

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



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September 18, 1996

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: PETER M. DOUGLAS, Executive Director
Charles Damm, South Coast District Director
Larry Simon, Ports Coordinator

SUBJECT: Staff Recommendation on Port of Los Angeles Port Master Plan
Amendment No. 15 (Port Landfill Mitigation Credit Account). For
Commission consideration at meeting of October 8, 1996.

SUMMARY OF STAFF RECOMMENDATION:

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

STAFF NOTE:

The Commission staff is recommending that the Commission certify a proposed port master plan amendment submitted by the Port of Los Angeles that would establish a port landfill mitigation credit account, with credits generated by port funding of wetland restoration at the Bolsa Chica Lowlands on the northern Orange County coastline. The staff recommendation on this proposed port master plan amendment is contingent upon the Commission concurring with federal consistency determination CD-115-96 (U.S. Fish and Wildlife Service), the conceptual wetland restoration plan for the Bolsa Chica Lowlands, scheduled for the October 8 Commission meeting and prior to consideration of this amendment. Should the Commission not concur with CD-115-96, consideration of this plan amendment will be postponed to a future Commission meeting. Additional background information regarding the process leading up to the proposed restoration plan for Bolsa Chica is contained in the Staff Note in the CD-115-96 staff report and recommendation.

The subject plan amendment was initially submitted by the Port in September 1995. An attachment to the amendment was the 1995 Interagency Memorandum of Agreement, calling for the U.S. Fish and Wildlife Service (Service) to purchase lowland properties at Bolsa Chica and for the Ports of Los Angeles and Long Beach to fund the restoration and maintenance components of the project. The 1996 Interagency Agreement now proposes that the California State Lands Commission (SLC) take title to lowland property and that Port funds be allocated to the acquisition effort, in addition to the restoration and maintenance components of the project. The mitigation credit account, which is the primary focus of this plan amendment, remains unchanged. The only change to the Port's submittal is the substitution of the 1996 Interagency Agreement for the 1995 MOA (the aforementioned attachment to the plan amendment). However, language from the Port's 1995 plan amendment submittal (language which is cited in this staff recommendation) does refer to the 1995 MOA, to the Service purchasing Bolsa Chica lowland property, and to Port funds directed only toward restoration. As a result, additional staff notes [underlined in brackets] are provided where necessary in this report for clarification of these changes.

Finally, and as explained in greater detail in the staff recommendation for CD-115-96, implementation of the proposed Interagency Agreement for land acquisition and wetland restoration at the Bolsa Chica Lowlands (upon which the proposed mitigation credit account is based) will not occur unless and until adequate funding for acquisition and all restoration components is obtained, and unless and until the extent of potential contamination of the site is documented and responsibility for clean-up costs is agreed upon by the signatories to the Interagency Agreement. As of September 18, these issues remain unresolved. Notwithstanding Commission concurrence with CD-115-96 and certification of this plan amendment (both steps being necessary at this time to move the Interagency Agreement process forward), if the project funding and contamination issues are not resolved to the satisfaction of all the signatories, then the Interagency Agreement, and the mitigation credit account proposed in this plan amendment, will not be implemented.

Port Master Plan Amendment Procedure. California Code of Regulations, Title 14 Section 13636 calls for port master plan amendments to be certified in the same manner as provided in Section 30714 of the Coastal Act for certification of port master plans. Section 13628 of the Regulations states that, upon the determination of the Executive Director that the master plan amendment and accompanying materials required by Section 13628(a) are sufficient, the master plan amendment shall be deemed submitted to the Commission for purposes of Section 30714 of the Coastal Act. The subject amendment was deemed submitted on September 19, 1995. Within 90 days of this submittal date, the Commission, after public hearing, shall certify or reject the amendment, in whole or in part. If the Commission fails to take action on the amendment submittal within the 90-day period, the proposed amendment is deemed certified. On December 6, 1995, the Port waived the 90-day period through January 31, 1996. On December 21, 1995, the Port waived the 90-day period indefinitely to provide additional time for the Port to address issues related to the Bolsa Chica project.

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

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

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

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

Certification of Amendment.

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

II. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

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

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

1. The proposed uses of land and water, where known.
2. The proposed design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the area of jurisdiction of the port governing body.
3. An estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impact.

4. Proposed projects listed as appealable in Section 30715 in sufficient detail to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.
5. Provisions for adequate public hearings and public participation in port planning and development decisions.

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

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

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

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

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

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

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

- (1) Developments for the storage, transmission, and processing of liquified natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state or nation. A development which has a significant impact shall be defined in the master plans.
- (2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.

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

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

(5) Oil refineries.

(6) Petrochemical production plants....

