

MINUTE ITEM
This Calendar Item No. 30
was approved as Minute Item
No. 30 by the State Lands
Commission by a vote of 3
to 0 at its 5/31/89
meeting.

CALENDAR ITEM

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AUTHORIZE A MEMORANDUM OF AGREEMENT (MOA)
WITH THE UNITED STATES ARMY CORPS OF ENGINEERS
FOR CONDUCTING ENVIRONMENTAL STUDIES AT
BOLSA CHICA, ORANGE COUNTY

APPLICANT: State Lands Commission
1807 - 13th Street
Sacramento, California 95814

The 1989-90 State Budget allocates, to the Commission, the sum of \$250,000 from the California Environmental License Plate Fund for the United States Army Corps of Engineers to conduct studies at Bolsa Chica.

Originally, this money was proposed to be used to assist the Corps in its Sunset Harbor Feasibility Study. The Study was to consider several land use alternatives, including the Orange County Land Use Plan (LUP) alternatives which were conditionally certified by the California Coastal Commission in January 1986. For the past six months, the Bolsa Chica Planning Coalition has been working on an alternative Concept Plan for Bolsa Chica. This Plan, agreed on by the Coalition on May 22, 1989, includes neither a navigable ocean entrance system nor a marina development with associated visitor-serving facilities. If this Plan proceeds in its present configuration, it is unlikely that the Corps will complete its Feasibility Study. However, the Corps is expected to have to issue a permit for some part of the development and/or wetlands restoration which has been proposed for Bolsa Chica.

Accordingly, staff proposes that the Commission enter into a contract with the Corps' Los Angeles District to govern the expenditure of the \$250,000 from the Environmental License

CALENDAR ITEM NO. 30 (CONT'D)

Plate Fund for the conduct of studies which would assist the Commission, the Corps, and other federal, state, and local agencies in their decision-making processes.

Attached, as Exhibit "A", is a copy of a proposed Memorandum of Agreement (MOA) between the United States Army Corps of Engineers and the Commission. Such studies would begin in June 1989.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes there is no possibility that this project may have a significant effect on the environment.

Authority: 14 Cal. Code Regs. 15061(b)(3).

EXHIBIT: A. Proposed MOA.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT 14 CAL. CODE REGS. 15061 BECAUSE THERE IS NO POSSIBILITY THAT IT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT [14 CAL. CODE REGS. 15061 (b)(3)].

2. AUTHORIZE THE EXECUTIVE OFFICER TO ENTER INTO A MEMORANDUM OF AGREEMENT, SUBSTANTIALLY IN THE FORM PRESENTED IN EXHIBIT "A", WITH THE UNITED STATES ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT, FOR THE CONDUCT OF STUDIES AT BOLSA CHICA.

19 MAY 1989

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF CALIFORNIA, STATE LANDS COMMISSION
AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

THIS AGREEMENT is entered into this _____ day of _____, 1989, by and between the U.S. Army Corps of Engineers, Los Angeles District (hereinafter referred to as the "CORPS"), and the State of California, State Lands Commission (hereinafter referred to as "SLC"), pursuant to the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6505) and Section 922 of the Water Resources Development Act of 1986 (WRDA 1986).

RECITALS

WHEREAS, the SLC is reviewing plans developed or being developed for wetland protection, restoration, enhancement and creation, and if necessary for use in conjunction with such wetland improvement, a new ocean entrance system in the Bolsa Chica area of the County of Orange, California, involving property owned by the State and by private interests;

WHEREAS, the County of Orange, California, is preparing a Land Use Plan (hereinafter "LUP") as part of its Local Coastal Program for the Bolsa Chica area as required by the California Coastal Act of 1976;

WHEREAS, in order to obtain information to be used in fulfilling the requirements of the California Coastal Act (CCA), California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), Clean Water Act (CWA) and other pertinent laws and requirements for future Federal/Corps regulatory permit actions, the CORPS is requested by the SLC to perform specific technical, administrative and/or logistical support in initiating and managing a study or studies and/or a contract(s) which may include offshore/marine surveys, biological surveys of "prime habitat", wetland valuation and use surveys and analyses, archeological surveys and analysis, and model studies which may be performed by the CORPS' Waterways Experiment Station (hereinafter referred as "CEWES") for plan(s) selected by the SLC or its designated staff representative(s), and development of alternative wetland restoration plans for the Bolsa Chica area;

