

## **CALIFORNIA COASTAL COMMISSION**

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# Th6e

### **Draft Public Trust Guiding Principles & Action Plan (June 2022)**

**JUNE 8, 2022**

**CORRESPONDENCE**

**From:** [patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net) <[patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net)>

**Sent:** Friday, May 20, 2022 2:52 PM

**To:** ExecutiveStaff@Coastal <[ExecutiveStaff@coastal.ca.gov](mailto:ExecutiveStaff@coastal.ca.gov)>

**Cc:** [saveballona@hotmail.com](mailto:saveballona@hotmail.com); [todd@tcardiffllaw.com](mailto:todd@tcardiffllaw.com); Lucchesi, Jennifer@SLC

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**Subject:** Public Comment on June 2022 Agenda Item Thursday 6e - June 2022 Draft Public Trust Guiding Principles



Patricia McPherson President

[Jeanette@SaveBallona.org](mailto:Jeanette@SaveBallona.org) (310) 721-3512

Executive Staff,

Grassroots Coalition respectfully provides this informational brochure on Ballona Wetlands/Ballona Wetlands Ecological Reserve as part of its comments to the Draft Public Trust Guiding Principles. The brochure sets forth legal designations that have been acknowledged, approved and registered for the protection of the Public Trust properties known as Ballona Wetlands/ Ballona Wetlands Ecological Reserve. As cited in the Public Trust Principles and Action Plan for the California Coastal Commission, there are Public Resource Codes (PRCs) utilized for protection of Public Trust property. In the case of Ballona Wetlands, numerous PRCs are applicable to Ballona, including but not limited to PRC 31220 which entails watershed restoration, and PRC 31113 Climate Change which also includes protections to biodiversity and protection from greenhouse gases. Neither of these PRCs have been meaningfully addressed by the State Lands Commission(SLC), in its stewardship of the freshwater marsh/ expanded wetland portion of SLC assigned property at Ballona Wetlands. And, these PRCs are not meaningfully addressed by CDFW in the certified FEIR. We look forward to input from the California Coastal Commission to assist in enforcement of these Public Resource Codes as part of the enforcement capability of the CCC and its PUBLIC TRUST ACTION PLAN that we wish for

CCC engagement to protect Ballona Wetlands/ Ballona Wetlands Ecological Reserve from watershed/ freshwater hydrology harm due to ongoing freshwater waste, diversion and throw away of Ballona's natural freshwater resources by the California Department of Fish & Wildlife, Playa Vista, Friends of Ballona--jointly the Ballona Wetlands Conservancy as cited by the State Lands Commission.

Grassroots Coalition provides this electronic correspondence as 1 of 3 for Item 6e.

Thank you for your consideration,

Patricia McPherson, Grassroots Coalition

**From:** patriciamcpherson1@verizon.net <patriciamcpherson1@verizon.net>

**Sent:** Wednesday, May 25, 2022 9:34 AM

**To:** ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>; Willis, Andrew@Coastal <Andrew.Willis@coastal.ca.gov>; jack.ainsworth@coastal.ca.gov

**Cc:** saveballona@hotmail.com; patriciamcpherson1@verizon.net; todd@tcardiffllaw.com; Haage, Lisa@Coastal <Lisa.Haage@coastal.ca.gov>; Revell, Mandy@Coastal <Mandy.Revell@coastal.ca.gov>; westbasinboardsecretary@westbasin.org; edwardc@westbasin.org; geyzzav@westbasin.org; Wilson, Mike@Coastal <mike.wilson@coastal.ca.gov>; Aminzadeh, Sara@Coastal <sara.aminzadeh@coastal.ca.gov>; Rice, Katie@Coastal <katie.rice@coastal.ca.gov>; Uranga, Roberto@Coastal <roberto.uranga@coastal.ca.gov>; Huckelbridge, Kate@Coastal <Kate.Huckelbridge@coastal.ca.gov>; christopher.ward@coastal.ca.gov; Groom, Carole@Coastal <carole.groom@coastal.ca.gov>; mary.luevano@coastal.ca.gov; Bochco, Dayna@Coastal <dayna.bochco@coastal.ca.gov>; Hart, Caryl@Coastal <caryl.hart@coastal.ca.gov>; Turnbull-Sanders, Effie@Coastal <effie.turnbull-sanders@coastal.ca.gov>; Brownsey, Donne@Coastal <donne.brownsey@coastal.ca.gov>; Rivas, Rick@Coastal <rick.rivas@coastal.ca.gov>; Vanderberg-Jones, Sonora@Coastal <sonora.vanderberg-jones@coastal.ca.gov>; aaron.o.allen@usace.army.mil; Taing, Adam@Waterboards <Adam.Taing@Waterboards.ca.gov>; Heath, Arthur@Waterboards <Arthur.Heath@waterboards.ca.gov>; rafiquel.i.talukder@usace.army.mil; Kang, Jim@Waterboards <Jim.Kang@Waterboards.ca.gov>; sheila@bos.lacounty.gov; jwilson@bos.lacounty.gov; hollyjmittchell@bos.lacounty.gov; hamilton.cloud@mail.house.gov; ben.allen@sen.ca.gov; olina.wibroe@sen.ca.gov; katharine.moore@sen.ca.gov; Office of the Secretary CNRA <secretary@resources.ca.gov>; director@wildlife.ca.gov

**Subject:** June CCC Meeting 2022 Comment Item 6e Public Trust CCC Action--Ballona Wetlands, Grassroots Coalition/ Dr. Griswold Presentation Groundwater Dependent Ecosystem/ SGMA

**To:** California Coastal Commissioners, and Coastal Commission Staff,  
Please include this information & information contained within the YouTube link included below, as part of Grassroots Coalition's submitted comments for June 9, 2022, Item 6e.

The following presentation pertains to Ballona Wetlands and its Sustainable Groundwater Management aspects as a Groundwater Dependent Ecosystem. A presentation to the Groundwater Sustainability Agencies of the Santa Monica Subbasin leads the additional discussion with new information from Grassroots Coalition and Margot Griswold, PhD, a renowned California restoration ecologist with over 27 years of expertise and engagement in positive habitat outcomes including the interagency, highly contentious Owens Valley Dust Control Plan via habitat restoration. Owens Valley became a consensus planning model that now exists and can be utilized for the restoration of Ballona Wetlands Ecological Reserve.

<https://youtu.be/MJ1Aag51EX8>

**Key points in the presentation include:**

1. The Groundwater Sustainability Plan Final Draft addresses in Appendix F, the data gap that exists which demonstrates that it is not possible, at present to address potential saltwater intrusion issues in the lower Santa Monica Subbasin due to a lack of needed monitoring wells. Neither sea level rise nor the California Dept. of Fish & Wildlife's (CDFW) proposed removal of over 3 million cubic yards of soil has been modeled to determine if CDFW's Plan for lowering the Ballona Wetlands below sea level for creation of a new saltwater bay, will have impacts of saltwater contamination to the Silverado Aquifer or the upper

freshwater aquifers currently classified by the Water Board as Drinking Water and Potential Drinking Water respectively.

The CDFW Final Environmental Impact Report does not include hydrologic evaluation of Ballona itself and does not address the potential negative impacts upon the aquifers and/or the potential impacts upon Ballona Wetlands as a freshwater/ Groundwater Dependent Ecosystem.

2. The Groundwater Sustainability Plan does not yet include data of the Playa Vista ongoing dewatering needed for the Clean Up and Abatement Order 98-125 (for the Howard Hughes/ MacDonald Douglas Aircraft decontamination) or the Playa Vista dewatering for the gas mitigation systems of the Playa Vista Methane Prevention Detection and Monitoring Program (Playa Vista Phase 1 Methane Code) or the Citywide Methane Code dewatering on the Phase 2 area of Playa Vista. No information exists in the GSP per the 20 years of dewatering via the unpermitted drainage wells in the wetlands that the California Coastal Commission cited as a violation of the Coastal Act as harming the hydrology and ecology of Ballona. Essentially, as in many GSPs an adequate evaluation of a Groundwater Dependent Ecosystem has not been done for Ballona Wetlands/ Ballona Wetlands Ecological Reserve.

3. New information regarding the legally required protective laws for Ballona ( Title 14, Section 630 Terrestrial/ NonMarine Ecological Reserve status that is Ballona specific) have not had adherence by the California Coastal Conservancy in its oversight and control of the Ballona Environmental Impact Report studies and documents.

The Coastal Conservancy in 2005, narrowed the scope of review by the Southern California Coastal Wetland Research Program and the Science Advisory Committee to a preferred alternative--estuarine, marine goal that was and is inconsistent with the Title 14, Section 630 Terrestrial/ Non Marine Ecological Reserve status that was approved by the Ca. Fish & Game Commission and Registered with the Office of Administrative Law.

(SCCWRP Letter--Slides 28,29 of 31)

<https://saveballona.org/media/California.Coastal.Commission.CCC.Meeting.May.8.2019.Ballona.Wetlands.Restoration.History.Presentation.pdf>

The following website link includes the Audubon article by Dr. Griswold, which contains new information regarding Ballona Wetlands Ecological Reserve status as an Ecological Reserve including the Office of Administrative Law's Registration as a terrestrial/ NONMARINE Ecological Reserve with its own specific Purpose and Goals for its acquisition.

