

**CALENDAR ITEM
C52**

A 73, 74

S 38

10/22/09
PRC 7242.9
W 20725.204
D. Brown
J. Rader

**REQUEST AUTHORITY FOR EXECUTIVE OFFICER TO EXECUTE
THE FIRST AMENDMENT TO THE BATIQUITOS LAGOON HABITAT
RESTORATION AGREEMENT, TO EXECUTE AN INTERAGENCY AGREEMENT
TO RECEIVE FUNDS AND RECOVER STAFF COSTS FOR MANAGING THE
MAINTENANCE DREDGING OF THE LAGOON INLET AND OTHER AREAS AS
DIRECTED BY PARTIES TO THE HABITAT AGREEMENT AND, AS TRUSTEE TO
THE KAPILOFF LAND BANK FUND, ACCEPT MITIGATION FUNDS
FOR THE PURPOSE OF CONDUCTING MAINTENANCE DREDGING
OF BATIQUITOS LAGOON IN SAN DIEGO COUNTY**

PARTY:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

BACKGROUND:

At its September 23, 1987 meeting, the California State Lands Commission (Commission) authorized the Executive Officer to enter into a Habitat Restoration Agreement (Agreement) with the city of Los Angeles, the city of Carlsbad, the California Department of Fish and Game, the National Marine Fisheries Service, and the United States Fish and Wildlife Service (Parties) to establish a project in order to compensate marine habitat losses incurred by port development landfills, within the Harbor District of the city of Los Angeles, by conducting marine habitat enhancement at Batiquitos Lagoon located near the city of Carlsbad in San Diego County. As part of that Agreement, compliance with the California Environmental Quality Act (CEQA)/ National Environmental Policy Act (NEPA) was required and a Final Environmental Impact Report/Statement (FEIR/S) was prepared for the Batiquitos Lagoon Enhancement Project (SCH No. 88080328) and approved by the city of Carlsbad and Army Corps of Engineers in 1990. The Batiquitos Lagoon Enhancement Project was undertaken as mitigation for the loss of deep water fish habitat due to channel improvements and construction of landfill for cargo terminals at the Port of Los Angeles.

CALENDAR ITEM NO. C52 (CONT'D)

On December 7, 1996, after seven years of planning, nearly three years of construction and total expenditures of \$55 million by the Port of Los Angeles, the Lagoon was dredged, least tern nesting sites were created and the mouth of Batiquitos Lagoon was permanently opened. The Agreement specifies that the California Department of Fish and Game (CDFG) will assume management responsibilities for the project. The Commission has leased its interest in Batiquitos Lagoon to the CDFG for management as part of the Batiquitos Lagoon Ecological Reserve.

The restoration of Batiquitos Lagoon has been a success. Numerous species of marine fish use the Lagoon for shelter, feeding, and as a nursery. Habitats and communities that had not been seen in the Lagoon for years appear to be thriving. In addition, many species of birds, including special-status species, use the Lagoon for foraging and nesting.

PROPOSED ACTIVITY:

The Parties propose an amendment to the Habitat Restoration Agreement that will clarify the roles of the Parties in relation to the determination of when and where dredging would be appropriate and allow the CDFG to direct funding to another entity to conduct the maintenance dredging. All Parties are in agreement regarding the proposed changes.

The proposed entity to contract for and oversee the initial dredging would be the Commission staff who have experience in large scale dredging projects such as that just completed at Bolsa Chica. An interagency agreement between the Commission and the CDFG will be drafted to facilitate the transfer of funds from the Maintenance Account held by the CDFG. Commission staff will place the funds in an interest bearing account within the Kapiloff Land Bank fund pursuant to Public Resources Code Section 8625 (b) for disbursement as needed to pay contractors and recover Commission staff costs as authorized by Section 8613 (b).

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code Section 6106 (Delegation to execute written instruments)
- B. Government Code Section 11256 (Interagency Agreements)
- C. Public Resources Code Section 6306.1 (Batiquitos Lagoon Restoration and Mitigation Project).
- D. Public Resources Code Section 8625 (b) (Acceptance of mitigation funds)
- E. Public Resources Code Section 8613 (b) (Expenditure of mitigation funds)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE ON BEHALF OF THE COMMISSION, THE FIRST AMENDMENT TO THAT "AGREEMENT AMONG THE CITY OF LOS ANGELES, THE CITY OF CARLSBAD, THE CALIFORNIA DEPARTMENT OF FISH AND GAME, THE CALIFORNIA STATE LANDS COMMISSION, THE NATIONAL MARINE FISHERIES SERVICE, AND THE UNITED STATES FISH AND WILDLIFE SERVICE, TO ESTABLISH A PROJECT FOR COMPENSATION OF MARINE HABITAT LOSSES INCURRED BY PORT DEVELOPMENT LANDFILLS WITHIN THE HARBOR DISTRICT OF THE CITY OF LOS ANGELES BY MARINE HABITAT ENHANCEMENT AT BATIQUITOS LAGOON" SUBSTANTIALLY IN THE FORM OF THAT ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION.
3. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF FISH AND GAME TO RECOVER STAFF COSTS FOR CONTRACTING FOR AND MANAGING THE DREDGING AND ANCILLARY ENGINEERING SERVICES TO PERFORM MAINTENANCE DREDGING AT BATIQUITOS LAGOON AND ITS INLET.
4. AS TRUSTEES OF THE KAPILOFF LAND BANK FUND, AUTHORIZE STAFF TO ACCEPT AND EXPEND FUNDS FOR THE PURPOSE OF CONDUCTING MAINTENANCE DREDGING AT THE BATIQUITOS LAGOON AND ITS INLET AND RECOVER STAFF EXPENSES.
- 5.. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE TERMS OF THE AGREEMENT DESCRIBED IN PARAGRAPHS 2 AND 3, THERE OF.