS, CDFG, SLC, EPA, RA, USACE, NMFS, and CONSERVANCY contemplate physically altering a portion of the Lowlands acquired from the Signal Bolsa Corporation to restore fish and wildlife habitat by restoring tidal influence, recontouring portions of the wetland, maintaining the wetland as altered, and taking other actions, as generally and conceptually described in the "Concept Plan for Fish and Wildlife Habitat Restoration at the Bolsa Chica Lowlands, Orange County, California" (the "Concept Plan"), attached hereto as Exhibit "A" and incorporated herein by this reference; and

XXI. WHEREAS, public acquisition of lands in the Bolsa Chica Lowlands which are not presently owned by the SLC would facilitate public agency implementation of the Concept Plan; and

XXII. WHEREAS, none of the parties to this Agreement independently has the necessary financial resources to acquire the properties in the Bolsa Chica Lowlands and to undertake the implementation of the Concept Plan; and

XXIII. WHEREAS, the parties find that a joint effort which combines their financial and other resources and their expertise would assist the parties in carrying out the acquisition and restoration of the Bolsa Chica Lowlands and would be mutually advantageous; and

XXIV. WHEREAS, the parties have determined that entering into this Agreement does not constitute the adoption of, 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"), that entering into this Agreement does not constitute a major Federal action significantly affecting the human environment as those terms are used in the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq. ("NEPA"), and that completion of CEQA and NEPA compliance are conditions precedent to any party being committed to carry out any obligations set forth in this Agreement for which such compliance is required; and

XXV. WHEREAS, the CONSERVANCY has the statutory authority to prepare plans, preliminary and final designs, environmental documents, and permit applications, and to undertake other activities necessary to implementation of a resource enhancement plan pursuant to Chapter 6 of Division 21 of the Public Resources Code and to the terms and conditions of this Agreement; and

XXVI. WHEREAS, the parties have determined that: (1) SLC is the appropriate agency to hold fee title to any property acquired in the Bolsa Chica Lowlands, (2) the CONSERVANCY is the appropriate agency to take the lead in preparing final plans for the physical features identified in the Concept Plan, in consultation with the other parties to this Agreement, (3) the SLC is the appropriate agency to obtain all necessary Federal and State permits and approvals for implementing the Concept Plan and is the appropriate lead State agency for preparation of CEQA documents for implementing the Concept Plan, (4) the FWS and USACE are the appropriate co-lead Federal agencies for preparation of NEPA documents for the Federal actions that will be required for construction of the physical features identified in the Concept Plan, (5) the FWS is the appropriate agency to oversee construction of the said physical features, and (6) the SLC is the appropriate agency to operate, maintain, monitor, and manage the completed project and all properties acquired in the Bolsa Chica Lowlands; and

XXVII. WHEREAS, the EPA, NMFS, CDFG, CONSERVANCY, RA, and BOARDS shall cooperate with the SLC and with the USACE and FWS in processing applications for permits and approvals for implementing the Concept Plan; and

XXVIII. WHEREAS, the RA and the U.S. Department of the Interior are deliberating on the development of a Southern California wetlands clearinghouse which could define a new approach to the restoration of Southern California's severely diminished coastal wetlands and could secure more efficient and more certain mitigation for necessary coastal development.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration hereinafter set forth, the parties hereto agree as follows:

#### DESCRIPTION OF THE BOLSA CHICA LOWLANDS PROJECT

##### SECTION 1. Short Description of Project.

(a) The Bolsa Chica Lowlands Project (the "Project") shall consist of the following components: (1) the acquisition by the SLC of as many properties in the Bolsa Chica Lowlands as possible, but not less than approximately 880 acres (the "Land Acquisition Component"), (2) the expeditious restoration of the wetlands and habitat areas in the Bolsa Chica Lowlands which are identified in the Concept Plan as the Full Tidal area (consisting of approximately 384 gross acres, inclusive of the degraded, unrestored areas within the Inner Bolsa Bay portion of the existing SLC/CDFG

Ecological Reserve (the "Ecological Reserve") and possibly including the most recently restored cell in the Inner Bolsa Bay portion of the Ecological Reserve) and the Managed Tidal areas (consisting of approximately 220 gross acres), subject to all necessary permits and approvals and completion of appropriate environmental analysis pursuant to Section 4 below, which restoration shall include planning, obtaining permits and approvals for, designing, and constructing the physical features identified in the Concept Plan (the "Restoration Features Component"), (3) monitoring activities to determine the condition of the restored habitats in the Full Tidal and Managed Tidal areas on a regular basis and the necessary operation, maintenance and management of the Full Tidal and Managed Tidal areas and their associated physical features, both during and after construction of those physical features (the "Restoration O&M Component"), and (4) the necessary maintenance and management of the approximately 275 gross acres which are identified in the Concept Plan as the Future Full Tidal area and of the approximately 120 gross acres which are identified in the Concept Plan as the Seasonal Ponds area (the "Management Component"). The Project does not intend any modification of the Outer Bolsa Bay portion of the Ecological Reserve currently under full tidal influence or of the Inner Bolsa Bay portion of the Ecological Reserve currently under muted tidal influence, except for the possible inclusion, as noted above in this subsection, of the most recently restored cell in the Restoration Features Component of the Project. Furthermore, restoration of the Future Full Tidal area as identified in the Concept Plan is not a part of the Project as defined herein. If established, and as appropriate, a Southern California wetlands clearinghouse or other mechanism could provide future mitigation opportunities for restoration and enhancement of that portion of the Bolsa Chica Lowlands which is in the Future Full Tidal area as identified in the Concept Plan.

(b) In entering into this Agreement, the parties intend, subject to Section 3 below, to carry out the Project in substantial conformance with the Concept Plan, except as future compliance with NEPA, CEQA, ESA, Section 404 (b)(1) Guidelines of the Federal Clean Water Act, and other applicable laws may require otherwise.

(c) Consistent with the goals and general description of the Project as set forth in the Concept Plan attached as Exhibit A, and subject to such modifications (if any) of the Restoration Features Component of the Project as are determined to be necessary to mitigate its adverse environmental impacts, the USACE, NMFS, EPA, FWS, and CDFG agree that the Restoration Features and Restoration O&M Components of the Project shall provide mitigation, as described in Section 14 below, for new landfills to be constructed by the BOARDS.

(d) The parties agree that the Project shall provide, in perpetuity, fish and wildlife habitats in the Bolsa Chica Lowlands consistent with the Concept Plan. Therefore, fee title to any property acquired and to the capital improvements constructed thereon, as well as to all other capital improvements constructed as part of the Project, shall be vested in the SLC and held in public trust by the SLC for the purposes of ecological restoration and preservation, scientific study, open space, and fish and wildlife habitat protection.