WHEREAS, the work can be accomplished within the existing and projected Division (CORPS) manpower allocations for the duration of the program; the work will not require a cumulative commitment, regardless of time, in excess of five Full Time Equivalent employees for the Division; the work is within the

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Division's civil works boundary; and the work does not involve hazardous and toxic wastes;

WHEREAS, it is necessary and desirable that the work to be accomplished in accordance with this Agreement be conducted in increments substantially described in the study options (Appendix A), the SLC is required to pay for each study option selected by the SLC and the CORPS before such work may commence;

WHEREAS, the CORPS is ready, willing and able to perform such services in a timely manner and the SLC is willing and able to pay the full cost of such study or studies up to \$250,000;

WHEREAS, the accomplishment of the studies described in this Agreement does not obligate the Federal Government to participate in the planning, design or implementation of a project or issue a permit under the CORPS Regulatory Program, or in any way affect the CORPS separate Bolsa Chica-Sunset Bay Area Feasibility Study authorized by Section 1119(a) of the WRDA 1986;

NOW THEREFORE, in consideration of the mutual covenant and agreements herein contained, the parties hereto do mutually agree as follows:

1. PURPOSE OF STUDIES

It is understood and acknowledged by both parties that all of the studies conducted pursuant to this Agreement are being undertaken to assist the SLC in evaluating the environmental feasibility of proposed plans for Bolsa Chica and provide information necessary to address the requirements of the CCA, CEQA, NEPA, CWA and other pertinent laws.

2. STUDY AREA

The study area shall include the Bolsa Chica LUP study area, including the waters of the United States and wetlands delineated by the Environmental Protection Agency (EPA) in February 1989, and associated shoreline and offshore areas of the Pacific Ocean lying between the Anaheim Bay Jetties and the Huntington Beach Pier.

3. STUDY OPTIONS

The CORPS shall, to the extent funds are available, perform, manage, and/or contract work pertaining to the study options or increments of the study options in Appendix A and as summarized below:

a. Biological Surveys/Analysis, to define the extent and quality of the existing marine and wetland environment;

- b. Archeological Surveys and Analysis;
- c. Development of Wetland Planning and Design Criteria;
- d. Wetland Valuation and Use Surveys and Analyses; and
- e. Model Studies for Plans selected by the SLC or its designated staff representative(s) to estimate potential effects of plans on the environment.

Administrative and/or logistical support (e.g., coordination, reporting, accounting, planning, and meetings) shall be included in all of the study options.

4. SCOPE OF WORK AND SCHEDULE

Appendix A presents a list of potential study options and outlines their components. Specific scopes of work, schedules, and costs shall be determined for selected study options and work on any study shall not proceed until its scope of work has been approved and signed by the Project Managers of the SLC and the CORPS.

5. RESPONSIBILITIES OF THE CORPS

The CORPS shall:

a. Manage and execute the contract(s) for work selected from the study options described in paragraph 3 above and Appendix A, from contract development and initiation through completion, and provide any and all necessary professional services for the successful completion of the contract(s). The CORPS shall use its best efforts to manage and monitor the contract(s) within the budget and time frames set forth herein. Although the CORPS is not now aware of any events or conditions which would prohibit or interfere with their performing the work within the time period and costs set forth herein, it is recognized that the CORPS cannot warrant or guarantee that such can be accomplished within these constraints. In this regard, the CORPS shall promptly notify the SLC of any potential delays which may affect the scheduled completion of the work as agreed upon;

b. As agreed to by the parties, the CORPS staff shall perform work pertaining to the study options or increments of the options selected by the SLC or its designated staff representatives.

c. To the extent allowed by Federal law, coordinate all work closely with the SLC and appointed representatives to ensure the timely completion of surveys/studies. The CORPS shall, at a minimum, perform the following:

(1) Provide written monthly status reports to the SLC on each task by the 10th day of each month, including statements indicating the expenditure of funds for the prior month and the amount remaining in the authorized budget for completing the work;

(2) Devote its best effort to make available personnel necessary to ensure the timely completion of the tasks and studies;

(3) As funds permit, devote its best effort to make available necessary personnel for meetings with the SLC and its appointed representatives which may be requested from time to time by the SLC and its appointed staff;

(4) At the completion of each/or part of a study option the CORPS shall provide to the SLC a report on that study; and

(5) Provide for the timely review of all comments received from the SLC or its appointed staff and respond to the concerns expressed by them.