<https://www.laaudubon.org/blog/2021/10/30/inconsistencies-and-missed-opportunities->

#### **Additionally, Fish & Game Code 1745**

1745. (a) For purposes of this section, the following terms have the following meanings: (1) **"Department-managed lands"** includes lands, or lands and water, acquired for public shooting grounds, state marine (estuarine) recreational management areas, ecological reserves, and wildlife management areas.

(2) The department may enter into contracts or other agreements for the management and operation of department-managed lands with nonprofit conservation groups, recognized under Section 501(c) of the Internal Revenue Code, or resource conservation districts, as described in Chapter 3 (commencing with Section 9151) of Division 9 of the Public Resources Code.

(B) **The contracts or other agreements authorized pursuant to this paragraph shall adhere to the goals and objectives included in an approved management plan and shall be consistent with the purpose for which the lands were acquired and managed by the department.** Any changes to the management plan shall be subject to public review and comment.

**The Goals and Objectives for which the Ballona Wetlands Ecological Reserve was acquired with public funds, over \$140 million, are as follows:**

California Regulatory Notice Register 2005, Volume No. 20-Z, Starting on **page 663** Ballona Wetlands Ecological Reserve

[https://www.dhcs.ca.gov/services/medi-cal/Documents/AB1629/ZREG/ZREG 20-Z 5.20.05\\_notice.pdf](https://www.dhcs.ca.gov/services/medi-cal/Documents/AB1629/ZREG/ZREG%20-%205.20.05_notice.pdf)

The Fish & Game Code 1745, above, provides also for adherence to the Title 14, Section 630 status approved for Ballona Wetlands Ecological Reserve and it follows that any/all agreements and actions should abide by the Registered Purpose and Goals. Ecological Reserves require, under Fish and Game Code 1019, that a Land Management Plan (LMP) be prepared for the Reserve after acquisition. The LMP leading language begins with the Purpose and Goals of the (Section 630) acquisition in its requirements for study. Any/all subsequent Environmental Impact Reports for the Ecological Reserve also start with the same premise.

No Land Management Plan was performed for Ballona Wetlands Ecological Reserve and the language of the Title 14, Section 630 Terrestrial/ NONMARINE with specific Ballona Wetlands Purpose and Goals language was not the premise of the Environmental Impact Report controlled and prepared by the California Coastal Conservancy (a Responsible Agency). Instead, the Coastal Conservancy utilized an inconsistent premise of preferred alternative of 'restoring the ebb and flow of the ocean' in its inconsistent narrowing of alternatives

for Ballona's restoration in both its contract language to the Southern California Coastal Waters Research Program/ SAC and in the premise of the Environmental Impact Report.

We believe that the California Coastal Conservancy failed to adhere to Title 14, Section 630 terrestrial/nonmarine Ecological Reserve status for Ballona Wetlands Ecological Reserve and failed to abide by and advise CDFW, in its legal role as an advisory Responsible Agency, and failed to abide by Fish & Game Code 1745.

**Please review the materials provided herein and keep this information as necessary information in the consideration by the California Coastal Commission for any/all decision making for Ballona Wetlands Ecological Reserve--restoration.**

Thank you,  
Patricia McPherson, Grassroots Coalition





## BIG DIG - NOT WHAT THE PUBLIC PAID FOR



There are five Ballona Wetlands Ecological Reserve (BWER) Lawsuits against a highly deficient Final Environmental Impact Report. The Preferred Alternative is to convert Ballona into a Saltwater Bay which is inconsistent with the State's registered purpose for acquisition of Ballona as a Terrestrial, NonMarine Ecological Reserve.

These lawsuits could go on for many years at great expense. Instead let's learn from the Owens Lake Collaborative's highly successful habitat restoration, after hiring a professional, impartial facilitator to guide about forty stakeholders through a fair, unbiased, science driven process.

<https://saveballona.org/opposition-ballona-wetland-ecological-reserve-fi...>

**Is there the will for a collaborative Ballona approach, among CDFW, State Lands, LA County, NGO's, private businesses? An impartial Facilitator is key to the process. Funding for a Facilitator and for public agency personnel to attend meetings will be necessary, and possibly science and engineering specialists.**



In 1908 William Mulholland, a civil engineer began construction of the Los Angeles Department of Water and Power (LADWP) 233 Mile Aqueduct. In 1913 the Aqueduct began bringing freshwater to LA.

Owens Valley farms began to fail due to over-pumping of freshwater. In 1928 the St. Francis Dam Disaster collapsed killing over 450 people. The Lake became a dust bowl, creating huge, life threatening dust storms. Wildlife suffered. Finally, about ten years ago stakeholders, agencies and the LADWP agreed something drastic needed to be done to correct the Dust Bowl which was created by the Aqueduct Project.

**Restoration Ecologist Dr. Margot Griswold was part of the successful habitat restoration at Owens Lake. She shares her experience in the collaborative planning of the mitigation for the Dust Storms in the Valley. She wants the process used for Ballona.** <https://youtu.be/e2F15wYL6c0> 26 minutes

See Huell Howser of **CALIFORNIA GOLD** explore LA Department of Water & Power Habitat Restoration of Owens Lake from 2002 to 2008 <https://blogs.chapman.edu/huell-howser-archives/2008/08/12/owens-river-h...> 56 minutes

# Bolsa Chica's 2021 Sustainability Report raises **Red Flag** after a 15 year experiment of engineered, full-tidal opening– Urgent Closure Remediation is recommended to restore the destroyed Salt Marsh Habitat and Endangered Species Loss.

<https://saveballona.org/lessons-applicable-ballona-wetlands-rehabilitation-bolsa-chica-2021-report-proposed-remediation-2006-full-tidal-restoration.html>

The Bolsa Chica Report provides an immediate **Red Flag** warning for conversion of Ballona Wetlands Ecological Reserve into a Saltwater Bay, below sea level. Like Bolsa Chica, at Ballona an engineered, full tidal opening will destroy Salt Marsh Habitat, and its reliant Endangered Species, to become mudflats and open water.



**Bolsa Chica Wetlands in need of immediate remediation to restore sensitive ecology.** [https://bclandtrust.org/wp-content/uploads/2022/03/BCSAS\\_Final-Report\\_Executive-Summary\\_Final.pdf](https://bclandtrust.org/wp-content/uploads/2022/03/BCSAS_Final-Report_Executive-Summary_Final.pdf) **FULL BCSAS REPORT**

## **TATTN statements to the California Coastal Commission:**

...“Playa Vista ruined and illegally diverted the fresh water pre-existing for millennia by their illegal freshwater marsh and its illegal water discharges in the Ballona Creek Channel --at approximately 500,000 gallons per day... Playa Vista math-- my math has it way higher.” *John Tommy Rosas, TATTN.*

**Both John Tommy Rosas and Anthony Morales Standing Chief of the Gabrieleno Tongva San Gabriel Band of Mission Indians oppose the “Big Dig” and acknowledge Ballona is a predominantly seasonal freshwater wetland and should remain one.** <https://saveballona.org/862020-ccc-anthony-morales-i-have-standing-chief-gabrieleno-tongva-san-gabriel-band-mission-indians.html>



## **Ballona Wetlands Ecological Reserve is a SACRED NATIVE AMERICAN SITE -**

The lands and waters of Ballona are part of the Tongva Village of Saangna.

*“This is a SACRED SITE registered by the Tongva Ancestral Territorial Tribal Nation...”*, states TATTN spokesperson and tribal leader John Tommy Rosas.

**FACT: BWER is a CCR Title 14, Section 630 Terrestrial / NonMarine Ecological Reserve  
BWER is not a CCR Title 14, Section 632 Marine Preserve**



**Ballona Wetlands Ecological Reserve  
Must be protected by its Legal Designations!**

Ballona Indigenous People call Ballona Wetlands Pwinikpar – Tongva word for “It is full of water”