#### THE LAND ACQUISITION COMPONENT OF THE PROJECT

##### SECTION 2. Lands to be Acquired.

(a) The parties acknowledge and agree that it will be necessary to purchase from the Signal Bolsa Corporation a minimum of approximately 880 acres in the Bolsa Chica Lowlands. The parties further acknowledge and agree

that the purchase price for the said 880 acres (more or less) will have to be paid, in part, with monies to be provided by the BOARDS pursuant to Sections 8(a) and 12(a) below.

(b) The parties agree that the SLC will endeavor to acquire title in fee to substantially all of the property in the Bolsa Chica Lowlands not owned by the State as of the date of this Agreement, including the property owned by the Fieldstone Corporation as of the date of this Agreement; Provided, however, that the first land to be acquired must be a minimum of approximately 880 acres of the property owned by the Signal Bolsa Corporation. Lands owned by persons or entities other than the Signal Bolsa Corporation may be acquired with Project funds only after construction of the Restoration Features Component of the Project (on the approximately 604 gross acres which are associated with that component) has been completed in accordance with Section 5 below or, if construction has not been completed, then only if, and to the extent that, the FWS determines, after consultation with the other State and Federal agencies which are parties to this Agreement, that sufficient monies would remain available after such property acquisition to complete the construction of the Restoration Features Component of the Project.

(c) The acquisition by the SLC of a minimum of approximately 880 acres in the Bolsa Chica Lowlands from the Signal Bolsa Corporation shall be subject to satisfaction of the conditions precedent and other requirements set forth in Section 13(a)(1) below.

#### PLANNING, PERMITTING, AND CONSTRUCTION OF THE PROJECT

##### SECTION 3. Completion of Planning for the Project.

(a) On behalf of the SLC, RA, CDFG, FWS, NMFS, USACE, and EPA, the CONSERVANCY shall be responsible for preparing, or causing to be prepared, a more detailed plan of the Restoration Features Component of the Project than is set forth in the Concept Plan, which plan (the "Feasibility Plan") shall be based upon and consistent with the Concept Plan and shall be prepared at the level of detail required by the SLC, USACE, and FWS for the purposes of the NEPA/CEQA compliance process for which those agencies are responsible pursuant to Section 4 below; Provided, however, that the CONSERVANCY may not incur any expenses for, nor commence preparation of, the Feasibility Plan until the SLC has received title to a minimum of approximately 880 acres of the property owned by the Signal Bolsa Corporation in the Bolsa Chica Lowlands. The CONSERVANCY shall consult closely with the SLC, RA, CDFG, FWS, NMFS, USACE, and EPA, and shall comply with the requirements of Section 13(b) below, in conducting any studies required for, and in preparing, the Feasibility Plan.

(b) Following completion of NEPA/CEQA compliance by the SLC, USACE, and FWS pursuant to Section 4 below, the CONSERVANCY shall, on behalf of the SLC, RA, CDFG, FWS, NMFS, USACE, and EPA, prepare, or cause to be prepared, such modifications, if any, in the Feasibility Plan as may be required by the results of the NEPA/CEQA process and such preliminary engineering designs and drawings as may be required by the SLC, USACE, and FWS for the purpose of all necessary State and Federal regulatory permit applications (collectively, the "Final Plan"). The CONSERVANCY shall consult closely with the SLC, RA, CDFG, FWS, NMFS, USACE, and EPA, and shall comply with the requirements of Section 13(b) below, when preparing the Final Plan.

(c) In order to prepare the Feasibility Plan and the Final Plan, including any studies or analyses needed therefore, the CONSERVANCY may, at its option but subject to the requirements of Section 13(b)(1), contract for and utilize the services of consultants rather than utilizing its own personnel.



(d) The parties acknowledge that the final configuration of the Restoration Features Component of the Project (including, but not limited to, the location of the tidal inlet, depths in the Full Tidal Basin, and configuration of the Garden Grove-Wintersburg Flood Control Channel) will be determined through the planning, public consultation, environmental review and documentation, and permitting processes provided for by this section and Section 4, which processes will address differences between the Concept and Feasibility Plans and the separate wetlands restoration plan which has already been approved by the County of Orange.

#### SECTION 4. Lead Agencies for NEPA/CEQA Compliance and Permits.

(a) Utilizing the Feasibility Plan prepared by the CONSERVANCY, the SLC shall be responsible, in consultation with the FWS and USACE, for obtaining all Federal and State permits and approvals necessary for the implementation of the Restoration Features Component of the Project. The SLC shall be the lead State agency for compliance with CEQA. The FWS and the USACE shall be co-lead Federal agencies for compliance with NEPA for Federal actions associated with implementation of the Restoration Features Component of the Project. The SLC, FWS, and USACE agree to prepare, or cause to be prepared, and to process joint NEPA and CEQA documents, including any supplemental CEQA/NEPA documentation that may be required during or after construction of the Restoration Features Component of the Project. In carrying out these responsibilities, the SLC, FWS, and USACE shall consult closely with the RA, CDFG, CONSERVANCY, EPA, and NMFS and shall comply with the requirements of Section 13(b) below.

(b) In preparing the required NEPA/CEQA documents and the required permit applications, including any supporting studies and analyses, the SLC, FWS, and USACE may each, at its option but subject to the requirements of Section 13(b)(1), contract for and utilize the services of consultants rather than utilizing its own personnel.

#### SECTION 5. Construction of the Restoration Features Component of the Project.

(a) On behalf of and in consultation with the SLC, RA, CDFG, CONSERVANCY, NMFS, EPA, and USACE, the FWS shall be responsible for performing, or causing the performance of, any sediment sampling, archaeological surveys, or other technical studies, or any supplemental NEPA documentation, required before or during construction as a condition of any approvals or permits for the Project or because of changed circumstances; for preparing, or causing the preparation of, final designs and specifications; and for constructing, or causing the construction of, the Restoration Features Component of the Project. The FWS shall be obligated to construct the Restoration Features Component of the Project in substantial conformance with the Final Plan and in conformance with any Federal or State permits or approvals issued for that component.

(b) In carrying out the activities required of it by subsection (a) of this section, the FWS may, at its option but subject to the requirements of Section 13(b)(1), contract for any necessary services (including, but not limited to, construction management), rather than providing the same with its own personnel. Such contracts may, at the FWS's option, be with the SLC or CONSERVANCY.

