

MINUTE ITEM

This Calendar Item No. 42
was approved as Minute Item
No. 41 by the State Lands
Commission by a vote of 2
to 0 at its 12/12/1989
meeting.

CALENDAR ITEM

A 58

2

S 37

12/12/89
W 30029
PRC 4735
R 00286
Trout
Gorfain
Fossum

APPROVE ENTERING INTO A MEMORANDUM OF UNDERSTANDING (MOU)
FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT
STATEMENT (EIS) IN CONJUNCTION WITH ORANGE COUNTY'S
SPECIFIC PLAN/LOCAL COASTAL PROGRAM AND IMPLEMENTATION
OF A WETLANDS RESTORATION PLAN FOR BOLSA CHICA

PARTIES:

State Lands Commission
County of Orange
City of Huntington Beach
Signal Landmark
Amigos de Bolsa Chica

BACKGROUND:

On May 22, 1989, the Bolsa Chica Planning Coalition (Coalition) adopted a Concept Plan as an alternative to the Bolsa Chica Land Use Plan conditionally certified by the California Coastal Commission in January 1986. The Coalition consists of an Executive Committee comprised of representatives of the County of Orange, City of Huntington Beach, Signal Landmark, Amigos de Bolsa Chica, and the State Lands Commission. Additional members of the Coalition include other affected local, State and federal agencies, other landowners, and a broad range of interested citizen organizations.

The Coalition's Plan provides for over 1,100 acres of wetlands, Environmentally Significant Habitat Areas and open space, as well as residential development, but excludes a marina and associated commercial development.

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Implementation of the Plan as a whole, especially its wetlands restoration, circulation and residential components, will require federal permits pursuant to Section 404 of the Clean Water Act and Section 10 of the 1899 Rivers and Harbors Act. The United States Army Corps of Engineers (Corps) has indicated that it will be the federal lead agency and that the project will require the preparation of an EIS in compliance with the National Environmental Policy Act (NEPA).

The County of Orange is the Lead Agency, pursuant to the California Environmental Quality Act (CEQA), for an Environmental Impact Report (EIR), currently being prepared on its Specific Plan/Local Coastal Program which is based on the Coalition's Plan. The Commission, a coalition member, is a CEQA responsible agency.

The Regulatory Branch of the Los Angeles District, U.S. Army Corps of Engineers, by letter dated October 19, 1989 (Exhibit "B"), has indicated that it intends to designate appropriate State and local agencies as cooperating agencies pursuant to NEPA. These designated agencies will subsequently prepare the EIS in consultation with the Corps, and will submit it to the Corps in conjunction with its consideration of the required Section 404 and Section 10 permits. Formal designation of the County of Orange, City of Huntington Beach and the Commission as cooperating agencies is expected by early 1990 following the filing of applications for Corps permits.

On the expectation that the Corps will designate its public agency members as cooperating agencies, it is proposed that each member entity of the Coalition's Executive Committee will designate a representative to form a Joint Review Team (JRT) for managing the preparation of the requisite EIS. The process, as described in the proposed MOU (Exhibit "C"), is modeled after the Commission's extensive successful experience as a member of Joint Review Panels (JRP) for the preparation of environmental documents for offshore oil projects. All staff expenses incurred in participating in the preparation of the EIS will be reimbursed to the Commission by Signal Landmark.

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More specifically, the MOU provides that while the County of Orange will hold the EIS consultant contract and assume the administrative responsibilities related to it, the preparation of the document will be jointly managed by the JRT. As such, the JRT will: 1) determine the scope of the EIS; 2) select and direct the work of the consultant; 3) exchange information among its members and with the public on a regular basis; and 4) coordinate its activities to avoid duplication of effort and ensure efficient use of staff resources. The MOU calls for the JRT to operate by consensus to resolve issues and address concerns, and cooperate in the development of consistent environmental mitigations for the project. Lastly, it sets forth provisions for decisionmaking and conflict resolution, the protection of agency reservation of authority, and amendment, termination and withdrawal from the agreement.

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 because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: PRC 21065 and 14 Cal. Code Regs. 15378.

EXHIBITS:

- A. Site Map.
- B. October 19, 1989 letter from the Los Angeles District, United States Army Corps of Engineers.
- C. Proposed Memorandum of Understanding.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PRC 21065 AND 14 CAL. CODE REGS. 15378.
2. AGREE TO BE A COOPERATING AGENCY, PURSUANT TO NEPA, FOR THE PREPARATION OF THE EIS FOR THIS PROJECT.