# Ballona Wetlands Ecological Reserve is protected by the

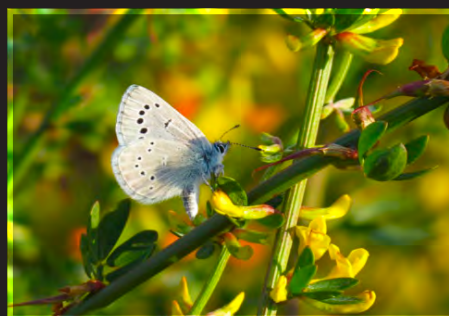
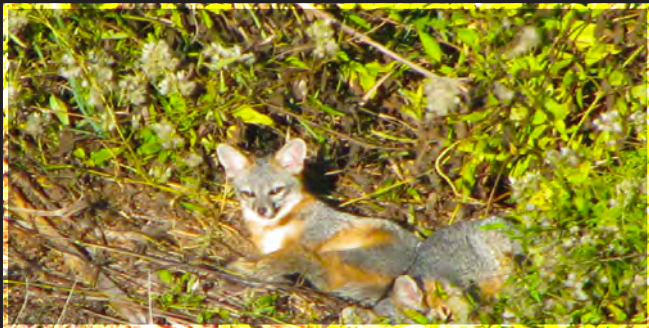
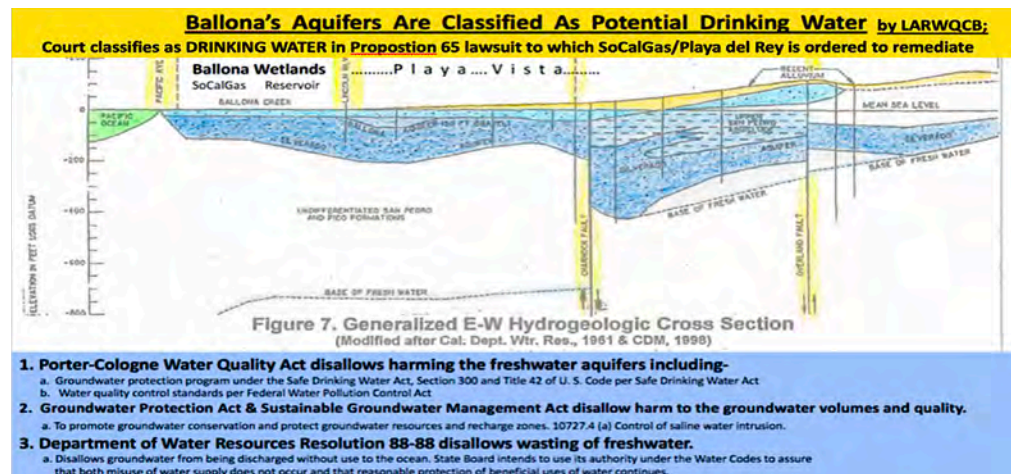
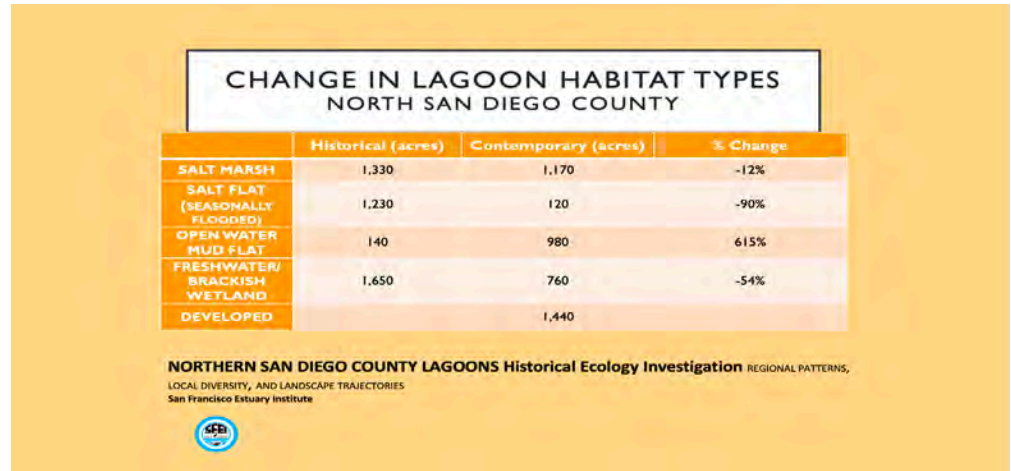
## 1. SUSTAINABLE GROUND-WATER MANAGEMENT ACT (SGMA)

<https://saveballona.org/sustainable-groundwater-management-act-sgma-plan...>

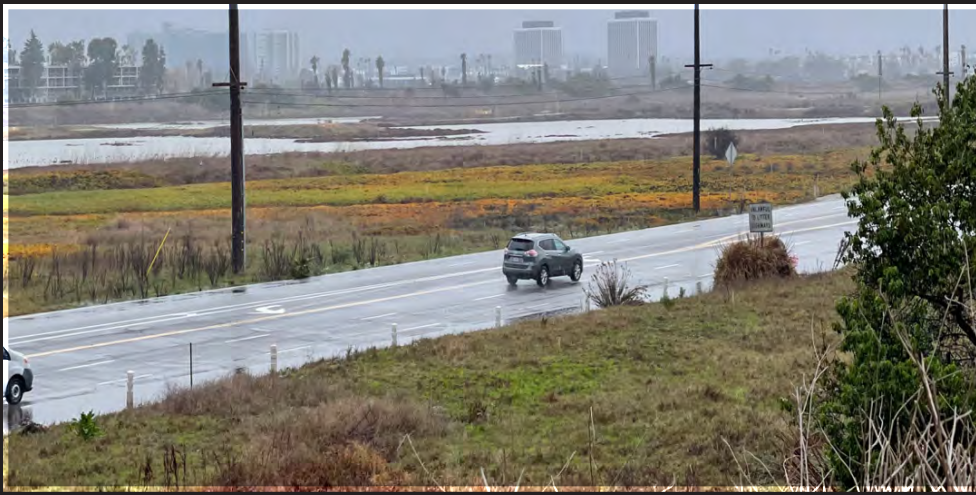
## 2. GROUNDWATER DEPENDENT ECOSYSTEM (GDE)

Ballona Wetlands Ecological Reserve is classified as a GDE.  
<https://saveballona.org/groundwater-dependent-ecosystems-hidden-dangers...>

3. CALIFORNIA REGULATORY NOTICE REGISTER 2005, Volume No. 20-Z, starting on pages 663-4 Ballona Wetlands Ecological Reserve, CCR Title 14, Section 630, Fish & Game Commission [https://www.dhcs.ca.gov/services/medi-cal/Documents/AB1629/ZREG/ZREG%2020-Z\\_5.20.05\\_notice.pdf](https://www.dhcs.ca.gov/services/medi-cal/Documents/AB1629/ZREG/ZREG%2020-Z_5.20.05_notice.pdf)







**Photos taken December 30, 2021**



**Originally 2,000 acres of Ballona Wetlands were roughly divided into five basic parts:**

**950 acres**

Marina del Rey (park space, ocean & dockside commercial and residential development)

**527 acres**

Ballona Wetlands Ecological Reserve

**67 acres**

Freshwater marsh at Lincoln and Jefferson

**56 acres**

County / USACE Owned Flood Control Channel and Levees -- not part of the Ecological Reserve

**400 acres**

Playa Vista (commercial & residential development)



Patricia McPherson President  
Jeanette@SaveBallona.org (310) 721-3512

place  
stamp  
here



October 2012 Pre-capping Photo J. Coffin

Photos to East  
of South Drain  
Area B



August 2020 Three years post capping Photo M. Griswold



FEIR has inconsistencies of existing Hydrology and Vegetation: Capping the unpermitted drains in B north resulted in native pickleweed wetland habitat.

Unpermitted drains in Area B in currently preserved areas that support wetland vegetation once drains were capped.



CALIFORNIA ASSOCIATION OF REALTORS®

June 2, 2022

Donne Brownsey, Chair  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, California 94105

**SUBMITTED VIA EMAIL**

**RE: June 2022 DRAFT PUBLIC TRUST GUIDING PRINCIPLES AND ACTION PLAN**

Dear Chair Brownsey,

Thank you for the opportunity to provide comments on the June 2022 Draft Public Trust Guiding Principles and Action Plan (Plan). With California's coast being the first line of defense against sea level rise, we appreciate the importance of local and regional planning for areas potentially threatened by inundation and erosion.

In the Plan, Principle 8 "Shoreline protective devices adversely impact public trust resources" raises some concerns by stating that, overall, sea walls, revetments, breakwaters, and other shoreline protection devices available for public trust uses may also lead to the loss of public trust resources.

We respectfully disagree that all shoreline protective devices negatively impact the environment. There are engineered solutions available, such as artificial reefs, that will help preserve California's coastline while also increasing nearshore habitat and biodiversity. According to the U.S. Department of the Interior, *"Artificial reefs provide shelter, food and other necessary elements for biodiversity and a productive ocean. This in turn creates a rich diversity of marine life, attracting divers and anglers. And states like the program because the increased tourism and commercial fishing benefits local economies."* Additionally, numerous studies around the world have shown the environmental and societal benefits of artificial reefs and reef ball breakwaters.

In addition, a March 2017, peer-reviewed study by the U.S. Geological Survey examined long-term shoreline response to climate change along a 500 km stretch of California's southern coast. To summarize, the findings in the report acknowledge *"that significant impacts to the shoreline will occur due to accelerated sea-level rise, with 31% to 67% of beaches in Southern California lost by 2100..."*. The report also concluded that *"It is likely that beaches in Southern California will require substantial management efforts (e.g. nourishments and armoring) to maintain beach widths and prevent impacts to coastal infrastructure."\**

Protecting California's coastline from sea level rise will require the application of a wide variety of solutions, natural and engineered. The diversity of sea level rise challenges deserves the application of a diversity of available solutions. We respectfully request that the Commission reconsider Principle 8 and include the benefits of mitigating the loss of public trust lands by way of thoughtfully combining natural and engineered solutions in a way that will protect public lands and the public interest.



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We hope that you find our comments relevant and helpful. If you would like to discuss our points further, please do not hesitate to contact me at [jelig@car.org](mailto:jelig@car.org).

Thank you,



Jeli Gavric  
Legislative Advocate

cc: Members, California Coastal Commission

\*Quotes excerpted from: Vitousek, S., P. L. Barnard, P. Limber, L. Erikson, and B. Cole (2017), A model integrating longshore and cross-shore processes for predicting long-term shoreline response to climate change, J. Geophys. Res. Earth Surf., 122, doi:[10.1002/2016JF004065](https://doi.org/10.1002/2016JF004065).