(c) The FWS's obligation to initiate and proceed with construction of the Restoration Features Component of the Project is expressly conditioned upon completion of all necessary NEPA/CEQA documentation and findings; approval of the Final Plan by the FWS, USACE, NMFS, and EPA; the obtaining of

all necessary permits and approvals; and compliance with all legally imposed conditions of the permits and approvals. Furthermore, the FWS shall have no obligation to initiate construction, or thereafter award any given construction contract, unless and until it determines, in its sole discretion, that the monies remaining for the Project at the time are sufficient to complete construction or, if applicable, cover the amount of a given contract. If the FWS determines pursuant to the preceding sentence to not proceed with construction or the award of any given contract, then any monies for the Project which remain unexpended at that time shall be handled in accordance with Section 14(b) below.

(d) The SLC shall grant to the FWS, pursuant to a license or other permission to enter upon its property, or pursuant to a short term lease, the right to enter upon and occupy the property for the purpose of constructing the Restoration Features Component of the Project, any such license, other permission to enter, or lease being upon mutually agreeable terms and conditions as between the SLC and the FWS.

**SECTION 6. 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, as refined by the Final Plan. All parties desire that the implementation of the Project shall be undertaken in an expeditious manner, with actual construction of the Restoration Features Component of the Project anticipated to be initiated not later October 1, 1999, and anticipated to be substantially completed within three years of the time actual construction is initiated.

#### **OPERATION AND MAINTENANCE OF THE PROJECT**

##### **SECTION 7. Project Operation, Maintenance and Management.**

(a) To the extent that monies are available from the Maintenance Account pursuant to Section 13(c) below, the SLC shall be responsible for effecting the Restoration O&M and Management Components of the Project for the primary purpose of preserving in perpetuity fish, wildlife, and wetland habitat values and aquatic functions. The parties acknowledge and agree that the SLC may enter into an agreement or agreements with another agency or entity (including, but not limited to, long-term leases of Project lands and features) in order to effect the said components of the Project.

(b) If the SLC elects to effect the said components of the Project by entering into an agreement or agreements with another agency or entity, it must first offer to the CDFG and FWS the opportunity to enter into such agreement or agreements, including a long-term lease of Project lands and features. If both the CDFG and the FWS decline to enter into such an agreement or agreements with the SLC, or if mutually satisfactory terms cannot be agreed to after good faith negotiations, then the SLC may enter into an agreement or agreements with a third party approved by the RA, CDFG, CONSERVANCY, FWS, EPA, NMFS, and USACE.

(c) If the SLC enters into such an agreement with the FWS, then the FWS hereby covenants that it shall manage all lands acquired for the Project, and all physical features associated therewith, as a unit of the National Wildlife Refuge System pursuant to Title 50 of the Code of Federal Regulations and the FWS and the CDFG agree to cooperate in their management and maintenance of, respectively, the Project and the Ecological Reserve.

## FUNDING FOR THE PROJECT

### SECTION 8. Sources of Funding for the Project.

(a) Each BOARD will provide the sum of \$33,375,000, which sum shall constitute the entirety of each BOARD's financial obligation under this Agreement. Each BOARD will deposit this sum with the SLC in accordance with Section 12(a) below, less any amount, not to exceed \$50,000 for each BOARD, advanced by a BOARD to the SLC for the purpose of defraying the SLC's costs of negotiating a contract with the Signal Bolsa Corporation for the purchase of its property by the SLC.

(b) The CONSERVANCY will provide a discretionary grant of matching funds in the amount of \$1,000,000. The said \$1,000,000 shall be deposited by the CONSERVANCY in accordance with Section 12(a) below.

The parties understand and agree that this grant cannot be used to pay for mitigation required for the landfill in the outer harbor areas of the BOARDS' Harbor Districts, but rather will be utilized to assure acquisition, to assure preparation of the Feasibility Plan and/or the Final Plan, and/or to assure restoration of wetlands in the Bolsa Chica Lowlands not included in the Full Tidal and Managed Tidal areas as identified in the Concept Plan.

(c) The parties acknowledge that, as of the date of this Agreement, the monies to be provided by the BOARDS and the CONSERVANCY, including future interest earnings thereon over time, may not be sufficient to fully fund the acquisition of all properties in the Bolsa Chica Lowlands as well as the other three components of the Project, depending upon the results of further engineering studies. Therefore, additional sources of funding will be actively sought for the Project by the State and Federal agencies which are parties to this Agreement in advance of the decision points identified in Section 13(a)(1).

(d) Nothing in this Agreement shall be construed to prohibit the CONSERVANCY, USACE, the BOARDS, or any other agencies or entities from funding restoration of any portion of the Bolsa Chica Lowlands that does not provide mitigation for the BOARDS' projects (e.g., the Future Full Tidal area as identified in the Concept Plan).

### SECTION 9. Management of Monies Received for the Project.

(a) All monies received for the Project, except for those obligated and encumbered by a Federal agency in accordance with Section 12(c), shall be deposited with the SLC and then immediately placed by the SLC into the SLC's Land Bank Fund. All monies so received, and all interest earnings thereon, shall be held by the SLC for the benefit of the parties to this Agreement and the SLC shall administer and disburse all such monies and interest earnings only in accordance with the requirements and limitations of this Agreement.

(b) The parties acknowledge that monies for the Project which are deposited in the SLC's Land Bank Fund will be commingled with monies from numerous State funds and accounts and managed and invested by the State Treasurer. The SLC agrees that the SLC and the State Treasurer shall manage and invest the monies deposited with the SLC for the Project at no cost to the parties or to the Project.

## ACTIONS TO BE SOUGHT FROM THE CALIFORNIA COASTAL COMMISSION

### SECTION 10. Initial Federal Consistency Determination.

(a) In accordance with the requirements of section 307(c) of the Federal Coastal Zone Management Act (16 U.S.C. §1456(c)) and of Subpart C, Part 930, Chapter IX, Title 15 of the Code of Federal Regulations (15 CFR §§930.30 et seq.), the FWS and/or the USACE shall prepare and present to the California Coastal Commission (the "Coastal Commission") for its consideration an initial Federal consistency determination for the Project, which initial determination shall be based upon the Concept Plan. Concurrently therewith, the BOARDS shall submit to the Coastal Commission for its action such amendments to their existing Port Master Plans as they deem necessary in order to obtain Coastal Commission approval of the 454 acres of mitigation credits to be granted to the BOARDS pursuant to Sections 14 and 15 of this Agreement. The said consistency determination and amendments to the Port Master Plans shall be presented to the Coastal Commission for consideration at its October, 1996, meeting unless the Signal Bolsa Corporation advises the SLC, FWS, and BOARDS in writing that it has no objection to the said matters being presented to the Coastal Commission at its November, 1996, meeting or at its January, 1997, meeting.