CALENDAR ITEM NO. 42 (CONT'D)

3. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE PROPOSED MEMORANDUM OF UNDERSTANDING SUBSTANTIALLY IN THE FORM PRESENTED, FOR THE PREPARATION OF THE EIS FOR THE BOLSA CHICA PLANNING COALITION'S CONCEPT PLAN.

BOLSA CHICA LOCATION MAP

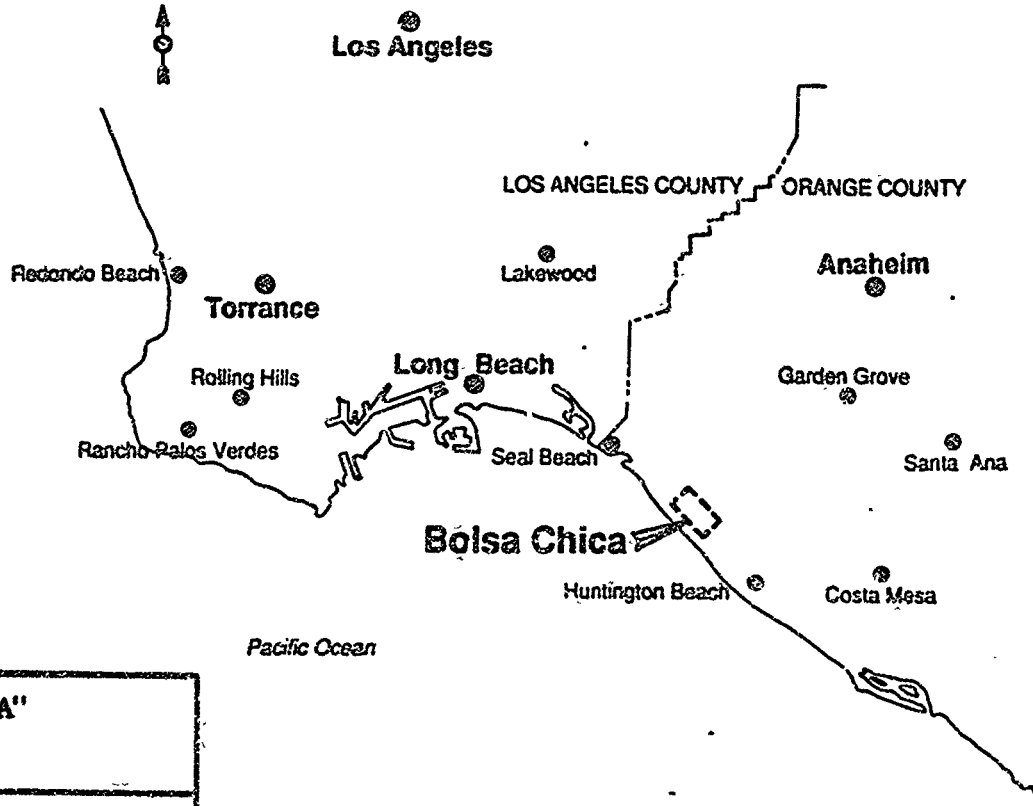


EXHIBIT "A"
W 30029.5



EXHIBIT "B"



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2711
LOS ANGELES, CALIFORNIA 90053-2711
October 19, 1989

REPLY TO
Office of the Chief
Regulatory Branch

Daniel Gorfain
State Lands Commission
1807 13th Street
Sacramento, CA 95814

Dear Mr. Gorfain:

This letter is in regard to the proposed development project at Bolsa Chica and the involvement of the Regulatory Branch in the processing of a permit application for this development.

My staff has been involved with this project for quite some time. Although we are extremely limited in the resources we can devote to any one project, especially during the pre application phase, we understand and appreciate the complexity and potential controversy of this project and feel the expenditure of our resources is justified.

It is our understanding that the State Lands Commission, county of Orange, city of Huntington Beach, and Signal Landmark, Inc. may apply jointly for a Department of the Army Permit. Although a formal decision has not yet been made, it has generally been assumed that an EIS would be required in conjunction with the Federal permit process because of the anticipated significant impacts on the human environment. Once we receive a permit application, we would make this decision and notify the applicant(s) in writing. Assuming that an EIS is required, we would coordinate with the other Federal agencies having an interest in this project, as required by NEPA regulations, to determine respective lead or cooperating agency status. NEPA regulations further provide that any State or local agency may become a cooperating agency by agreement with the lead agency. Because of the Corps' major role in the process, i.e., permit issuance, and the lack of any Federal permit applicant, the Corps would most likely become the lead agency. It would be our intention to designate as cooperating agencies the appropriate state and local agencies expressing such an interest.