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June 3, 2022

Sea-Level Rise Leadership Team  
[SLRActionPlan@resources.ca.gov](mailto:SLRActionPlan@resources.ca.gov)

Re: Comments on the State Agency Sea-Level Rise Action Plan for California

These comments on the State Agency Sea-Level Rise Action Plan for California are submitted on behalf of Humboldt Baykeeper, which was launched in 2004 with a mission to safeguard coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution.

We strongly support the long-term goals of the Action Plan, and we submit the following comments to help provide local context that will help strengthen the statewide Plan.

SLR adaptation planning should include pathways to resiliency to 3.5' by 2050 and 6.0' by 2100.

We support this goal, although it is important to note that the Humboldt Bay area is experiencing the fastest rate of sea level rise on the West Coast due to tectonic subsidence.

SLR adaptation plans should lead to project implementation.

We agree. After nearly a decade of planning, analysis, and vulnerability assessments, we have a better understanding of the need for SLR adaptation, but now we need to take action. Local government agencies need to incorporate SLR policies and adaptation plans into Local Coastal Plans, most of which are so out of date that SLR is not considered. We need these policies to be updated to establish the framework for including SLR adaptation in future projects.

Coordination across agencies is especially important. Too often, permits are approved that don't take SLR into consideration at all, leaving the Coastal Commission to incorporate sea level rise adaptation after projects have been designed and approved to meet other regulatory agencies' requirements. This results in delays, frustration, and is not the best use of limited time and resources.

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[www.humboltdbaykeeper.org](http://www.humboltdbaykeeper.org)



Nature-based solutions should be pursued when possible.

We strongly support nature-based solutions. Planning is too often focused on short-term fixes for protecting infrastructure, leading to a bias toward shoreline armoring. The existing regulatory framework encourages after-the-fact permits for emergency armoring where dikes and levees have failed rather than nature-based solutions that take time to plan, permit, and fund. And yet short-term fixes will do nothing to minimize rising groundwater – they are simply stalling the inevitable (again, not the best use of limited time and resources).

Coastal habitats including wetlands, beaches, and dunes should be protected and conserved.

Wetlands, beaches, and dunes are important for SLR adaptation, but we also must consider how these areas will migrate as the sea rises – if they will be able to migrate at all given armored shoreline, infrastructure, and other manmade features that will lead to the loss of these important habitats. Of course, beaches and dunes provide important public access. Key Action 6.3 includes protection of vulnerable public access areas, but in the long-term, many public access points may also need to be relocated as rising sea level, flooding, and erosion increase.

Integrate and prioritize equity and social justice in all SLR adaptation planning and projects by involving community-based organizations and California Native American tribes throughout the SLR planning process.

This goal is critical in our remote rural region. Humboldt County is too often inadequately considered in statewide efforts, despite abundant local expertise and major challenges such as high poverty rates in low-lying coastal areas, the fastest rate of relative SLR in the state, and numerous contaminated sites adjacent to Humboldt Bay, its tributary streams, and wetlands.

Many people, including Native American and Hmong residents, fish and harvest shellfish for subsistence, recreation, and traditional cultural purposes as well as commercial purposes. SLR and rising groundwater threaten to mobilize contaminants at these sites, posing risks to Humboldt Bay fisheries, the people and fish-eating wildlife that consume fish and shellfish, and the commercial oyster industry.

The numerous low-lying contaminated sites provide a glimpse into the importance of involving community-based organizations and tribes to promote environmental justice and social equity in SLR adaptation planning and projects, as briefly described below.

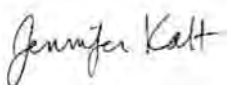
The number of contaminated sites that are vulnerable to rising sea level and groundwater was vastly undercounted in the recent Toxic Tides report (described in the Plan on page 5) because it omitted sites under the jurisdiction of the North Coast Regional Water Quality Control Board. CalEnviroScreen 4.0 also vastly under-represents cleanup sites in our region, because it relies on overseen by Department of Toxic Substance Control (Fig. 1) while excluding cleanup sites that are overseen by the Regional Water Resource Control Boards (Fig. 2). The Humboldt Bay

region is impacted by numerous dioxin-contaminated sites, and in 2006, Humboldt Bay was added to the Clean Water Act 303(d) list as Impaired by dioxins and furans, which are some of the most toxic and persistent chemicals ever manufactured. Many are a legacy of the timber industry which for nearly 50 years used wood preservatives made from the dioxin-laden fungicide pentachlorophenol. The use of this chemical in lumber mills was eliminated in 1987 due to its dioxin content. In aquatic and estuarine ecosystems, they bioaccumulate in fish, shellfish, and other estuarine and marine species.

Contaminated sites routinely receive “No Further Action” status without taking SLR into consideration, even for sites adjacent to Humboldt Bay and in the path of rising groundwater.

Thank you for your consideration. We look forward to the evolution of the Action Plan and increased coordination among agencies that will lead to implementation of SLR adaptation policies and projects. We are available to discuss our concerns at any point in the process.

Sincerely,



Jennifer Kalt, Director

[jkalt@humboltdbaykeeper.org](mailto:jkalt@humboltdbaykeeper.org)

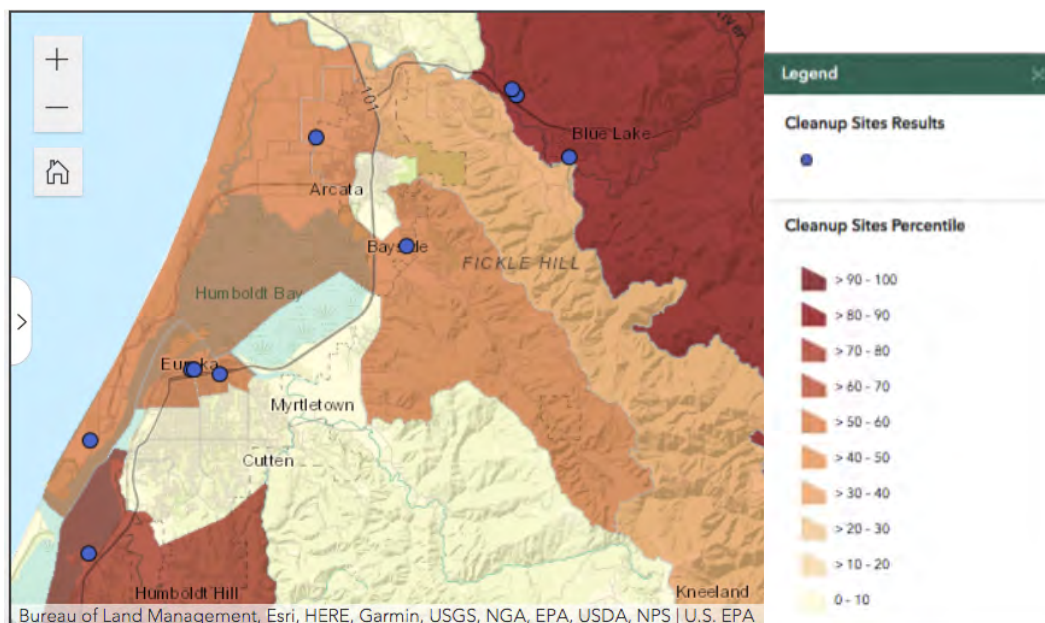


Fig. 1. Cleanup Sites in the Humboldt Bay Area on CalEnviroScreen 4.0, OEHHHA. (<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>)



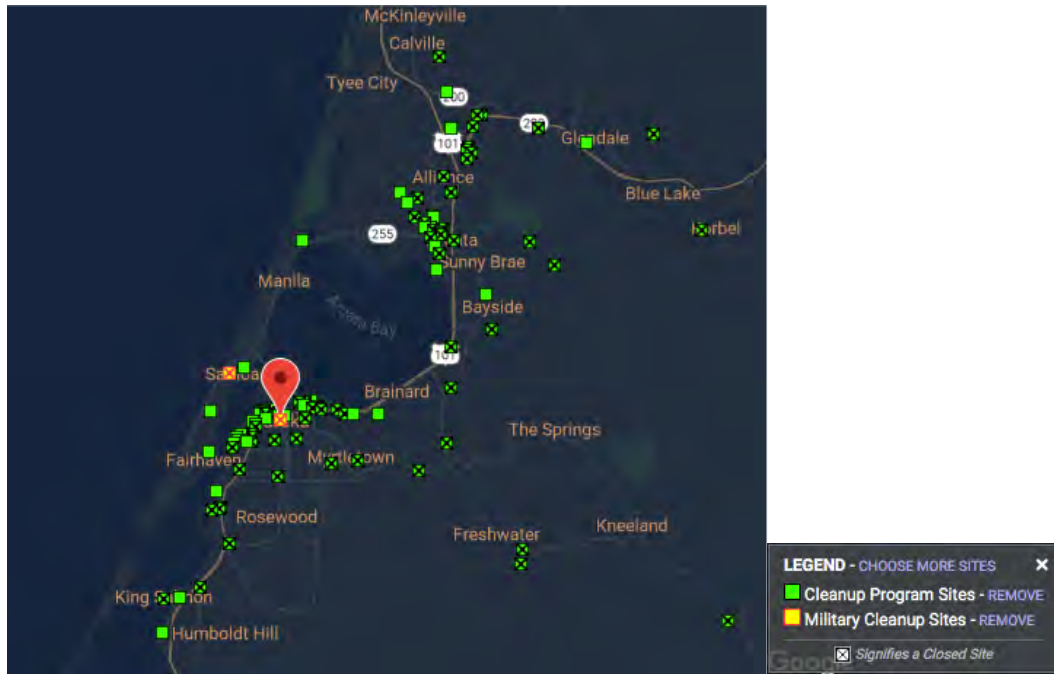


Fig. 2. Cleanup Sites in the Humboldt Bay Area on the GeoTracker website, State Water Resources Control Board (<https://geotracker.waterboards.ca.gov/>).