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

D. Summary of Proposed Plan Amendment. The Port of Los Angeles proposes to amend its port master plan by obtaining Commission certification that establishment of a port landfill mitigation credit account for permitted port landfill projects is consistent with the Coastal Act. Mitigation credits would be obtained by the Port through funding of land acquisition and wetland restoration at the Bolsa Chica Lowlands, as outlined in an Interagency Project Agreement (Exhibit 1). The Port of Los Angeles, in association with the Port of Long Beach and several regulatory and resource agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, State Lands Commission, California Department of Fish and Game, State Coastal Conservancy, and the Resources Agency), identified a 344-acre full tidal wetland restoration project at the Bolsa Chica Lowlands that would provide the port with mitigation credits to serve as compensation for marine resource and habitat losses associated with future port landfills. (The proposed land acquisition and conceptual wetland restoration plan for the Bolsa Chica Lowlands is the subject of a federal consistency determination (CD-115-96) submitted by the U.S. Fish and Wildlife Service and scheduled on the Commission's October 8, 1996, agenda prior to this amendment.)

This master plan amendment consists of a description of the establishment and proposed use of the port mitigation credit account outlined in the Project Agreement. The amendment does not propose or seek Commission authorization for any landfill construction within the Port or any restoration activity at Bolsa Chica. Unlike most port master plan amendments that are project-oriented, the subject amendment is procedural in nature and will be utilized only if the subject 880-acre Bolsa Chica Lowland property is transferred to public ownership, and if the Ports of Los Angeles and Long Beach deposit the \$66.75 million they have committed for acquisition and wetland restoration into accounts to be established by the State Lands Commission.

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

The parties to the proposed agreement have found that a joint project to purchase and restore the Bolsa Chica Lowlands by combining financial and other resources and expertise would be mutually advantageous. As the

resource agencies do not have the financial capability to accomplish the wetlands restoration project independently and there is a compelling public interest in protecting and maximizing the habitat values at Bolsa Chica, the parties to the agreement have agreed that the Bolsa Chica Lowlands is an appropriate location to offset future, unavoidable marine habitat losses associated with port landfill projects. In return for the mitigation credits, the Ports would fund the restoration project costs. [The revised Interagency Agreement calls for the Ports to fund property acquisition and most of the restoration costs.]

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

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

The proposed wetland restoration project outlined in the Interagency Agreement contemplates the Ports of Los Angeles and Long Beach providing \$66.75 million to fund acquisition of 880 acres of Bolsa Chica Lowlands, full tidal restoration of approximately 344 acres at the Lowlands, restoration and enhancement of an additional 260 acres in the Lowlands, and monitoring and maintenance activities. Each port would provide \$33.375 million towards the project and receive 227 acres of outer harbor landfill mitigation credits. (In the event the Port of Long Beach chooses not to participate in the project, the Port of Los Angeles would have the option of funding the Port of Long Beach share and receiving all 454 acres of mitigation credits.)

A significant feature of the plan amendment is that mitigation credits generated by the restoration project will become available for the Port to use once the 880 acres necessary to implement the restoration project at Bolsa Chica is in public ownership and the Ports have provided the \$66.75 million for acquisition and restoration; both actions are currently estimated to occur in late 1996. At that time the Port would then be able to seek Commission certification (through the master plan amendment process) of port landfill projects with the knowledge that mitigation credits were available to compensate for unavoidable marine resource impacts. Port landfill construction could then proceed prior to the start of mitigation work at

Bolsa Chica, a significant departure from past Commission actions requiring mitigation concurrent with landfill construction. The plan amendment states that the 227 acres of mitigation credits in the Port of Los Angeles account would constitute acceptable compensatory marine habitat mitigation for outer harbor port landfill projects that meet all the requirements for certification in the port master plan and that are otherwise approvable.

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

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

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

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

Aquatic habitats of the main channels and interior slips of both Los Angeles and Long Beach Harbors (the Inner Harbor) have been documented to be of lower fish and bird diversity and abundance than the outer harbor

(from the seaward edge of Terminal Island to the main breakwaters). Consequently, offsetting an acre of inner harbor landfill habitat loss has required less (half) compensation than an acre of outer harbor habitats deeper than 20 feet.

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

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

Section 30701. The Legislature finds and declares that:

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

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

Section 30705.

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

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

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

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

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

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

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

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

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

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

(c) Dredging shall be planned, scheduled, and carried out to minimize disruption to fish and bird breeding and migrations, marine habitats, and water circulation. Bottom sediments or sediment elutriate shall be analyzed for toxicants prior to dredging or mining, and where water quality standards are met, dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms, or in confined coastal waters designated as fill sites by the master plan where such spoil can be isolated and contained, or in fill basins on upland sites. Dredge material shall not be transported from coastal waters into estuarine or fresh water areas for disposal.

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

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

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

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

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

(d) The fill is consistent with navigational safety.

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

(a) Minimize substantial adverse environmental impacts.