We have reviewed the proposed Memorandum of Understanding (MOU) being negotiated among the State Lands Commission, county of Orange, city of Huntington Beach, Signal Landmark, Inc., and the Amigos de Bolsa Chica for the preparation of an Environmental Impact Statement for the proposed development. We understand that an interest has been expressed in the Corps becoming a party to this agreement. Although we support the concept of a cooperative approach to this considerable task, it would not be appropriate for the Corps to become a party to the agreement.

We will continue to be involved in this project to the maximum extent allowed by our limited resources. Your consideration of the following would facilitate our involvement: 1) try to schedule meetings in Los Angeles whenever possible; 2) schedule meetings early in the day as opposed to late

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afternoon; 3) prepare meeting agendas and provide them to us in advance; 4) provide ample advance notice of meetings; and 5) attempt to limit discussion at meetings we attend to topics where our input is appropriate.

Mr. Harlacher will continue as the project manager for the Bolsa Chica project. He may be reached at (213) 994-5606 or (213) 894-2118. Thank you for your interest in our Regulatory program.

Sincerely


Charles M. Holt
Chief, Regulatory Branch

cc

Orange County (Lippets)
Huntington Beach (Palin)
Signal Landmark (Shelly)
Amigos de Bolsa Chica (Detloff)
USFWS (Fancher)
NMFS (Hoffman)
CDFG (Lollock, Radovich, Burkett)
EPA (Yokum)

EXHIBIT "C"

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA STATE LANDS COMMISSION,
THE COUNTY OF ORANGE, THE CITY OF HUNTINGTON BEACH,
SIGNAL LANDMARK, INC., AND THE AMIGOS DE BOLSA CHICA
FOR THE ESTABLISHMENT OF A MANAGEMENT TEAM
REGARDING THE PREPARATION OF AN ENVIRONMENTAL IMPACT
STATEMENT FOR BOLSA CHICA

This Memorandum of Understanding ("MOU") is entered into this _____ day of _____, 1989, by and between the following parties: the State Lands Commission ("SLC"); the County of Orange ("County"); the City of Huntington Beach ("City"); Signal Landmark, Inc. ("Signal"); and the Amigos de Bolsa Chica ("Amigos").

RECITALS

1. Bolsa Chica is an area of land of approximately 1,600 acres located within the coastal zone of the northwestern section of unincorporated Orange County;

2. In October 1988, the County and City formed the Bolsa Chica Planning Coalition ("BCPC") to develop an alternative plan to the land use plan certified by the California Coastal Commission in January 1986 for Bolsa Chica. The principal members of the Coalition are the County, the City, the SLC, Signal and the Amigos.

3. The County has responsibility to complete a Local Coastal Program ("LCP") for Bolsa Chica for certification by the California Coastal Commission, pursuant to the California Coastal Act, Cal. Public Resources Code § 30000 et seq. The County is preparing a Specific Plan/Local Coastal Program ("SP/LCP") for Bolsa Chica as part of its Coastal Act responsibilities. The

alternative Concept Plan, agreed to by the Coalition, is serving as the basis for the County's SP/LCP for Bolsa Chica.

4. The City has jurisdiction over the entire area surrounding and a small area within Bolsa Chica, and the Bolsa Chica State Beach. The City intends to amend its LCP for those areas of Bolsa Chica within its jurisdiction so that its LCP is consistent with the SP/LCP adopted by the County. The City also intends to annex all lands in the Bolsa Chica area now under the jurisdiction of the County.

5. Signal is the major private landowner of property at Bolsa Chica and desires to develop a portion of its property for residential uses and to provide third parties with the opportunity to restore or create wetlands on portions of the remainder of its property, below the 5 ft. contour, not proposed for urban development.

6. The SLC is the principal public landowner within the Bolsa Chica area, and may acquire additional property within Bolsa Chica. Any lands restored or created for wetlands purposes with public trust funds provided by the Ports of Long Beach or Los Angeles, must be held as public trust lands by the SLC. It is intended that the SLC will lease all such restored or created wetlands to the Department of Fish and Game for inclusion in an expanded Bolsa Chica Ecological Reserve.

7. The Amigos is a non-profit, public interest organization concerned with the protection of wetlands and other environmental values at Bolsa Chica.