(b) If the Coastal Commission acts to express its disagreement with this initial Federal consistency determination or fails to act on it at all prior to November 16, 1996, or if the Coastal Commission acts to express its agreement with this initial Federal consistency determination prior to November 16, 1996, but does not approve the amendments to the BOARDS' Port Master Plans prior to this date, then this Agreement shall automatically terminate on November 30, 1996, and no party hereto shall have any further obligations hereunder; Provided, however, that if the initial Federal consistency determination and the amendments to the BOARDS' Port Master Plans are not presented to the Coastal Commission until its January, 1997, meeting, then the foregoing November 16 and November 30, 1996, dates shall be automatically extended to January 11, 1997, and January 25, 1997, respectively.

SECTION 11. Subsequent Federal Consistency Determination. The parties acknowledge that a second Federal consistency determination will need to be submitted to the Coastal Commission based upon the Final Plan. The FWS and/or the USACE shall be responsible for preparing and submitting this second determination to the Coastal Commission at the appropriate time.

## DEPOSITS AND DISBURSEMENTS OF MONIES FOR THE PROJECT

### SECTION 12. Deposits of Monies.

(a) If the Coastal Commission acts to express its agreement with the initial Federal consistency determination and to approve the accompanying amendments to the Ports' Master Plans by the deadlines set forth in Section 10(b) above, and if both BOARDS determine, each in their sole discretion acting in accordance with Section 13(a)(1)(F) below, that the Coastal Commission's actions and findings reflect the Coastal Commission's approval of the use of mitigation credits for the BOARDS' landfills consistent with the conditions of this Agreement, then, and only then, the BOARDS and CONSERVANCY shall be obligated to deposit with the SLC the sums specified in Section 8(a) and 8(b), respectively, within three business days after the date upon which the last of the conditions set forth in subparagraphs (A), (B), (C), (E), and (F) of Section 13(a)(1) below is satisfied.

(b) All sources of other non-Federal monies shall, if and when received, be deposited with the SLC, unless otherwise agreed by the SLC and the entity providing the monies. All sources of other non-Federal monies deposited with the SLC shall be placed by it in its Land Bank Fund and managed by it in accordance with the requirements of Section 9 above.

(c) If any Federal funding is forthcoming, it shall either be deposited with and managed by the SLC in accordance with the requirements of Section 9 above or obligated and encumbered by the involved Federal agency for direct expenditure by that Federal agency on the Project.

SECTION 13. Disbursements from the SLC's Land Bank Fund. Monies deposited into the SLC's Land Bank Fund pursuant to this Agreement from all sources shall be disbursed and used only as follows:

(a) Land Acquisition Component of the Project. Subject to the requirements of Section 1(d), Section 2, and paragraph (1) of this subsection (a), the SLC may use monies deposited in its Land Bank Fund pursuant to this Agreement for the acquisition of any lands in the Bolsa Chica Lowlands.

(1) The SLC may not use any monies from the Land Bank Fund for the purchase of all or any portion of the Signal Bolsa Corporation's property in the Bolsa Chica Lowlands unless and until:

(A) The FWS, USACE, NMFS, and EPA have each advised the other parties to this Agreement in writing prior to December 16, 1996, that each of them has determined, in its sole discretion after consultation with the other Federal agencies to this Agreement, that the acquisition of land from the Signal Bolsa Corporation in the Bolsa Chica Lowlands should be consummated and the planning, environmental review, and regulatory permitting processes for the Project commenced in accordance with Sections 3 and 4 above,

(B) The RA, CDFG, and CONSERVANCY have each advised the other parties to this Agreement in writing prior to December 16, 1996, that each of them has determined, in its sole discretion after consultation with the other State agencies to this Agreement, that the acquisition of land from the Signal Bolsa Corporation in the Bolsa Chica Lowlands should be consummated and the planning, environmental review, and regulatory permitting processes for the Project commenced in accordance with Sections 3 and 4 above,

(C) The SLC has advised the other parties to this Agreement in writing prior to December 16, 1996, that it is prepared to take title to the lands which the Signal Bolsa Corporation is requiring be purchased and that the Signal Bolsa Corporation is prepared to sell to the SLC a minimum of approximately 880 acres,

(D) The Coastal Commission has acted to express its agreement with the initial Federal consistency determination, to approve the amendments to the Ports' Master Plans, and to adopt findings which reflect the Coastal Commission's approval of the use of the mitigation credits for the BOARDS' landfills, consistent with the conditions of this Agreement, which findings and actions must be satisfactory to both BOARDS, each acting in its sole discretion,

(E) Sixty (60) days have elapsed from the date of the Coastal Commission's final action on the initial Federal

consistency determination and on the amendments to the Ports' Master Plans, and

(F) The SLC has received written notification from each BOARD (which notification shall be provided by the sixty-fifth day after the Coastal Commission's final action on the initial Federal consistency determination and on the amendments to the Ports' Master Plans or by the fifth business day after the last of the notifications required by subparagraphs (A), (B), and (C) of this paragraph (1) is given, whichever is later) advising that each has determined, in its sole discretion, that the Coastal Commission's actions are satisfactory to it, that all other pre-conditions to the vesting of the mitigation credits have been satisfied or are being waived by it, and that the SLC should proceed to close the transaction.

(2) If all of the Federal and State agencies do not, prior to December 16, 1996, determine pursuant to paragraphs (1)(A) and (1)(B) immediately above to proceed, then this Agreement shall automatically terminate on the said date and no party hereto shall have any further obligations under this Agreement.

(b) Restoration Features Component of the Project.

(1) If, and only if, title to a minimum of approximately 880 acres in the Bolsa Chica Lowlands has vested in the SLC and \$5 million has been transferred into the Maintenance Account in accordance with subsection (c) of this section, then all monies remaining in or subsequently deposited to the Land Bank Fund pursuant to this Agreement, and the interest earnings thereon, shall be available to the SLC, FWS, USACE, and the CONSERVANCY to cover the costs incurred by each of them in carrying out the activities for which they are responsible pursuant to Sections 3, 4, and 5 of this Agreement in accordance with the following:

(A) It is understood and agreed that the CONSERVANCY, SLC, USACE, and FWS will obtain the contractual services of planning consultants, consulting engineers, construction management firms, construction contractors, and other necessary consultants and contractors to accomplish the activities for which each of them is responsible. The costs of all such contractual services incurred by the CONSERVANCY, SLC, USACE, and FWS shall be paid for out of the monies in the SLC's Land Bank Fund that are available for the Restoration Features Component of the Project.

(B) With respect to the activities for which the CONSERVANCY is responsible pursuant to Section 3, its direct staff costs (including benefits), reasonable overhead costs associated with such direct staff costs, costs of materials and supplies, costs of liability insurance, and costs of defending against any litigation filed against the CONSERVANCY by reason of its actions pursuant to Section 3, not to exceed \$500,000 unless the other State and Federal parties to this Agreement agree to a larger amount, shall be paid for out of the monies in the SLC's Land Bank Fund that are available for the Restoration Features Component of the Project.