State Lands Commission-- Director Lucchesi, Commissioners, Chair Betty Yee (Controller), Members Keely Bosler (Finance Director), Eleni Kounalakis (Lt Gov,)

Thursday June 9, 2022, Agenda Item 6E

The Los Angeles Audubon Society is sending you the attached information because there seem to be many efforts by various State agencies and commissions ongoing to create 'action plans' in relation to sea level rise, a result of climate change. This is especially true for the Public Trust and how it relates to sea level rise and coastal restoration projects.

We believe that there is an excellent recent example of the speed at which climate change is affecting coastal restoration efforts in the Southern California Region. The Bolsa Chica Ecological Reserve is failing to maintain target salt marsh vegetation that is the habitat for the State endangered Belding's Savannah Sparrow, and in fact the salt marsh habitat is being drowned by ocean water.

Only 15 years ago, Bolsa Chica Ecological Reserve was engineered to allow the ocean into a historically closed wetland system. And last December 2021, a report was published on finding a 'sustainable alternative' to the initial project because of the drowning of salt marsh habitat and lack of success for other targets, such as establishing cord grass habitat. Fixing the Bolsa Chica problem will likely include closure of the engineered opening to the ocean in just 15 short years. The Bolsa Chica Project should be a wake-up call for other coastal wetland projects.

We should not spend the public's money to fix failed coastal wetland projects that propose to lower wetland elevations to current sea level by engineering an opening to the ocean based on how this approach has failed at Bolsa Chica Ecological Reserve.

In fact, California Department of Fish and Wildlife recently certified an EIR for the Ballona Wetlands Ecological Reserve project in Southern California Region that calls for removing 3.2 Million Cubic Yards of soil to below current sea level and opening the wetlands to the ocean – in the face of sea level rise. This action will immediately begin the loss of rare coastal wetland habitats, such as salt panne, salt marsh, and freshwater wetlands as well as all the species that these habitats currently support. The sea level rise comparison of the 'No Project Alternative' with the proposed project is buried in an appendix of the EIR and shows little to no effect of sea level rise with the 'No Project Alternative'. However, the 'Propose Project' shows the loss of all the existing habitats to open sea water, including the salt marsh habitat that is home to a breeding population of Belding's Savannah Sparrow, a State endangered species. This project is not restoration, but rather it is 'erase and replace'.

As far as I know, the Ballona Wetlands Ecological Reserve project is the ONLY project proposing to lower a coastal wetland in the face of sea level rise on the entire west coast.

Please direct your staff to create appropriate language to prevent any project from lowering coastal wetland elevations to current sea level in the face of predicted sea level rise as part of the California State Coastal Commission statement on resilience sea level rise. And please see the attached correspondence and presentations for further discussion.

Thank you,

Margot Griswold, Ph.D.  
Los Angeles Audubon Society

**From:** Margot Griswold <mgriswold@landiq.com>

**Date:** Thursday, June 2, 2022 at 11:04 AM

**To:** Sea-Level Rise Action Plan <slractionplan@resources.ca.gov>, patricia mc pherson <patriciamcpherson1@verizon.net>

**Cc:** Office of the Secretary CNRA <secretary@resources.ca.gov>, "saveballona@hotmail.com" <saveballona@hotmail.com>, "jwilson@bos.lacounty.gov" <jwilson@bos.lacounty.gov>, "dgonzalez@bos.lacounty.gov" <dgonzalez@bos.lacounty.gov>, "jwaldron@bos.lacounty.gov" <jwaldron@bos.lacounty.gov>, "lmuraida@bos.lacounty.gov" <lmuraida@bos.lacounty.gov>, "lrichards@bos.lacounty.gov" <lrichards@bos.lacounty.gov>, "zgaidzik@bos.lacounty.gov" <zgaidzik@bos.lacounty.gov>, "hollyjmitchell@bos.lacounty.gov" <hollyjmitchell@bos.lacounty.gov>, "sfreeman@bos.lacounty.gov" <sfreeman@bos.lacounty.gov>, "sheila@bos.lacounty.gov" <sheila@bos.lacounty.gov>, "executiveoffice@bos.lacounty.gov" <executiveoffice@bos.lacounty.gov>, "olina.wibroe@sen.ca.gov" <olina.wibroe@sen.ca.gov>, "aaron.o.allen@usace.army.mil" <aaron.o.allen@usace.army.mil>, "rafiquel.i.talukder@usace.army.mil" <rafiquel.i.talukder@usace.army.mil>, "samuel.liu@sen.ca.gov" <samuel.liu@sen.ca.gov>, "katharine.moore@sen.ca.gov" <katharine.moore@sen.ca.gov>, "Willis, Andrew@Coastal" <Andrew.Willis@coastal.ca.gov>, "Ainsworth, John@Coastal" <John.Ainsworth@coastal.ca.gov>, "Revell, Mandy@Coastal" <Mandy.Revell@coastal.ca.gov>

**Subject:** FW: Comments to State Agency Sea Level Rise Action Plan- Red Flag Bolsa Chica Warning and Ballona Wetlands

Dear Ella McDougall et al.,

Your response to Patricia McPherson's comments and suggestions for your Sea Level Rise Action Plan misses the point of her comments, in my opinion. You must consider specific projects, both successes and failures to inform the Sea Level Rise Action Plan and translate those to general action points in your plan. How else are you proposing to proceed and progress?

As a general action point for your Sea Level Rise Action Plan, projects proposing to lower coastal wetlands to current sea level should be required to look to recent past failures such as those cited in the December 2021 published evaluation of the Bolsa Chica Wetland Restoration. This project opened the wetlands to then current sea level (2006) to convert the wetlands to full tidal, and now the project requires a sustainable alternative to fix the problem of losing target saltmarsh habitat to rising tidal waters. Proposed fixes include closing the engineered opening (see Bolsa Chica Lowlands Restoration Project, Sustainable Alternatives Study: Final. Anchor QEA, December 2021. Prepared for the Bolsa Chica Land Trust). There are general take away points just from reviewing even the executive summary of this report without getting into the specifics.

We learn from projects in the recent past. The rate at which climate change is occurring has surprised scientists, including coastal engineers and restoration ecologists. Please consider recent evidence in putting together your Sea Level Rise Action Plan. How else do we learn if not by the projects that have been implemented to open coastal wetlands to the ocean and fail in relation to accelerating sea level rise?



The failure of key aspects of the Bolsa Chica Wetlands Restoration, that engineered open this historically closed coastal wetland to the ocean in the face of sea level rise, should inform current and future project plans, such as the plan for the Ballona Wetlands Ecological Reserve.

I have no doubt that the Sea Level Action Plan Group can find the best language to make the point for the plan in general terms. But in the south coast region, these are two large wetlands so I think the point should be made lest we lose more coastal wetland area to the sea and the important habitat on which current wildlife relies in the South Coast region.

Margot Griswold, Ph.D.  
Restoration Ecologist

Original Message-----

From: Sea-Level Rise Action Plan <[slractionplan@resources.ca.gov](mailto:slractionplan@resources.ca.gov)>  
To: [patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net) <[patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net)>  
Sent: Tue, May 31, 2022 12:53 pm  
Subject: Re: Comments to State Agency Sea Level Rise Action Plan- Red Flag Bolsa Chica Warning and Ballona Wetlands

Dear Patricia,

Thank you for your comment, detailed information and maps, and presentation. We will consider your comment for the SLR Action Plan. Though at this time, the SLR Action Plan focuses more on the statewide and regional scope of SLR policy, planning, and projects, as opposed to individual localized projects.