(b) Minimize potential traffic conflicts between vessels.

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

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

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

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

While the plan amendment proposes no actual development or activity, the implications of finding the amendment consistent with the Coastal Act are significant, for both the port and the Commission. This is because the proposed amendment calls for the port mitigation credits generated by the restoration project to be released to the ports prior to commencement of restoration work and prior to subsequent Commission action on port master plan amendments for landfills that would need the mitigation credits. Therefore, the Commission must determine in this amendment: (1) whether the proposed restoration project at Bolsa Chica (including the number of port mitigation credits generated) would compensate for marine resource losses due

to port landfill construction, and (2) whether the proposed timing schedule for release of the mitigation credits prior to the start of restoration work is justified. These determinations are significant because should this amendment be certified by the Commission, and if the subject 880 acres of Bolsa Chica lowlands are transferred to public ownership and the Ports provide to the SLC the \$66.75 million they have committed for acquisition and restoration, then the issue of marine resource compensation for up to 227 acres of outer harbor landfills in the Port of Los Angeles would not be an issue in the Commission's review of future port master plan amendments for those landfills.

1. Adequacy of Mitigation. In order to certify the proposed plan amendment, the Commission must first determine whether the proposed wetland restoration project at Bolsa Chica would adequately compensate for marine resource losses that would occur from the construction of up to 227 acres of outer harbor landfills. The proposed project was first outlined in the Interagency Agreement, is summarized in the proposed plan amendment, and is the subject of a federal consistency determination (CD-115-96) submitted by the U.S. Fish and Wildlife Service and concurred with by the Commission earlier today on the October 8, 1996 agenda. (NOTE: Commission review and action on this plan amendment is contingent upon the Commission concurring with CD-115-96. Should concurrence not occur, this proposed plan amendment will be postponed to a subsequent Commission meeting.)

The Commission has reviewed the conceptual wetland restoration plan for the Bolsa Chica Lowlands and determined that, at this conceptual phase, the plan is consistent with the coastal resource protection policies of the Coastal Act. In that determination, however, the Commission did not address the adequacy of the conceptual plan as mitigation for marine habitat losses associated with port landfill construction. This issue is now ripe for analysis in this plan amendment.

As noted earlier in this report, the Interagency Agreement calls for the ports to receive mitigation credits for their funding of acquisition of 880 acres of Bolsa Chica lowlands and full tidal restoration of approximately 344 acres of the lowlands. The Interagency Agreement then translates this into 454 acres of outer harbor mitigation credits by using the Anaheim Bay-Pier J habitat evaluation report (HEP) and the related mitigation acreage ratio of 0.76:1.0 (mitigation acres to fill acres). The Interagency Agreement concludes that this amount of restoration is adequate compensatory marine habitat mitigation for 454 acres of otherwise approvable outer harbor landfills.

It is important to note that the Commission was not a signatory to the Interagency Agreement and was not a participant in the HEP process used to determine mitigation credits for the Bolsa Chica restoration plan. The Commission has long expressed its concerns over the HEP process and results, and is not endorsing the use of that process (and the resulting acreage ratio) as the sole means of calculating Bolsa Chica mitigation credits. Instead, the Commission is taking a more expansive view of restoration and enhancement activities that would occur if the proposed conceptual plan is implemented. This view is similar to the course of action the Commission followed in its approval of the Port of Los Angeles' Pier 400 landfill

project and the associated mitigation component, the Batiquitos Lagoon restoration plan in northern San Diego County. In that action, the Commission credited the Port with restoring and enhancing subtidal, intertidal, saltmarsh, and upland habitat in the Batiquitos Lagoon complex. The Commission took into account the total acreage of restoration and enhancement work (not just full tidal acreage) in calculating the number of port mitigation credits generated by the work.

The Commission acknowledges that the ports will provide \$66.75 million assist funding the acquisition of 880 acres of Bolsa Chica lowlands and full tidal restoration on 344 acres of the lowlands. The Commission notes, however, that approximately 40 acres of Rabbit Island located within the "Full Tidal" restoration area outlined in the Interagency Agreement will remain above tidal influence and were not included in the mitigation credit calculation, but will be enhanced as a result of the port-funded restoration work. In addition, the Commission notes that restoration activities in the "Full Tidal" area are also designed to restore and enhance wetland and biological productivity on approximately 220 acres of adjacent lands described as "Managed Tidal" in the Interagency Agreement, by admitting seawater onto these lands through culverts or water control structures. Rabbit Island and "Managed Tidal" lands will not be full tidal areas, would not directly provide habitat for fishery resources, and therefore do not qualify for mitigation credits from the state and federal resource agencies.