(C) With respect to the activities for which the SLC, USACE, and FWS are responsible pursuant to Sections 4 and 5, each of those parties direct staff costs (including benefits), reasonable overhead costs associated with such direct staff costs, and costs of materials and supplies shall be paid for out of the

monies in the SLC's Land Bank Fund that are available for the Restoration Features Component of the Project.

(D) Expenditures by the SLC, FWS, USACE, and the CONSERVANCY from the SLC's Land Bank Fund for implementation of the Restoration Features Component of the Project shall be made in accordance with an annual work program and budget prepared by each agency and agreed to by the other State and Federal parties to this Agreement. The SLC, FWS, USACE, and the CONSERVANCY shall provide the other State and Federal parties with quarterly reports of their respective expenditures while the Restoration Features Component of the Project is being implemented, with a final accounting of expenditures to be made by the SLC, FWS, USACE, and the CONSERVANCY upon completion each of the activities for which they are responsible pursuant to Sections 3, 4, and 5 above.

(E) Unless the Federal and State parties agree to the contrary, all contracts entered into by the SLC, USACE, FWS, and the CONSERVANCY for the purpose of implementing the Restoration Features Component of the Project using monies deposited to the Land Bank Fund shall contain a clause which provides that all work under the contract can be suspended by the SLC, USACE, FWS, or CONSERVANCY for a period of 60 days without penalty and a clause which provides that the contract is terminable by the SLC, USACE, FWS, or CONSERVANCY on no more than thirty (30) days notice without any further obligation other than to pay for non-cancellable costs incurred by the contractor prior to the date of notice to terminate and for services already provided.

(2) For the purposes of paragraph (1) of this subsection (b), the CONSERVANCY, FWS, or USACE may each enter into an agreement with the SLC to specify the details of transferring funds from the SLC's Land Bank Fund to each of them in a manner that best meets the administrative needs of the SLC and the other involved agency.

(3) One hundred eighty days after construction of the Restoration Features Component of the Project is completed, any monies remaining in the Land Bank Fund for the Project, except for the monies previously placed in the Maintenance Account (including any accrued interest earnings thereon) and except for monies otherwise encumbered, not to exceed \$3,000,000, shall be transferred by the SLC to the Maintenance Account to become part of the principal in the said account unless all of the Federal and State parties to this Agreement agree to an alternative disposition of the remaining monies; Provided, however, that if any construction or litigation claims have been proffered or are reasonably expected to be lodged, then no monies shall be transferred by the SLC to the Maintenance Account until the claims have been resolved. If the remaining monies exceed \$3,000,000, then the amount in excess of \$3,000,000 shall be available, upon the mutual written agreement of the Federal and State parties to this Agreement, for the restoration of the Future Full Tidal area described in the Concept Plan.

(c) Restoration O&M and Management Components of the Project.

(1) If, and only if, title to a minimum of approximately 880 acres in the Bolsa Chica Lowlands has vested in the SLC, then not later than ten business days after the vesting of title, \$5,000,000 shall be placed by the SLC in a separate Maintenance Account within the SLC's Land Bank Fund, to be permanently reserved as the principal of the Maintenance Account and managed for the production of investment income for the purposes of, and in accordance with, this subsection (c).

(2) Monies in the Maintenance Account shall be disbursed and used only for the expenses associated with the Restoration O&M and Management Components of the Project, as follows:

(A) Commencing at the end of the first year following the creation of the Maintenance Account, and each year thereafter, a sufficient portion of the interest earnings from the year shall be added to the principal of the Maintenance Account to cover the effects of any inflation which occurred during the year, as measured by the Consumer Price Index.

(B) From the date on which title to a minimum of approximately 880 acres in the Bolsa Chica Lowlands has vested in the SLC, accrued interest earnings from the Maintenance Account which remain after the requirements of subparagraph (A) of this paragraph (1) have been met may be used by the SLC, or the agency which has entered into an agreement with the SLC to manage the Project, for such operation, maintenance, monitoring, and management of the Project's lands and physical features as is necessary to maintain the Project's habitat values and aquatic functions, including removal of any blockage that may occur in the ocean inlet.

(C) Throughout the first, second, third, fifth, and tenth years following completion of the Restoration Features Component of the Project, the SLC, or the agency which has entered into an agreement with the SLC to manage the Project, shall carry out biological monitoring to document the fish and wildlife values and aquatic functions of the Project, with all costs of said monitoring to be covered with accrued interest earnings from the Maintenance Account. Such monitoring shall be carried out in accordance with a plan developed by the SLC, or the agency which has entered into an agreement with the SLC to manage the Project, and approved by the NMFS, FWS, EPA, USACE, and CDFG and shall include success criteria and at least an annual report for each of the years that are monitored which describes the results of each year's monitoring.

(D) The carrying out of the Restoration O&M and Management Components of the Project (including biological monitoring), and expenditures therefor from the Maintenance Account, shall be made in accordance with an annual work program and budget prepared by the SLC, or the agency which has entered into an agreement with the SLC to manage the Project, and agreed to by the NMFS, FWS, EPA, USACE, and CDFG. The SLC, or other managing agency, shall provide NMFS and CDFG with quarterly reports of: (i) its expenditures for restoration activities through the quarter in which construction of the Project is completed, (ii) its expenditures for operation, maintenance, monitoring, and management of the Project through year ten following completion of the full tidal basin and ocean inlet portions of the Project, and (iii) any withdrawals of the principal in the Maintenance Account, made in accordance with paragraph (4) of this subsection (c), including the justification therefor.

(3) Any accrued interest earnings which are not reinvested or withdrawn and expended in accordance with paragraph (2) of this subsection (c) shall remain available for future expenditure in accordance with the said paragraph (2), unless the State and Federal parties to this Agreement agree to add all or a portion of such excess interest earnings to the principal of the Maintenance Account.



(4) Account principal (i.e., the original \$5,000,000 and interest earnings added thereto over time) shall be available for expenditure only for the purpose of ensuring the preservation of fish, wildlife and wetland habitat values and aquatic functions 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 and functions.

(d) Expenditures of monies made available for the Project shall be deemed to be made from the following sources:

(1) For the purposes of acquiring the initial 880 acres (more or less) from the Signal Bolsa Corporation, \$1,000,000 of the purchase price shall be deemed to come from the monies provided by the CONSERVANCY in accordance with Section 8(b), with the balance coming in prorata shares from all other sources of monies available at the time of closing.