Best,  
Ella McDougall

-----Original Message-----

From: [patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net) <[patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net)>  
To: [SLRActionPlan@resources.ca.gov](mailto:SLRActionPlan@resources.ca.gov) <[SLRActionPlan@resources.ca.gov](mailto:SLRActionPlan@resources.ca.gov)>; [secretary@resources.ca.gov](mailto:secretary@resources.ca.gov) <[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)>  
Cc: [saveballona@hotmail.com](mailto:saveballona@hotmail.com) <[saveballona@hotmail.com](mailto:saveballona@hotmail.com)>; [jwilson@bos.lacounty.gov](mailto:jwilson@bos.lacounty.gov) <[jwilson@bos.lacounty.gov](mailto:jwilson@bos.lacounty.gov)>; [dgonzalez@bos.lacounty.gov](mailto:dgonzalez@bos.lacounty.gov) <[dgonzalez@bos.lacounty.gov](mailto:dgonzalez@bos.lacounty.gov)>; [jwaldron@bos.lacounty.gov](mailto:jwaldron@bos.lacounty.gov) <[jwaldron@bos.lacounty.gov](mailto:jwaldron@bos.lacounty.gov)>; [lmuraida@bos.lacounty.gov](mailto:lmuraida@bos.lacounty.gov) <[lmuraida@bos.lacounty.gov](mailto:lmuraida@bos.lacounty.gov)>; [lrichards@bos.lacounty.gov](mailto:lrichards@bos.lacounty.gov) <[lrichards@bos.lacounty.gov](mailto:lrichards@bos.lacounty.gov)>; [zgaidzik@bos.lacounty.gov](mailto:zgaidzik@bos.lacounty.gov) <[zgaidzik@bos.lacounty.gov](mailto:zgaidzik@bos.lacounty.gov)>; [hollyjmittchell@bos.lacounty.gov](mailto:hollyjmittchell@bos.lacounty.gov) <[hollyjmittchell@bos.lacounty.gov](mailto:hollyjmittchell@bos.lacounty.gov)>; [sfreeman@bos.lacounty.gov](mailto:sfreeman@bos.lacounty.gov) <[sfreeman@bos.lacounty.gov](mailto:sfreeman@bos.lacounty.gov)>; [sheila@bos.lacounty.gov](mailto:sheila@bos.lacounty.gov) <[sheila@bos.lacounty.gov](mailto:sheila@bos.lacounty.gov)>; [executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov) <[executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov)>; [olina.wibroe@sen.ca.gov](mailto:olina.wibroe@sen.ca.gov) <[olina.wibroe@sen.ca.gov](mailto:olina.wibroe@sen.ca.gov)>; [aaron.o.allen@usace.army.mil](mailto:aaron.o.allen@usace.army.mil) <[aaron.o.allen@usace.army.mil](mailto:aaron.o.allen@usace.army.mil)>; [rafiquel.i.talukder@usace.army.mil](mailto:rafiquel.i.talukder@usace.army.mil) <[rafiquel.i.talukder@usace.army.mil](mailto:rafiquel.i.talukder@usace.army.mil)>; [samuel.liu@sen.ca.gov](mailto:samuel.liu@sen.ca.gov) <[samuel.liu@sen.ca.gov](mailto:samuel.liu@sen.ca.gov)>; [katharine.moore@sen.ca.gov](mailto:katharine.moore@sen.ca.gov) <[katharine.moore@sen.ca.gov](mailto:katharine.moore@sen.ca.gov)>; [andrew.willis@coastal.ca.gov](mailto:andrew.willis@coastal.ca.gov) <[andrew.willis@coastal.ca.gov](mailto:andrew.willis@coastal.ca.gov)>; [john.ainsworth@coastal.ca.gov](mailto:john.ainsworth@coastal.ca.gov) <[john.ainsworth@coastal.ca.gov](mailto:john.ainsworth@coastal.ca.gov)>; [mandy.revell@coastal.ca.gov](mailto:mandy.revell@coastal.ca.gov) <[mandy.revell@coastal.ca.gov](mailto:mandy.revell@coastal.ca.gov)>  
Sent: Mon, May 2, 2022 3:09 pm

Subject: Comments to State Agency Sea Level Rise Action Plan- Red Flag Bolsa Chica Warning and Ballona Wetlands



Patricia McPherson President  
Jeanette@SaveBallona.org (310) 721-3512

Dear CNRA and OPC staff,

Grassroots Coalition provides the following comments in response to the State Agency Sea Level Rise Action Plan. Grassroots Coalition was founded in the early 90's to promote education pertaining to wetland habitat and wildlife protection. Our focus upon the Los Angeles coastal Ballona Wetlands led to discoveries of oilfield gas contamination throughout the area which led to the creation of new and experimental gas mitigation measures for the Playa Vista development site known as the Playa Vista Methane Prevention Detection and Monitoring Program (LA City Methane Code 1 of 2) in an attempt to control the outgassing (PVMPDMP). ( A 2007 LA City Audit by Laura Chick revealed the mitigation measures did not have proof of efficacy and/ or proof of installation.) Meanwhile, the city determined it was not safe for residential building west of Lincoln Blvd. Playa Vista became a willing seller for the Playa Capital LLC properties west of Lincoln Blvd. Public bond funds (Prop 12, 50) provided for acquisition funds of \$140 million and Prop 12 funds set aside approximately 25 million dollars for study, restoration/ further acquisition. **The California Fish & Game Commission, in 2005 inducted/approved and registered Ballona into the Ecological Reserve System under Title 14, Section 630 Terrestrial/ NonMarine Ecological Reserve having its specific Purpose and Goals of protecting its freshwater resources, its salt marsh, and endangered species and habitat upon which the endangered species rely. In particular, Belding's Savannah Sparrow and its foraging/nesting habitat of pickleweed ( a salt TOLERANT) vegetation that flourishes in the freshwater of Ballona. Ballona's goals included protection of its wildlife corridors that are adjacent to wildlife corridors.** At no time, approval for conversion of Ballona Wetlands into a fully tidal bay, was anticipated for this Public Trust area by the public. At no time has the Fish & Game Commission revoked the Registration of Ballona with the Office of Administrative Law, as a Title 14, Section 630 Terrestrial/ NonMarine Ecological Reserve. At no time has Ballona been provided consideration by the public or any agencies as a Title 14, Section 632 Marine Preserve.

The current CDFW Plan for industrial scale excavation of Ballona to below sea level provides the biggest threat to this critical natural resource. And, sea level rise compounds this threat to Ballona's ecosystems rife with endangered species, and multiple underlying freshwater aquifers, classified as drinking water and potential drinking water by the Los Angeles Regional Water Quality Control Board. For any action plan to be successful, there is the need to actually promote true scientific study, which for Ballona, basic hydrology studies have been nonexistent. Only unacceptable hydraulics studies of the Ballona Channel were undertaken. The Ballona Channel was never a part of the Ecological Reserve therefore use of Prop. 12 funds for an area outside the Ecological Reserve is now part of a Department of Finance Complaint regarding the Ca. Coastal Conservancy's ill use of public bond funds. There is also, at least one ongoing litigation against the Coastal Conservancy for improper bond fund use.

Ballona has been acknowledged as a Groundwater Dependent Ecosystem (GDE) and is subject to protection and studies under the Sustainable Groundwater Management Act. Prudent GDE evaluation of Ballona has only started. The Groundwater Protection Agencies' final report was recently submitted to the Department of Water Resources. Its focus, as many GPA reports, was upon Drinking Water Wells hence the GDE portions of study must be done. The Report identifies data gaps per the lack of monitoring wells along the southern coastal area of the Santa Monica Subbasin (wherein lies Ballona) that would help to monitor for saltwater intrusion and the negative effects of saltwater contamination upon the freshwater aquifers.

Thus far, via public support and prevailing Grassroots Coalition litigation against both Playa Vista and CDFW for draining and wasting Ballona's freshwater resources to the ocean has ended the illegal drainage of portions of Ballona Wetlands. Thanks to support from the California Coastal Commission for citing that the unpermitted drainage was a violation of the Coastal Act and had harmed the hydrology of Ballona, CDFW and Playa Vista were compelled to seal the drains. The area again ponds with rainwater and the targeted for protection saltmarsh habitat--pickleweed is again flourishing across the area. Playa Vista and CDFW as a board member of Playa Vista's - Ballona Conservancy still divert great amounts of pumped/cleansed groundwater away from Ballona via either wasting to the sanitary sewer or the ocean via the MAIN DRAIN out of the Playa Vista catch basin. We continue to work to end this wasting of Ballona's plentiful freshwater resources one National Pollutant Discharge Permit (NPDES) after another to restore Ballona.

However, we are deeply concerned that multiple state agencies have endorsed a re-engineering plan for the Ballona Wetlands that would actually hasten the loss of critical marsh habitat to sea level rise, according to modeling done in the California Department of Fish & Wildlife's (CDFW) Final Environmental Impact Report (FEIR). Please note the maps below that are from the Ballona FEIR.

#### **RED FLAG WARNING-**

A December 2021 Sustainability Study of Bolsa Chica Wetlands reveals that after a 15 year experiment that opened Bolsa Chica with an artificially engineered full tidal opening the area has become open saltwater and mudflats that has destroyed the saltmarsh habitat. The Report cites to the uncontrollable saltwater influence and the unsustainable cost and ecological harm from having to regularly dredge out the tidal inlet. The Report recommends there must be immediate REMEDIATION of the RESTORATION attempted in order to bring back the targeted protection of its salt marsh. The targeted endangered species, the Belding's Savannah Sparrow numbers have declined. The new report advises the CLOSURE OF THE ENGINEERED TIDAL OPENING and to rely upon freshwater resources to restore the salt marsh.

<https://bclandtrust.org/> Scroll down to bottom right hand side of page = BCSAS Bolsa Chica Sustainable Alternatives Study ; news story ..

Grassroots Coalition agrees with the comment made to the CNRA AND OPC by the Ballona Wetlands Land Trust-

*If multiple state agencies are willing to endorse such a clearly deficient plan, rather than simply acknowledging that the plan was poorly thought out and poorly designed, then the entire state-wide effort to address sea level rise would appear to be vulnerable to politics as usual. This would imperil the success of the effort and of the future sustainability of the California Coast.*

The following maps of the FEIR reveal the same failures as Bolsa Chica has experienced with habitat turning into open saltwater and mudflats.

The below maps are from a State Coastal Conservancy [staff presentation](#) and can also be found in the [EIR](#) for the proposed plan.