The Commission, however, believes that the mitigation for port landfills should focus on ecosystem restoration rather than replacement of a specific habitat type. The Bolsa Chica project will result in the restoration, enhancement, and protection of different habitat types, including but not limited to subtidal, intertidal mudflats and marsh, sandflats, and seasonal ponds. While the enhancement of Rabbit Island and the "Managed Tidal" lands resulting from the ports' funding of the full tidal restoration area will not precisely replace lost deep water habitat affected by port landfills, the overall project will result in the restoration and enhancement of an integrated ecosystem providing habitat for fish, birds, and benthic organisms. The Commission believes that all of the habitats restored and enhanced by the Bolsa Chica project will provide benefits, directly or indirectly, to a variety of natural resources, including, but not limited to fish, birds, wetland plants, and benthic invertebrates.

The conceptual restoration plan for the Bolsa Chica lowlands concurred with by the Commission in CD-115-96 (U.S. Fish and Wildlife Service) would result in significant ecosystem restoration and enhancement. In addition, the plan includes provisions and funding for monitoring and maintenance activities in perpetuity and provides insurance for the success of restoration activities. Therefore, the Commission finds that the approximately 600 acres of the Bolsa Chica lowlands to be restored and enhanced by the port-funded wetland restoration project will adequately compensate for the loss of marine habitat and resources from construction of 454 acres of outer harbor landfills.

2. Mitigation Credit Release. As noted earlier, when reviewing previous master plan amendments for the construction of new port landfills, the Commission has usually found that mitigation for unavoidable adverse project impacts needed to be implemented concurrently with landfill development. It is a policy that has been successfully and cooperatively utilized by state

and Federal resource and regulatory agencies and the Ports of Los Angeles and Long Beach in order to ensure that: (1) the length of time between the loss of marine habitat at landfill construction sites and completion of wetland and tidal restoration projects is minimized, and (2) necessary port landfill and terminal construction projects can move forward in a timely manner. Certification of the proposed amendment would represent a significant modification of that policy and allow construction of Commission-certified port landfills (up to a limit of 227 acres in the Port of Los Angeles) prior to construction of a mitigation project.

The Commission finds that in this particular circumstance, certification of the proposed amendment and allowing landfill construction to proceed prior to the start of mitigation at Bolsa Chica is consistent with the resource protection policies of Chapter 8 of the Coastal Act. The proposed amendment is a key factor in a complex public and private sector undertaking to resolve longstanding land use and coastal resource protection conflicts at Bolsa Chica. The potential transfer of approximately 880 acres of the Bolsa Chica lowlands to public ownership and the willingness of the Ports of Los Angeles and Long Beach to provide \$66.75 million for property acquisition and for full tidal restoration of approximately 344 acres of the lowlands (and related restoration and enhancement of approximately 264 adjacent acres of the lowlands) in exchange for port landfill mitigation credits is an opportunity that calls for the Commission to look beyond its standard port landfill mitigation policies and consider an action that matches the significance and potential public and coastal resource benefits associated with the proposed Bolsa Chica acquisition and restoration plan.

Therefore, the Commission finds that: (1) the types of marine habitat losses that would occur with up to 227 acres of future Port of Los Angeles landfill construction (otherwise consistent with the Chapter 8 policies of the Coastal Act) are well-documented, significant, and must be mitigated by the Port; (2) the proposed Bolsa Chica restoration project, as outlined in the Interagency Agreement and consistency determination CD-115-96 (U.S. Fish and Wildlife Service), and for the reasons described above, would provide adequate mitigation for up to 227 acres of Port of Los Angeles landfills; (3) restoration funds provided by the Ports of Long Beach and Los Angeles would be used to restore and enhance public trust resources located on public trust lands which are and will remain within the permit jurisdiction of the Commission; and (4) the comprehensive and significant coastal resource benefits arising from the Bolsa Chica project outweigh and take precedent over the lesser, but nevertheless still significant, marine habitat losses that will go unmitigated for a multi-year period of time until the Bolsa Chica restoration project is completed and functioning. The amendment would encourage the ports to modernize and expand as necessary, and would minimize adverse landfill impacts on marine habitat by contributing to the implementation of the restoration project at Bolsa Chica, which would provide numerous beneficial uses consistent with the public trust. In conclusion, the Commission finds that the proposed schedule for release of port landfill mitigation credits from the Bolsa Chica restoration project, as described in the proposed plan amendment, conforms with and carries out the port development and coastal resource protection policies of Chapter 8 of the Coastal Act.

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

1850p

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

EXHIBIT NO. 1

APPLICATION NO.

POLA PMPA #15

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
1415 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.

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

Port of Los Angeles:

Outer harbor 227 acres

Port of Long Beach:

Inner harbor 60 acres

Outer harbor 197 acres

TOTALS 484 acres

Bolsa Chica Restored Full Tidal Habitat

172 acres

23 acres

149 acres

344 acres (mitigated by restoring)