(2) For the purposes of reimbursing costs incurred by the CONSERVANCY, SLC, FWS, and USACE in carrying out their respective responsibilities pursuant to Sections 3, 4, and 5, reimbursement of such costs shall be deemed to come in prorata shares from all sources of monies available for activities undertaken pursuant to Sections 3, 4, and 5.

(e) All records, invoices, vouchers, ledgers, correspondence, and other written documents of any kind developed during the course of the Project which document the expenditure by any party of monies for the Project, whether from the Land Bank Fund or otherwise, shall be retained for a period of four (4) years following the year in which an expenditure was made 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.

(f) If this Agreement or a related project results in litigation in which any party to this Agreement is challenged, each party shall bear its own legal fees and expenses, except as provided in Section 13(b)(1)(B) with respect to the CONSERVANCY.

#### GRANTING, VESTING, AND USE OF MITIGATION CREDITS

##### SECTION 14. Mitigation Credits Created by Project.

(a) Implementation of the Restoration Features and Restoration O&M Components of the Project are expected to create habitat values and aquatic functions, 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.

(b) Even if it turns out that implementing the Restoration Features and Restoration O&M Components of the Project in accordance with the Final Plan as developed pursuant to Sections 3 and 4 will not generate sufficient habitat values and aquatic functions to create all 454 acres of landfill mitigation credit, or even if it turns out that the funding for construction of the Restoration Features Component of the Project proves to be insufficient and construction is terminated in accordance with Section 5(c) above with the

result that sufficient habitat values and aquatic functions are not generated so as to create all 454 acres of landfill mitigation credit, the 454 credits shall still remain vested in the BOARDS for their use in accordance with Section 15.

(1) If either of these events occurs, the USACE, FWS, NMFS, CDFG, EPA, SLC, RA, and CONSERVANCY shall (with good faith, due diligence, to the extent feasible and consistent with CEQA, NEPA, and other applicable laws, and to the extent that monies made available pursuant to this Agreement remain available in the SLC's Land Bank Fund after funding the Project) identify, plan, design, and implement an alternative tidal restoration project for the Bolsa Chica Lowlands or an appropriate tidal restoration project or projects at a location or locations other than the Bolsa Chica Lowlands, but still within the Southern California Bight, in order to generate sufficient additional credits. Prior to the expenditure of monies from the Land Bank Fund for this purpose, the parties agree that the lands to be restored at such other location or locations will either be acquired by the SLC or be made subject to a public trust easement in favor of the State of California, acting by and through the SLC.

(2) Furthermore, if either of these events occurs, the Federal and State parties to this Agreement shall, with good faith and due diligence, agree on an allocation of all or a portion of the principal then existing in the Maintenance Account for the operation and maintenance of any tidal restoration project or projects undertaken at a location or locations other than the Bolsa Chica Lowlands, but still within the Southern California Bight.

#### SECTION 15. Use of Mitigation Credits by the BOARDS.

(a) If the BOARDS have deposited the sum called for by Section 8(a), and if title to a minimum of approximately 880 acres in the Bolsa Chica Lowlands has vested in the SLC in accordance with this Agreement, then the BOARDS shall be entitled thereafter 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 for the prorated cost of the credits being sold.

(b) The BOARDS covenant and agree that they will undertake port projects which affect fish and wildlife resources only after fee title to a minimum of approximately 880 acres in the Bolsa Chica Lowlands has been acquired by the SLC in accordance with this Agreement. The USACE, FWS, EPA, NMFS, and CDFG acknowledge and agree that some BOARD projects may involve impacts to fish and wildlife resources occurring in advance of compensatory mitigation being effected through implementation of the Restoration Features Component of the Project, although the USACE, FWS, EPA, NMFS, and CDFG anticipate that the BOARDS will use the mitigation credits to be generated by the Restoration Features Component of the Project over a number of years. So long as port projects involving fills are not in wetlands as defined in

FWS/OBS 79/31 and have received the required authorizations, the USACE, FWS, EPA, NMFS, and CDFG agree that the BOARDS shall be entitled to use all of the mitigation credits identified in subsection (a) of this section when and as set forth in subsection (a) of this section. This paragraph does not prevent the Ports from carrying out projects which affect fish and wildlife resources which have been mitigated by otherwise available mitigation.

(c) 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 the FWS, USACE, EPA, NMFS, and CDFG 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 FWS, USACE, EPA, NMFS, and CDFG acknowledge that the biological mitigation credits established by this Agreement will constitute acceptable compensatory mitigation, provided a positive balance of credits established herein exists.

(d) The FWS, USACE, EPA, NMFS, and CDFG (the "Agencies") agree that they have had their respective counsel review this Agreement, the applicable laws and regulations within their respective jurisdictions, the 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 Agencies concur that deposit by the BOARDS of the sums called for by Section 8(a) and acquisition by the SLC of title to a minimum of approximately 880 acres in the Bolsa Chica Lowlands in accordance with this Agreement satisfy all applicable requirements for the vesting of these credits in, and the use of these credits by, the BOARDS in accordance with subsections (a) and (b) of this section. All the Agencies 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.

#### MISCELLANEOUS PROVISIONS

SECTION 16. 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 Federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), shall be implemented.

#### SECTION 17. Effective Date, Term, and Termination/Withdrawal.

(a) This Agreement shall not take effect unless and until it is executed by all ten parties hereto. It shall be dated and take effect as of the latest date upon which it is executed as among the signatories hereto.

(b) This Agreement shall remain in full force and effect until automatically terminated pursuant to the terms hereof or by agreement of all the parties hereto.

(c) If any governmental agency, excluding the BOARDS, but including,

but not limited to, one of the other parties to this Agreement, any trial court (whether or not the trial court's final decision is appealed), or any new or existing legislation prevents either or both BOARDS from using the credits granted by this Agreement in the manner provided by this Agreement (including provisions of Section 14), then the affected BOARD shall be entitled, upon written notice to the other parties, to withdraw from this Agreement and recover its prorata share, less the cost of any non-cancellable obligations, of the unexpended balance of monies remaining in the SLC's Land Bank Fund (including the Maintenance Account). 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 Restoration Features Component of the Project or of any BOARD landfill that would have been mitigated by the Restoration Features and Restoration O&M Components of the Project.

(1) If only one BOARD withdraws from this Agreement, then the other BOARD shall have the right to purchase all of the mitigation credits of the withdrawing BOARD by paying directly to the withdrawing BOARD, within 45 calendar days of the other BOARD'S withdrawal, an amount of money equal to the amount to which the withdrawing BOARD is entitled pursuant to paragraph (3) of this subsection (c), in which event the monies of the withdrawing BOARD shall remain in the SLC's Land Bank Fund to be credited to the remaining BOARD and this Agreement shall terminate with respect to the rights and obligations of the withdrawing BOARD, but shall otherwise continue in full force and effect. However, if one BOARD withdraws from this Agreement but the other BOARD does not purchase the withdrawing BOARD'S mitigation credits within the aforementioned 45 day period, then this Agreement shall automatically terminate on the 46th day, unexpended monies deposited with the SLC by each BOARD shall be, subject to paragraph (3) of this subsection (c), immediately returned by the SLC in an amount proportionate to their respective contribution, and neither BOARD shall be allowed any mitigation credits.