6. RESPONSIBILITIES OF THE SLC

The SLC shall:

a. Provide funds of up to \$250,000 for the cost of work or portions of work selected from the study options described in paragraph 3 and Appendix A;

b. Pay, as specified in the scope(s) of work, the full cost of the study(s). The total cost of the study means all actual costs that are incurred by the CORPS pursuant to the terms of this Agreement, not to exceed the maximum contract total of \$250,000;

c. Upon execution of this Agreement, furnish all pertinent data available for use by the CORPS for studies associated with this Agreement;

d. Coordinate with the CORPS all work necessary for the execution of the pertinent studies and/or contract(s);

e. Provide specific background information and guidance on desired study efforts, alternative plans, and/or any specific plans to be modeled by CEWES; and

f. Review all monthly status reports/budget statements, and any and all other reports or information that may be prepared by the CORPS or its contractor(s) and provide its comments to the CORPS in a timely manner.

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7. COST

a. Best efforts shall be employed to assure that all tasks described in the selected study options are executed within the budget amounts set forth in each particular scope of work and agreed upon by both parties. The costs and scopes of work shall not be revised except upon the written approval of the appointed representatives of both the SLC and the CORPS.

b. Upon execution of this Agreement and prior to commencement of work on a particular study option funds shall be provided from the SLC to the CORPS for the sum of money required for that study option.

8. PAYMENT

a. Following execution of this Agreement and prior to the start of any study, the SLC shall certify that the necessary funds are available. Not later than ten (10) days prior to the start of each selected study option the SLC shall provide funds to the CORPS in the amount equal to that which the CORPS requires for obligation during that study period.

b. Should, by mutual agreement, the CORPS and the SLC increase the work set forth in the scope(s) of work, payment for such extra work shall be in accordance with the procedures set forth herein.

c. All amounts received by the CORPS from the SLC shall be applied to the costs of the work specified in the scope(s) of work.

d. The SLC shall make its check(s) payable to: "Finance and Accounting Officer, United States Army Corps of Engineers, Los Angeles District".

e. The SLC shall mail their check(s) directly to:

USACOE
300 North Los Angeles Street
Los Angeles, California 90012
ATTN: SPLDC-F

f. Upon completion of the study(s) and resolution of any contract claims and appeals, the CORPS shall compute the total costs of the study and tender to the SLC a final accounting of the study costs. In the event SLC paid more than the total Study costs at the time of the final accounting, the CORPS shall return to the SLC within ninety (90) calendar days any excess funds.

g. All pertinent status reports and notices shall be sent to the State of California, State Lands Commission, 1807 - 13th Street, Sacramento, California, 95814, ATTN: Daniel Gorfain, and shall include a reference to Bolsa Chica Studies - ELPF (Environmental License Plate Fund).

9. TERM

a. This Agreement shall be effective on the date of execution of the Agreement and shall continue in full force and effect through the 30th day of June, 1991, unless terminated or otherwise modified earlier in accordance with the provisions of paragraph 14 of this Agreement.

b. The term of this Agreement may be modified only by the mutual written consent of the parties hereto as deemed reasonably necessary for the performance of any obligations hereunder.

10. QUALITY OF WORK

The parties agree to prosecute all work under this Agreement continuously and diligently, and employ their best efforts to comply with the schedule and budget set forth in subsequent specific scopes of work. The CORPS shall be responsible for the supervision and inspection of, and the technical adequacy and coordination of all data and work pursuant to this Agreement.

