

CALENDAR ITEM

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**CONSIDER A MEMORANDUM OF INTENT BETWEEN THE CALIFORNIA STATE
LANDS COMMISSION AND THE PORT OF LOS ANGELES RELATING TO THE
BOLSA CHICA LOWLANDS RESTORATION PROJECT**

PARTIES:

California State Lands Commission

Port of Los Angeles

BACKGROUND:

In 1996, the Commission and the Port of Los Angeles, along with seven other state and federal agencies and the Port of Long Beach partnered in an unprecedented collaboration to restore and preserve a large area of the Bolsa Chica Lowlands Project (Project). The Project created or rehabilitated nearly 600 acres of marine and wetland habitat in Orange County, restoring part of what had historically been a vast estuarine ecosystem. The Project was a cooperative effort involving partnership through an Interagency Agreement among the California State Lands Commission, California Department of Fish and Wildlife, State Coastal Conservancy, California Natural Resources Agency, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, National Marine Fisheries Service, and the U.S. Environmental Protection Agency. Out of the \$151 million available for the Project, \$101.4 million came from the ports in exchange for mitigation credits needed to expand their multi-modal services, which included new fill in San Pedro Bay. The Project is the largest tidal wetland restoration in Southern California history. Post-restoration monitoring has shown that the Project has meaningfully increased the availability of tidal habitat, improving southern California fishery resources. In addition, increases in habitat quantity and quality at the Bolsa Chica Lowlands have greatly enhanced its role as a critical stop for migrating birds on the Pacific Flyway.

The current management structure of the Project is governed by the Interagency Agreement: although the Commission holds land title, administers the management funds and performs general management oversight for the Project, all expenditures and key management decisions are made by an

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oversight committee composed of representatives from the Commission, NMFS, USFWS, EPA, USACE, and CDFW (the "Managing Agencies"), pursuant to the Interagency Agreement.

The Project is now facing a critical funding deficiency. The \$15 million set aside for ongoing maintenance of the restored wetland is inadequate to meet long term adaptive management needs. The Project restoration design requires management of an open ocean inlet to ensure the continued functioning of the wetlands and to protect the biological benefits gained by the restoration investment. Other ongoing management costs include on-site California Department of Fish and Wildlife staff, repairs, maintenance and consultants, for an estimated total operational cost of \$3 million annually.

Under the agreement with the Ports of Los Angeles and Long Beach establishing the Project, mitigation credits were granted for full tidal fish and wildlife habitats, for the creation of Bolsa Chica's tidal inlet, and for restoration of muted, tidally influenced habitat within the Project's Muted Tidal and Muted Pocket Areas. No mitigation credits were granted for creation of eelgrass habitat. The establishment of eelgrass within the Project was not a requirement of the restoration plan for which the Ports of Los Angeles and Long Beach received mitigation credits, and was established after the completion of the restoration and the Ports' compensatory mitigation requirements. As such, Commission staff believes the unassigned eelgrass habitat is available for mitigation purposes. A small scale planting effort of approximately one acre was initiated by volunteers. Within five years the eelgrass was well established, with the 2011 surveys documenting well over 100 acres of eelgrass in the Full Tidal Basin.

PROPOSED MEMORANDUM OF INTENT:

The purpose of the proposed Memorandum of Intent is to memorialize the Parties' intent and commitment to expeditiously pursue establishing a mechanism whereby the Port of Los Angeles contributes \$250,000 per year for 10 years or a one-time payment of \$2,500,000 for enhancement and continued adaptive management of the Project and efforts toward the development and approval of a mitigation bank or other mechanism that allows the sale of eelgrass mitigation credits, in exchange for future mitigation credits associated with the creation of eelgrass habitat at the Project.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted

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sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems.

2. The authorization to sign the Memorandum of Intent is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5)

EXHIBIT:

- A. Memorandum of Intent between the California State Lands Commission and the Port of Los Angeles

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

Authorize the Executive Officer or her designee to execute the Memorandum of Intent, substantially in the form attached as Exhibit A, between the California State Lands Commission and the Port of Los Angeles.



EXHIBIT A

Memorandum of Intent

I. INTRODUCTION

This Memorandum of Intent is between the California State Lands Commission (Commission) and the Port of Los Angeles (collectively referred to as “Parties”). The purpose of this Memorandum of Intent is to memorialize the Parties’ intent and commitment to expeditiously pursue establishing a mechanism whereby the Port of Los Angeles contributes \$250,000 per year for 10 years or a one-time payment of \$2,500,000 to purchase future mitigation credits associated with the creation of eelgrass habitat at the Bolsa Chica Lowlands Restoration Project (Project). These funds shall be used by the Commission for the development and approval of a mitigation bank or other mechanism that allows the sale of eelgrass mitigation credits, the continued adaptive management of the ecological system (including tidal inlet maintenance) and enhancement of the eelgrass habitat at the Project.