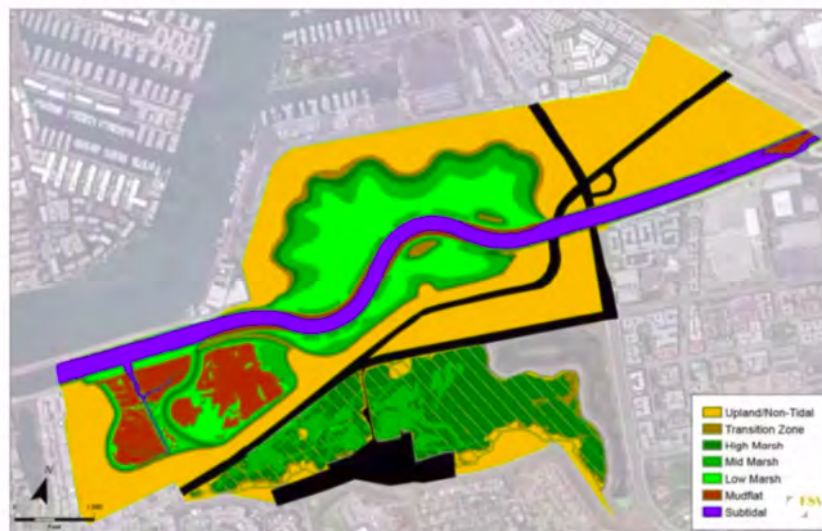
# Will sea level rise impact the restored wetlands?



Ballona Wetlands  
Restoration Project

Figure 2-37  
Habitat Evolution with Sea Level Rise: 2030 Projection (9 in of Sea Level Rise)

2-148

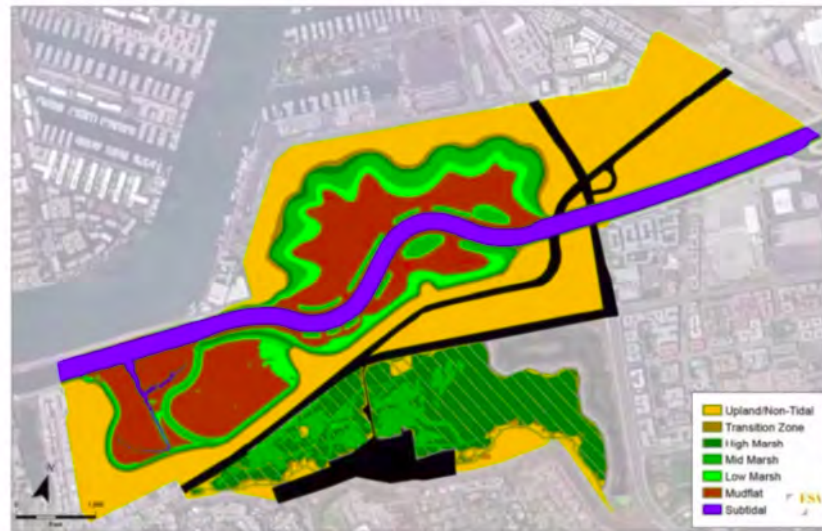


Ballona Wetlands  
Restoration Project

Figure 2-38  
Habitat Evolution with Sea Level Rise: 2050 Projection (19 in of Sea Level Rise)

2-149



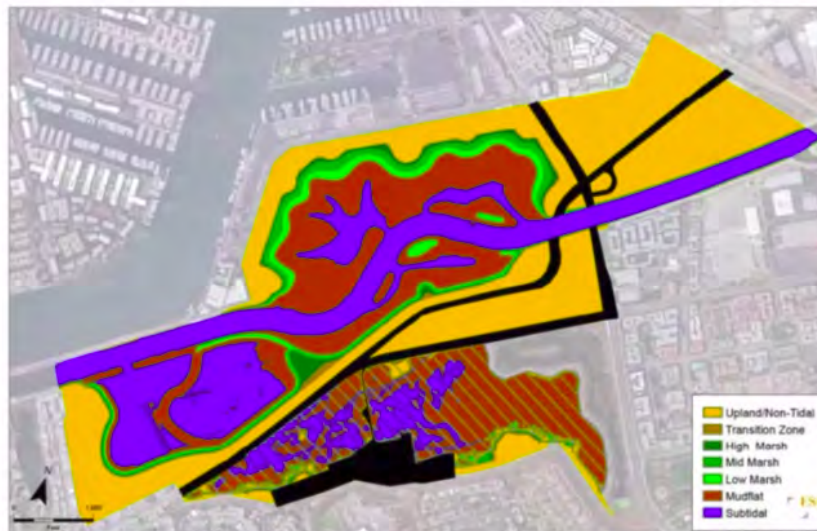


Ballona Wetlands  
Restoration Project

Habitat Evolution with Sea Level Rise: 2070 Projection (32 in of Sea Level Rise)

Figure 2-39

2-150



Ballona Wetlands  
Restoration Project

Habitat Evolution with Sea Level Rise: 2100 Projection (59 in of Sea Level Rise)

Figure 2-40

2-151

Grassroots Coalition also supports the following comments made by the Ballona Wetlands Landtrust;

*During the Conservancy presentation, staff acknowledged that even based on older sea level rise projections, most of the site would convert to mudflat with only "fringe marsh" remaining, and that actual sea level rise is likely to exceed earlier projections.. This would lead to the extirpation of multiple marsh-dependent species, including the state endangered Belding's Savannah Sparrow and other sensitive species such as the South Coast Marsh Vole and Wandering Skipper. Claims by the Conservancy staff presenter that sea*

*level rise impacts would be worse without the proposed design are misleading on several levels. First, options for restoration aren't limited to either the current project design or doing nothing. Second, the EIR for Ballona indicates that it would be 50 to 80 years before the existing tide gates would need to be closed in response to sea level rise, whereas habitats would begin to be inundated almost immediately under the current project design..*

*It is beyond alarming that the agencies entrusted with protecting our coastal resources are spinning these maps as showing resilience to sea level rise when they clearly show a surrender of coastal marsh to sea level rise inundation. It is important that science not be replaced with marketing with regard to the management of this important ecosystem.*

Grassroots Coalition also requests that the California Natural Resources Agency and Ocean Protection Council publicly acknowledge that the maps of anticipated habitat that would result from sea level rise under the proposed project design do not reflect "a critical buffer" against sea level rise and instead reflect an unacceptable outcome. Without such clarity and candor from CNRA and OPC on such a straightforward and important issue, the statewide action plan will lack credibility,

It is time to protect our earth's natural resources and have honesty in actions toward that endeavor.

Patricia McPherson, Grassroots Coalition

**From:** patriciamcpherson1@verizon.net <patriciamcpherson1@verizon.net>

**Sent:** Thursday, June 9, 2022 9:35 AM

**To:** ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

**Subject:** Fwd: PUBLIC COMMENT June 2022 CCC Meeting/. Item 6e Public Trust Principles & Action Plan (BWER and applicability of public trust doctrine)

June 9, 2022

Good Morning Executive Staff,

in review of Correspondence of Item 6e, it appears that staff has left out this correspondence from Grassroots Coalition that is

specific to Public Trust issues. Please add this correspondence to our filing for item 6e and as part of our submission for the CCC Public Trust/Action Plan.

Thank you,

Patricia McPherson, Grassroots Coalition

-----Original Message-----

From: [patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net) <[patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net)>

To: [executivestaff@coastal.ca.gov](mailto:executivestaff@coastal.ca.gov) <[executivestaff@coastal.ca.gov](mailto:executivestaff@coastal.ca.gov)>