11. MEMORANDUM REPRESENTATIVES

The following individuals are designated as Project Managers under this Agreement for their respective parties.

SIC	Daniel Gorfain, MS, PE, AICP State Lands Commission 1807 - 13th Street Sacramento, California 95814 Telephone (916) 322-7829
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CORPS	Stephen Fine U.S. Army Corps of Engineers Los Angeles District P.O. Box 2711, CA 90053 Telephone (213) 894-5400
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The following individuals are designated as Alternates.

SLC

Claire T. Dedrick
Executive Director
State Lands Commission
1807 - 13th Street
Sacramento, California 95814
Telephone (916) 445-1012

CORPS

Ron Ganzfried
U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 2711, CA 90053
Telephone (213) 894- 5404

Should any of these individuals become unavailable during the period of performance, personnel of equivalent capability shall be assigned, subject to written notice to the other party.

12. RELEASE

a. It is understood and agreed that each party must take care to comply with its duties and responsibilities under the statutes, ordinances, regulations, and policies which govern its activities. Nothing herein shall be construed to limit the authority of the parties or to be delegation of authority which would prevent it from fully and independently carrying out and complying with such duties and responsibilities.

b. To the extent permitted by law, the SLC shall hold and save the Department of the Army, its officers, agents, and employees, harmless from liability of any nature or kind, for or on account of any claim for damages arising from and occurring either before, during, or after the prosecution of the work except through the fault or negligence of the CORPS.

13. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

14. TERMINATION

This Agreement may be terminated by the SLC prior to the completion of the Studies as described in the scopes of work effective, upon written notice to the Department of the Army pursuant to paragraph 17. Should termination occur, the CORPS or contractor(s) shall be reimbursed for all reasonable costs incurred to the date of termination. Should the CORPS default in the performance of work listed in paragraph 3 above, the SLC shall notify the Department of the Army of the default in writing

and grant the CORPS fifteen days to take corrective action after the receipt of said notice. If the CORPS fails to correct the default, the SLC shall have the right to immediately terminate this Agreement and secure reimbursement of any unexpended funds provided by the SLC.

15. ASSIGNABILITY

This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party. The CORPS may with the prior approval of the SLC, contract portions or all of the work to qualified individuals or vendors.

16. MERGER

This Agreement and Appendix A attached hereto, including a detailed breakdown of the technical work outlined in paragraph 4 to be provided at a later date from negotiated specific scopes of work, embody the entire agreement of the parties. There are no promises, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

17. NOTICE

All notices and demands which any party is required or desires to give to the other party shall be given in writing to the individual at the address set forth in paragraph 11 and shall be effective upon receipt.

18. RECORDS

To the extent allowed by Federal law, and upon five working days notice, the CORPS records relating to its costs shall be available for audit by the staff of the SLC in the CORPS office in Los Angeles, California. Said audit may take place only during regular business hours of the CORPS. Payment of costs by the SLC shall not constitute a waiver of its rights to audit nor an acknowledgment by the SLC of the validity of the costs that have been paid. Nothing herein shall be deemed to require the CORPS or any consultants or contractors it may engage, to maintain books records, or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the cost for which payment is required hereunder.

19. FINAL REPORTS

a. Copies of all data, studies, drawings, plans, maps, reports and/or other documents shall, upon completion of services set forth in the Scope of Work(s), be furnished to SLC.

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b. To the extent allowed by Federal law, all pertinent information, results, analysis, or reports prepared by the contractor pursuant to this Agreement shall be provided to the SLC. Accordingly, prior to final publication and public release and subject to compliance with applicable law, the CORPS may divulge to or discuss with other parties any information, results, analysis, or reports prepared as part of the studies. This paragraph shall survive termination of this Agreement or the provision of services hereunder.