(2) If the BOARDS give simultaneous written notices of their withdrawal from this Agreement, or if one BOARD has previously withdrawn and its mitigation credits have been purchased by the second BOARD which thereafter gives written notice of its withdrawal from this Agreement, then this Agreement shall automatically terminate 30 days after receipt of such notices by the SLC, unexpended monies deposited with the SLC by each BOARD (or credited to the second BOARD if it has purchased the first BOARD'S mitigation credits) shall be, subject to paragraph (3) of this subsection (c), immediately returned by the SLC in an amount proportionate to their respective contribution, and neither BOARD shall be allowed any mitigation credits.

(3) In the event a BOARD withdraws from this Agreement pursuant to this subsection (c), then the monies to which a BOARD is entitled shall be limited to that BOARD'S prorata share of the unexpended balance of monies, including interest earnings thereon, which remain as of, and for which no non-cancellable obligations have been incurred as of, the date a BOARD'S notice is received by the SLC.

(d) If a BOARD withdraws from this Agreement as authorized by subsection (c) of this section after acquisition from the Signal Bolsa Corporation of the approximately 880 acres of the Bolsa Chica Lowlands, and if, because of such acquisition, the withdrawing BOARD'S share of the monies used for the said acquisition cannot be returned to or reimbursed to that BOARD, then the Federal and State parties to this Agreement shall negotiate in good faith with the withdrawing BOARD to attempt to reach a mutually acceptable means of making the withdrawing BOARD whole, which may include, but are not limited to, (i) reallocation of mitigation credits, (ii) alternate

mitigation projects, and/or (iii) other forms of consideration.

SECTION 18. Substantial Conformance. The term "in substantial conformance", whenever used in this Agreement, shall mean not differing in any way that results in a reduction in the habitat values and aquatic functions anticipated from the Project and not in conflict with the requirements of State and Federal law.

SECTION 19. Disclaimers.

(a) By participating in this Agreement, no party waives or yields to any other party to the Agreement any regulatory authority or duty that is necessary to the proper exercise of that party's discretion or otherwise imposed by law.

(b) Nothing in this Agreement shall be deemed a waiver of the attorney-client privileges of any party.

SECTION 20. Notices.

(a) Any communications or notices required by this Agreement shall either be mailed by United States first class mail, postage prepaid, and addressed as follows, or transmitted by facsimile as follows:

Executive Director  
Port of Los Angeles  
P.O. Box 151  
425 S. Palos Verdes St.  
San Pedro, CA 90733  
Fax: 310-547-4643

Executive Director  
Port of Long Beach  
P.O. Box 570  
925 Harbor Plaza  
Long Beach, CA 90802  
Fax: 310-495-4925

Field Supervisor  
U.S. Fish and Wildlife Service  
2730 Loker Ave. W.  
Carlsbad, CA 92008  
Fax: 619-431-9624

Regional Director  
National Marine Fisheries Service  
501 W. Ocean Blvd, Suite 4200  
Long Beach, CA 90802  
Fax: 310-980-4018

District Engineer  
U.S. Army Corps of Engineers  
Los Angeles District  
P.O. Box 2711  
911 Wilshire Blvd.  
Los Angeles, CA 90053-2325  
Fax: 213-452-4214

Director, Water Management Division  
Attention: Wetlands Section  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105  
Fax: 415-744-2499

Executive Officer  
California Coastal Conservancy  
1330 Broadway  
Oakland, CA 94612  
Fax: 510-286-0470

Secretary for Resources  
California Resources Agency  
1416 Ninth St., Suite 1311  
Sacramento, CA 95814  
Fax: 916-653-8102

Regional Manager  
California Department of Fish and Game  
330 Golden Shore, Suite 50  
Long Beach, CA 90802  
Fax: 310-590-5113

Executive Officer  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825-8202  
Fax: 919-574-1810

(b) Each party hereto shall be responsible for advising the other parties in writing and in a timely fashion of any changes to the above titles,

addresses, and faxogram telephone numbers, and of any further subsequent changes. Until notice of such changes is received, all communications and notices shall be deemed to have been properly sent if sent to the last known title and address or faxogram telephone number for a party.

SECTION 21. Executed Counterparts. The signature pages of this Agreement are being executed in counterparts. When all parties have signed, all executed counterparts taken together shall constitute one and the same instrument. The FWS shall be responsible for receiving and retaining the originally executed signature pages of each party, for dating the Agreement as of the latest date upon which it is executed as among the signatories hereto, and for providing a copy of the dated and executed Agreement to each of the parties.

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

[Two signature pages follow]

CITY OF LOS ANGELES, acting by and  
through its Board of Harbor Commissioners

Date \_\_\_\_\_ EXECUTIVE DIRECTOR

CITY OF LONG BEACH, acting by and  
through its Board of Harbor Commissioners

Date \_\_\_\_\_ EXECUTIVE DIRECTOR

RESOURCES AGENCY, STATE OF CALIFORNIA

Date \_\_\_\_\_ SECRETARY

CALIFORNIA DEPT. OF FISH AND GAME

Date \_\_\_\_\_ DIRECTOR

CALIFORNIA STATE LANDS COMMISSION

Date \_\_\_\_\_ EXECUTIVE OFFICER

CALIFORNIA COASTAL CONSERVANCY

Date \_\_\_\_\_ EXECUTIVE OFFICER

U.S. ARMY CORPS OF ENGINEERS

Date \_\_\_\_\_ DISTRICT ENGINEER

NATIONAL MARINE FISHERIES SERVICE, NOAA

Date \_\_\_\_\_ REGIONAL DIRECTOR

U.S. FISH AND WILDLIFE SERVICE

Date \_\_\_\_\_ REGIONAL DIRECTOR

ENVIRONMENTAL PROTECTION AGENCY

Date \_\_\_\_\_ REGIONAL  
ADMINISTRATOR

[End of signature pages]



EXHIBIT A  
CONCEPT PLAN  
FOR FISH AND WILDLIFE HABITAT RESTORATION  
AT THE BOLSA CHICA LOWLANDS,  
ORANGE COUNTY, CALIFORNIA

Bolsa Chica Restoration Goals:

The goal of the Concept Plan for the Bolsa Chica Lowlands Project (the "Project") is to provide for the retention of existing fish and wildlife resources and, to the extent 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 Concept Plan:

The specific objectives of the Concept Plan for the Bolsa Chica Lowlands Project 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 Lowlands 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 Concept Plan for the Bolsa Chica Lowlands Project:

No change is contemplated to the full tidal part of the Ecological Reserve (i.e., Outer Bolsa Bay ) or the muted tidal portion of the Ecological Reserve (i.e., Inner Bolsa Bay), except for the degraded, unrestored areas within Inner Bolsa Bay and except for the possible inclusion in the Full Tidal area (see below) of the most recently restored cell in the Inner Bolsa Bay portion of the 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 Harbor 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. Avoidance of further beach erosion or water quality problems, encouragement of human recreational access, retention of public safety access, and the public transportation thoroughfare requirements are related factors to be considered in contemplating reestablishment of a Bolsa Chica ocean inlet, with any adverse impacts thereto to be fully mitigated.