II. BACKGROUND

In 1996, the Commission and the Port of Los Angeles, along with seven other state and federal agencies and the Port of Long Beach partnered in an unprecedented collaboration to restore and preserve a large area of the Bolsa Chica Lowlands. The Project created or rehabilitated nearly 600 acres of marine and wetland habitat in Orange County, California, restoring part of what had historically been a vast estuarine ecosystem. The project was a cooperative effort involving partnership through an Interagency Agreement among the California State Lands Commission, California Department of Fish and Wildlife (CDFW), State Coastal Conservancy, California Natural Resources Agency, U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE, National Marine Fisheries Service (NMFS), and the U.S. Environmental Protection Agency (EPA). Out of the \$151 million available for the Project, \$101.4 million came from the ports in exchange for mitigation credits needed to expand their multi-modal services, which included new fill in San Pedro Bay. The Project is the largest tidal wetland restoration in Southern California history. Post-restoration monitoring has shown that the Project has meaningfully increased the availability of tidal habitat, improving southern California fishery resources. In

addition, increases in habitat quantity and quality at the Bolsa Chica Lowlands, have greatly enhanced its role as a critical stop for migrating birds on the Pacific Flyway.

The current management structure of the Project is governed by the Interagency Agreement: although the Commission holds land title, administers the management funds and performs general management oversight for the Project, all expenditures and key management decisions are made by an oversight committee composed of representatives from the Commission, NMFS, USFWS, EPA, USACE, and CDFW (the "Managing Agencies"), pursuant to the Interagency Agreement.

The Project is now facing a critical funding deficiency. The \$15 million set aside for ongoing maintenance is inadequate to meet the long term adaptive management needs. The Project restoration design requires management of an open ocean inlet, to ensure the continued functioning of the wetland and to protect the biological benefits gained by the restoration investment. Other ongoing management costs include on-site California Department of Fish and Wildlife staff, repairs, maintenance and consultants, for an estimated total operational cost of \$3 million annually.

Under the agreement with the Ports of Los Angeles and Long Beach establishing the Project (Interagency Agreement), mitigation credits were granted for fish and wildlife habitats, for the creation of Bolsa Chica's tidal inlet, and for restoration of muted, tidally influenced habitat within the Project's Muted Tidal and Muted Pocket Areas. No mitigation credits were granted for creation of eelgrass habitat. The establishment of eelgrass within the Project was not a requirement of the restoration plan for which the Ports of Los Angeles and Long Beach received mitigation credits, and was established after the completion of the restoration and the Ports' compensatory mitigation requirements. As such, the California State Lands Commission believes the unassigned eelgrass habitat is available for mitigation purposes. A small scale planting effort of approximately 1 acre was initiated by volunteers. Within 5 years the eelgrass was well established, with the 2011 surveys documenting well over 100 acres of eelgrass in the Full Tidal Basin.

III. PURPOSE AND COMMITMENT

The Parties, recognizing the importance of both enhancement and continued adaptive management of the Project and strong protection of the significant biological, physical and economic values eelgrass habitat provides, commit to working together to provide eelgrass mitigation credits to the Port and the Commission can ensure the appropriate funding of the management requirements of the Project in order to sustain and enhance the ecological functions and value of the eelgrass habitat, and toward the development of establishing regulatory approved eelgrass habitat mitigation credits.

The California State Lands Commission commits to using its best efforts to offer eelgrass habitat mitigation credits through the development of a mitigation bank or other mechanism, consistent with the regulatory requirements of the relevant state and federal wildlife and resource agencies.

The Port of Los Angeles commits to pursuing an agreement with the State Lands Commission and the other Managing Agencies to provide either an amount of \$250,000 per year for 10 years or a one-time payment of \$2,500,000 for the purchase of future eelgrass mitigation credits. Funds shall be used by the Commission for the development and approval of a mitigation bank or other mechanism that allows the sale of eelgrass mitigation credits to the Port of Los Angeles and others, and the adaptive and continued management and sustenance of the ecological system and enhancement of the eelgrass habitat. In exchange, the Port of Los Angeles shall have first right of refusal to purchase eelgrass mitigation credits from an agreed-upon reserve amount of credits set aside for the Port of Los Angeles from the total approved credits. The \$250,000 per year for 10 years or a one-time payment of \$2,500,000 received from the Port of Los Angeles will be credited toward the purchase of eelgrass mitigation credits at the time of purchase. The Parties acknowledge that, pursuant to the Interagency Agreement, the Commission manages the Project with the participation of the Managing Agencies. Activities at the Project are subject to the Interagency Agreement, and all expenditures and major management decisions are subject to the approval of the Managing Agencies. The Commission does not foresee any conflicts between the Interagency Agreement and this Memorandum of Intent. However, in the event any conflict arises, the Interagency Agreement shall prevail over this Memorandum of Intent.

This Memorandum of Intent shall expire on the effective date of the agreement pursued pursuant to this Memorandum of Intent, or twelve (12) months from its execution by both parties, whichever is earlier.

IV. APPROVALS

California State Lands Commission

Port of Los Angeles

Date: _____

Date: _____