Cc: [saveballona@hotmail.com](mailto:saveballona@hotmail.com) <[saveballona@hotmail.com](mailto:saveballona@hotmail.com)>; [jennifer.lucchesi@slc.ca.gov](mailto:jennifer.lucchesi@slc.ca.gov) <[jennifer.lucchesi@slc.ca.gov](mailto:jennifer.lucchesi@slc.ca.gov)>; [jwaldron@bos.lacounty.gov](mailto:jwaldron@bos.lacounty.gov) <[jwaldron@bos.lacounty.gov](mailto:jwaldron@bos.lacounty.gov)>; [lmuraida@bos.lacounty.gov](mailto:lmuraida@bos.lacounty.gov) <[lmuraida@bos.lacounty.gov](mailto:lmuraida@bos.lacounty.gov)>; [jwilson@bos.lacounty.gov](mailto:jwilson@bos.lacounty.gov) <[jwilson@bos.lacounty.gov](mailto:jwilson@bos.lacounty.gov)>; [sheila@bos.lacounty.gov](mailto:sheila@bos.lacounty.gov) <[sheila@bos.lacounty.gov](mailto:sheila@bos.lacounty.gov)>; [dgonzalez@bos.lacounty.gov](mailto:dgonzalez@bos.lacounty.gov) <[dgonzalez@bos.lacounty.gov](mailto:dgonzalez@bos.lacounty.gov)>; [zgaidzik@bos.lacounty.gov](mailto:zgaidzik@bos.lacounty.gov) <[zgaidzik@bos.lacounty.gov](mailto:zgaidzik@bos.lacounty.gov)>; [hollyjimmitchell@bos.lacounty.gov](mailto:hollyjimmitchell@bos.lacounty.gov) <[hollyjimmitchell@bos.lacounty.gov](mailto:hollyjimmitchell@bos.lacounty.gov)>; [sfreeman@bos.lacounty.gov](mailto:sfreeman@bos.lacounty.gov) <[sfreeman@bos.lacounty.gov](mailto:sfreeman@bos.lacounty.gov)>; [executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov) <[executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov)>; [lrichards@bos.lacounty.gov](mailto:lrichards@bos.lacounty.gov) <[lrichards@bos.lacounty.gov](mailto:lrichards@bos.lacounty.gov)>; [ben.allen@sen.ca.gov](mailto:ben.allen@sen.ca.gov) <[ben.allen@sen.ca.gov](mailto:ben.allen@sen.ca.gov)>; [olina.wibroe@sen.ca.gov](mailto:olina.wibroe@sen.ca.gov) <[olina.wibroe@sen.ca.gov](mailto:olina.wibroe@sen.ca.gov)>; [secretary@resources.ca.gov](mailto:secretary@resources.ca.gov) <[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)>; [katharine.moore@sen.ca.gov](mailto:katharine.moore@sen.ca.gov) <[katharine.moore@sen.ca.gov](mailto:katharine.moore@sen.ca.gov)>; [ari.ruiz@asm.ca.gov](mailto:ari.ruiz@asm.ca.gov) <[ari.ruiz@asm.ca.gov](mailto:ari.ruiz@asm.ca.gov)>; [amy.hutzel@scc.ca.gov](mailto:amy.hutzel@scc.ca.gov) <[amy.hutzel@scc.ca.gov](mailto:amy.hutzel@scc.ca.gov)>; [keely.bosler@dof.ca.gov](mailto:keely.bosler@dof.ca.gov) <[keely.bosler@dof.ca.gov](mailto:keely.bosler@dof.ca.gov)>; [hamilton.cloud@mail.house.gov](mailto:hamilton.cloud@mail.house.gov) <[hamilton.cloud@mail.house.gov](mailto:hamilton.cloud@mail.house.gov)>; [director@wildlife.ca.gov](mailto:director@wildlife.ca.gov) <[director@wildlife.ca.gov](mailto:director@wildlife.ca.gov)>; [edwardc@westbasin.org](mailto:edwardc@westbasin.org) <[edwardc@westbasin.org](mailto:edwardc@westbasin.org)>; [valerie.termini@fgc.ca.gov](mailto:valerie.termini@fgc.ca.gov) <[valerie.termini@fgc.ca.gov](mailto:valerie.termini@fgc.ca.gov)>

Sent: Fri, May 20, 2022 3:52 pm

Subject: PUBLIC COMMENT June 2022 CCC Meeting/. Item 6e Public Trust Principles & Action Plan (BWER and applicability of public trust doctrine)

Executive Staff and Coastal Commission Board Members,

This document is 3 of 3 submissions to Item 6 e. by Grassroots Coalition

Ballona Wetlands and a Memo on the applicability of the Public Trust Doctrine is provided for your review in the attached document as part of Grassroots Coalition's submission of comments and requests per the Coastal Commission's (CCC) Public Trust Principles and Action Plan--Item 6e for Thursday, June 9, 2022. Grassroots Coalition supports the recently researched and written Memo per the Ballona Wetlands Ecological Reserve and the Applicability of the Public Trust Doctrine by Seth Weisbord. We look forward to discussing the thoughtful and thought provoking MEMO with you as part of the CCC's engagement opportunities at Ballona and as part of the CCC's Public Trust Action Plan.

Thank you for your review of this compelling information,  
Patricia McPherson, Grassroots Coalition

## BEWR public trust

Seth Weisbord

The California Department of Fish and Wildlife (CDFW) owns the Ballona Ecological Wetlands Reserve (BEWR) and holds it in "public trust" for the benefit of the public. As the trustee, CDFW must comply with the purpose and terms of the trust, and owes certain substantive and procedural fiduciary duties in carrying out the trust as well as to members of the public.

Although specifically provided for by statute and regulation, as explained below, the "public trust" construct draws from the ancient yet enduring public trust principle, which safeguards crucial natural resources as common property belonging to each and every beneficiary citizen. (Mary Wood, "Nature's Trust")

Title 14 California Code of Regulations, Section 630, which applies specifically to the Ballona reserve, designates it as "an ecological reserve for the protection of coastal salt marsh and freshwater habitats, and associated species...The area is also an important wildlife movement corridor to other public lands in the vicinity of the wetlands...The reasons for listing this property in Title 14 are to...provide the best available protection for the species and habitats the property was acquired to protect..."

Seen as establishing a public trust, Sec. 630 names as the ecological resources held in the trust:

Coastal salt marsh and freshwater habitats

Associated species

Other animals which depend on the reserve, such as migratory birds

Wildlife movement corridor for area species

Section 630 itself doesn't explicitly provide that the ecological resources are held in trust for the benefit of the public.



But by the clear language of related statutes, and their proper interpretation, the law emphatically provides that BWER is held in public trust, with its owner, CDFW, acting as trustee.

Fish and Game Code section 15386 designates CDFW as a "trustee agency" for purposes of CEQA, holding in trust for the people of the State of California, its fish and wildlife, and designated rare or endangered native plants.

Perhaps most important, Fish and Game Code Section 711.7 explicitly provides that "the fish and wildlife resources are held in trust for the people of the state by and through the department (CDFW)."

Another statute, Fish and Game Code Section 1580, speaks specifically to ecological reserves, stating they provide protection to "...threatened or endangered native plants, wildlife...or specialized habitat types...for the future use of humankind through the establishment of ecological reserves".

Although it doesn't explicitly say the ecological assets Section 1580 names are held in public trust, the main trust assets are specified--the ecological resources, the plants and animals. The beneficiaries are specified as well, with the term "humankind". In any case, if there's any doubt, Section 1580 and above all Section 630 should be read and applied in a manner that's consistent with the broader context maintained by Section 711.7, which does specifically state that wildlife resources are held in public trust.

Finally, Fish and Game Section 1801, similarly to Section 1580, first lays out the public trust's resources--wildlife resources--and then describes the beneficiaries as "all citizens of the state". Again, as with Section 1580, Section 1801 should be understood in the broader context of Section 711.7, which explicitly cites a public trust.

In addition to these statutes, the Commission of Fish and Game affirms on its website that its stewardship of ecological resources takes the form of a public trust, declaring, "We embrace our responsibility to hold California's fish and wildlife and habitats in public trust...(Fish and Game Commission Strategic Plan Mission Statement)The Commission also states, "We hold the estate's wildlife and their habitats and ecosystems in trust for the public."

In thinking about the department's mandated future efforts, the first issue is what are the terms of the trust. Actions by the department must be carried out according to trust terms. (Probate Code Section 16002).

Taken together, the provisions of Section 630 and of the Land Management Plan constitute the guiding trust language, if not in each and every specific.

The Land Management Plan, required by Fish and Game Section 1019, specifies "...[the plan]" serves as a descriptive inventory of fish, wildlife, and native plant habitats that occur on or use the property..." and the plan "...guide[s] management of habitats, species, and programs described in the LMP..."

As stated above, the purpose of the trust is two-fold. The first purpose is to protect the designated habitats. The second is to provide the best available protection to the associated species they help sustain.

Dr. Margot Griswold puts the mandate more broadly, writing that the overarching purpose of the 630 trust can be characterized as "...the restoration, rehabilitation and re-establishment of the history and currently existing habitats at BWER."

The department has two kinds of fiduciary duties in managing the trust. First are its substantive obligations, to ensure that what it's doing furthers the trust's purposes and doesn't detract from them.

CDFW, as trustee, has a fiduciary duty to further the trust's substantive purposes and provisions, and its relevant terms. It can't ignore or avoid its duties as they're described, or unilaterally decide on any terms of ownership or operation it might prefer if such preferences don't further the trust's purposes. Bound to comply, it's incumbent upon CDFW to provide the "best available" protection to the reserve's habitats and the plants and animals who depend on them.

In addition to these substantive duties, CDFW's actions are guided by procedural fiduciary duties. Instead of spelling out the "what" of the department's actions, these procedural duties lay out the "how"—how the department's different relevant

actions, processes and decisions in pursuing its 630 purposes are managed and put into motion.

Perhaps foremost of its procedural duties is the fiduciary duty of loyalty. (California Probate Code Section 16002). CDFW owes loyalty to the trust's guiding purposes and terms. And it owes loyalty to the public, as its common beneficiaries, to do what it's legally obligated to.

In addition to its duty of loyalty, CDFW has a duty not to waste the trust's biological and ecological assets-that is, it must work to ensure the protected habitats and species not lose ground. Statutory expression of this no waste fiduciary duty appears, in part, in Fish and Game Section 1801, which states it's the policy of the state "to encourage the preservation, conservation, and maintenance of wildlife resources..." and goes on to say in (a) that in carrying out these overarching duties, the state is obligated "to maintain sufficient populations of all species of wildlife and the habitat necessary to do so".

Further, Section 630 implies a duty not to waste in calling for the "best available protection" of its habitats and associated animals. This suggests the department is obligated to act to avoid the waste of its ecological resources.

Another critical set of procedural duties is set out in Probate Code Section 16040 (a), requiring trustees to administer the trust "with reasonable care, skill and caution".

Having been involved as the lead agency in preparing an EIR for Ballona doesn't necessarily relieve the department of its duties as trustee. Generally stated, a CEQA review of a project doesn't necessarily or automatically satisfy the agency's affirmative duties to take a trust into account and protect public trust uses whenever feasible. (San Francisco Baykeeper, Inc.v. California State Lands Commission)