20. COUNTERPARTS

This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. AMENDMENTS

This Agreement may be amended at any time by the written agreement of the CORPS and the SLC. All amendments, changes, revisions, and discharges of this Agreement, in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BY THE DEPARTMENT OF THE ARMY

Tadahiko Ono
Colonel, Corps of Engineers
District Engineer

BY THE STATE OF CALIFORNIA

Claire T. Dedrick
Executive Director
State Lands Commission

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APPENDIX A
STUDY OPTIONS AND COSTS
SUPPORT FOR OTHERS PROGRAM (BOLSA CHICA AREA)

STUDY OPTIONS	COSTS	HANDAYS
A. Biological Surveys/Analysis:		
Study Management/Budgeting/Reporting	:\$ 16,300	: 31
Coordinate with SLC	: 14,700	: 29
Scope/Cost Est. for Wetland Prime Sites Survey Contract	: 3,000	: 5
Scope/Cost Est. for Offshore/Marine Survey Contract	: 3,000	: 4
Coordinate & Monitor Contracts & Review Work	: 10,200	: 24
Coordinate with FWS, NMFS & others	: 2,100	: 5
Scope/Cost Est. for FUS Contract	: 900	: 2
Travel	: 2,100	: 5
Award Contract(s)	: 2,000	: 10
Reports	: 12,100	: 35
Wetland Prime Sites Survey Contract - Four Seasons	: 127,500	: -
Offshore/Marine Survey Contract - Four Season	: 129,800	: -
FWS Contract	: 10,000	: -
(NOTE: Total study period is estimated to be 14 months)		
Total	\$333,700	150 DAYS
B. Archeological Surveys/Analysis:		
Study Management/Budgeting/Reporting	:\$ 8,100	: 17
Coordinate with SLC	: 9,800	: 21
Scope/Cost Est. for Cultural Resources (Mesa)	: 4,100	: 9
Scope/Cost Est. for Cultural Resources (Marine)	: 4,100	: 9
Coordinate, Monitor, & Review Contract Work	: 15,000	: 40
Travel	: 1,900	: 5
Award Contract(s)	: 2,000	: 5
Reports	: 9,600	: 29
Archeological Contract (Mesa)	: 100,000	: -
Archeological Contract (Marine)	: 10,000	: -
(NOTE: Total study period is estimated to be 12 months)		
Total	\$164,600	135 DAYS
C. Development of Wetland Planning & Design Criteria:		
Study Management/Budgeting/Reporting	:\$ 13,200	: 25
Coordinate with SLC on Wetland Needs/Opportunities	: 11,200	: 22
Develop Draft Wetland Planning & Design Criteria	: 16,100	: 34
Develop Draft Final Wetland Planning & Design Criteria	: 12,700	: 27
Travel	: 6,200	: 12
Reports	: 10,400	: 30
(NOTE: Total study period is estimated to be 6 months)		
Total	\$69,800	150 DAYS
D. Wetland User Day Surveys/Analysis:		
Study Management/Budgeting/Reporting	:\$ 11,400	: 21
Coordinate with SLC	: 9,400	: 17
Scope/Cost Est. for CVM (Boating/Beach/Wetland Rec.)	: 6,000	: 11
Coordinate & Monitor CVM Contract/Review Work	: 13,500	: 26
Travel	: 4,500	: 8
Award Contract(s)	: 2,600	: 5
Reports	: 10,600	: 29
CVM Contract (Wetland Recreation)-Alt @ \$100,000	: (0)	: (0)
CVM Contract (Boating/Wetland Recreation)	: 150,000	: -
(NOTE: Total study period is estimated to be 12 months)		
Total	\$207,600	117 DAYS
E. Model Studies for Plans Specified by SLC:		
Study Management/Budgeting/Reporting	:\$ 7,200	: 13
Coordinate with SLC on Conceptual Plans	: 8,700	: 17
Scope/Cost Estimate for CEVES Model Studies	: 3,100	: 6
Travel	: 6,500	: 12
Coordinate & Monitor CEVES Model Studies/Review Reports	: 8,200	: 15
CEVES Model Studies	: 150,000	: 220
(NOTE: Total study period is estimated to be 12 months)		
Total	\$183,700	283 DAYS

NOTE: Study Options and/or Increments of Study Options Shall not Require a Cumulative Commitment, Regardless of Time, in Excess of Five Full Time Equivalent for the Division, on an Annual Basis (i.e., 10,400 hrs./1300 days); Contract Work is Excluded from the FTE Requirement.