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 Rattlesnake 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. Such maintenance and management of this area is part of the Project (i.e., the Management Component of the Project as defined in Section 1(a) of the body of the Agreement). However, potential future restoration of this area is not part of the Project and is not a basis for the mitigation credits to be granted to the BOARDS.

Enhancement of suitable nesting areas for Belding's savannah sparrow would be achieved in the Managed Tidal areas, while other existing valuable areas would be retained intact in the Seasonal Pond area and in the muted tidal portion (i.e., Inner Bolsa Bay) of the Ecological Reserve (except for the possible inclusion in the Full Tidal area of the most recently restored cell in the Ecological Reserve). Seasonal pond habitats in all areas (not just in the Seasonal Ponds area depicted on the attached map) 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.

**BOLSA CHICA / PORT MITIGATION  
WETLANDS CONCEPTUAL GRADING PLAN**  
APRIL 6, 1993

**RESTORATION REQUIRED BY:**  
**STATE OF CALIFORNIA GENERAL CONSUMER**  
**PROTECTION BOARD**  
**PO BOX 900000**  
**LOS ANGELES**

**COMPANY/ARTIST:**  
**WILLIAMS & SONES / WEST-COLLINS**  
**PROPERTY & MORTGAGE**  
**171 IMPERIAL**



## EXHIBIT B

### EXPLANATION OF THE PROPOSED HABITAT VALUE TRADEOFF RATIO

Habitat evaluations of Los Angeles/Long Beach outer harbor landfills impacts and tidal wetland mitigation 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.

Harbor Landfills

Bolsa Chica Restored Full Tidal Habitat

Port of Los Angeles:

Outer harbor 227 acres

172 acres

Port of Long Beach:

Inner harbor 60 acres

23 acres

Outer harbor 197 acres

149 acres

TOTALS 484 acres

344 acres (mitigated by restoring)

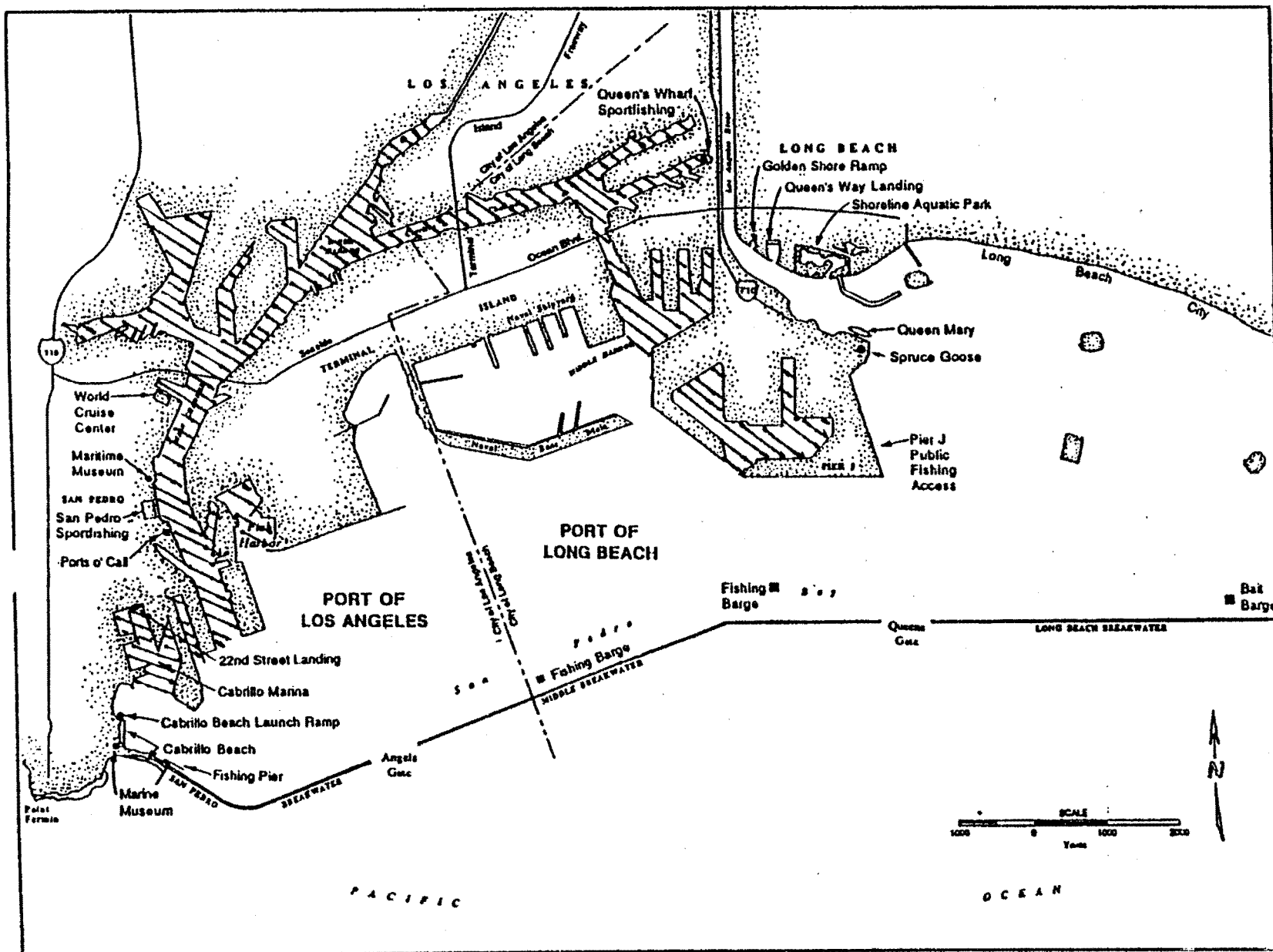


EXHIBIT C INNER HARBOR AREAS (CROSS HATCHED)