8. The Environmental Protection Agency ("EPA") has determined that 927 acres of Bolsa Chica are "waters of the United States," as that term is defined under the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

9. The U. S. Army Corps of Engineers ("Corps") has regulatory jurisdiction over federal permitting actions associated with development in waters of the United States at Bolsa Chica, as delineated by the EPA pursuant to Section 404 of the Clean Water Act, and as determined by the Corps pursuant to Section 10 of the 1899 Rivers and Harbors Act, as amended.

10. The County's SP/LCP will provide for the restoration, creation and/or preservation of 1109.4± acres of wetlands, open space and environmentally sensitive habitat areas. The SP/LCP also provides for the development of residential and public infrastructure uses in certain areas of Bolsa Chica designated waters of the United States by the EPA.

11. Prior to the commencement of any wetlands restoration activities, residential development activities or any other activities in "wetlands" or other "waters of the United States," the entity conducting such activities must obtain appropriate approvals from all public agencies and affected landowners, including permits from the Corps pursuant to Section 404 of the federal Clean Water Act, 33 U.S.C. § 1344 for the discharge of dredged or fill materials, and Section 10 of the 1899 Rivers and Harbors Act for any activities conducted in the navigable waters of the United States.

12. The SLC, County, City and Signal may approve, conduct activities, and/or own property over which Section 404 and Section 10 permits must be obtained.

13. As the issuance of a Section 404 permit under the Clean Water Act and a Section 10 permit under the 1899 Rivers and Harbors Act are major federal actions which will require compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., an environmental impact statement ("EIS") must be prepared before the Corps can issue the Section 404 and Section 10 permits if it is determined that the project may have potential significant environmental impacts.

14. The Corps is the lead federal agency under the NEPA with responsibility for ensuring that its actions associated with its regulatory permitting programs are based on sound environmental information prepared in compliance with NEPA, and as lead agency is responsible for the EIS.

15. Because of their respective regulatory and permitting responsibilities over Bolsa Chica, the SLC, County and City have been designated cooperating agencies under NEPA pursuant to 40 C.F.R. § 1508.5.

16. Section 1506.5 of the Regulations Implementing NEPA, 40 C.F.R. § 1506.5, permits a contractor selected by the lead agency or by the lead agency in cooperation with cooperating agencies to prepare the EIS.

17. The Corps has requested the BCPC to assume responsibility for selecting a contractor and preparing the EIS

for the federal actions required to implement the Bolsa Chica SP/LCP for submission to the Corps.

18. The parties to this MOU have the authority and capability to furnish the cooperation hereinafter set forth and are willing to participate in any related studies and/or any study cost sharing and financing contingent upon the availability of funds and agency/organization authorization.

19. It is in the mutual interest of the parties to this MOU to cooperate with each other regarding the preparation of and review of the EIS and any other necessary economic, environmental, and technical studies; to promote a more efficient environmental review process by sharing staff expertise and information; and to encourage intergovernmental cooperation at the federal, state and local levels, in a manner which permits each party to fully carry out their respective mandates and responsibilities.

AGREEMENT

In consideration of the foregoing Recitals, the parties agree as follows:

I. PURPOSE.

The SLC, County, City, Signal, and Amigos agree to establish an EIS Management Team to:

A. Jointly manage the preparation and review of the EIS, including the analysis and assessment of alternative plans and mitigation measures to be considered by the Corps as part of the Section 404 and Section 10 permitting process;

B. Exchange information, provide for regular interagency communication and public involvement, promote efficient use of agency staff resources, and reduce duplication of effort;

C. Identify and work to resolve individual and/or mutual issues and concerns of governmental agencies and the public; and

D. Promote cooperative planning and the development of feasible and consistent environmental mitigation measures for the project.

II. COMPOSITION OF THE EIS MANAGEMENT TEAM.

The EIS Management Team shall be composed of one representative from each agency or organization that is party to this MOU. The following individuals and their alternates are appointed by their respective agency or organization:

- | | |
|------------|------------------------------------|
| 1. SLC: | Daniel Gorfain/Dwight Sanders |
| 2. County: | Ronald Tippetts/Ken Winter |
| 3. City: | Jim Palin/Mike Adams |
| 4. Signal: | Darlene Shelley/Lucy Dunn |
| 5. Amigos: | Shirley Dettloff/Adrienne Morrison |

III. RESPONSIBILITIES OF THE EIS MANAGEMENT TEAM.

In consultation with the Corps, the EIS Management Team shall be responsible for the management of the EIS process including, but not limited to:

A. Determining the organization, scope, content and schedule of the EIS in accordance with NEPA regulations and addressing and meeting the concerns of regulatory agencies and the public;

B. Determining the form and content of requests for proposals for engaging consultants to prepare and develop information for the EIS, consistent with the administrative requirements of the agency issuing and holding a specific contract for such services; and setting the qualification requirements and selection criteria for the consultant(s) who may prepare the EIS and other information for the EIS, if necessary;

C. Soliciting proposals, reviewing the qualifications of, interviewing, and selecting the consultants, or consultant team, who will prepare and complete the EIS, as required;

D. Directing and monitoring the work of the consultants; reviewing, commenting and determining the adequacy of such work to ensure that the EIS and any other studies are completed in a satisfactory manner; and

E. Subject to the approval of the Corps, provide opportunities for public participation consistent with NEPA requirements.

IV. CONTRACTING WITH AND MANAGEMENT OF CONSULTANT.

A. The County will hold the EIS consultant contract and other consultant contracts, as appropriate, on behalf of the EIS Management Team.

B. The County will manage the consultant(s) on a day-to-day basis on behalf of the EIS Management Team and shall keep all members of the Team apprised of such activity. The County shall assume responsibility for providing direction to the consultant(s) based upon guidance and instruction from the

Team. In order to ensure that requests of the consultant(s) are documented and to avoid conflicting requests of the consultant(s), the EIS Management Team members shall use the EIS Management Team meetings as the primary forum for communicating with the consultant(s).

C. If the consultant is provided with technical information from any member of the EIS Management Team, copies shall be promptly provided to all Team members upon request. The Team shall inform the consultant(s) of his or their responsibility to inform the Team members of individual contacts regarding the EIS or related studies between the consultant(s) and any Team member at every Team meeting.

D. The County will process all invoices subject to the reimbursement of costs by Signal pursuant to existing agreements. In situations where there is a disagreement as to whether the invoice should be paid in part or in whole, the EIS Management Team will recommend a course of action.

V. NEPA RESPONSIBILITIES OF THE EIS MANAGEMENT TEAM.

Subject to the independent review and decision-making of the Corps, the EIS Management Team shall carry out the following duties required by NEPA:

A. Prepare a draft of the Notice of Intent as defined in 40 C.F.R. § 1508.22 for review by the Corps. The Corps will publish the Notice of Intent in the Federal Register as required by 40 C.F.R. § 1501.7;

B. Prepare a draft notice for a public scoping meeting to receive comment on the scope of work for the EIS as required

by 40 C.F.R. § 1501.7. The Corps or its designee will conduct the public scoping meeting. All members of the EIS Management Team should be present at the public scoping meeting to receive comments of the public;

C. Determine whether the work performed by the consultant(s) is satisfactory, and if not, how best to correct the deficiencies in the work; and

D. The Corps, in consultation with BCPC, will determine the adequacy of the Draft EIS and the Response to Comments on the EIS.

VI. COMMUNICATION AMONG EIS MANAGEMENT TEAM MEMBERS.

The successful preparation of the EIS and related studies requires complete and full communication between all involved parties. It is the duty of the representatives identified in Section II. above to ensure close consultation throughout the preparation of the EIS and other studies. The representatives shall keep each other advised of the developments affecting the preparation of the EIS and studies. Each representative shall notify the other representatives in writing of a change in his or her address or telephone number, or in agency or organization representation.

All parties agree to share all relevant information, including confidential information, to the extent appropriate, if allowed under applicable laws and regulations.

VII. DECISIONMAKING AND RESOLUTION OF DISPUTES.

The County shall chair the EIS Management Team and shall convene Team meetings periodically, but in no event less

than every eight (8) weeks. The chair shall provide reasonable advance notice to Team members and the Corps of all Team meetings. The Team shall operate by consensus.

VIII. RESERVATION OF AUTHORITY.

A. Each agency shall be free to exercise its statutory and regulatory authority and responsibilities, including permit actions. It is also recognized that each agency's license, permit, approval or decision may affect similar actions of the other agencies if differing permit conditions are placed on the respective actions. In the event differing permit conditions result in conflicts, all parties to this MOU agree to work together to minimize such conflicts to the extent consistent with their authority.

B. The parties to this MOU further agree to take whatever steps they may deem necessary, including additional agreements or amendment to this MOU, in order to fulfill the purpose of this MOU.

C. It is specifically understood by the parties that this is neither a contractual agreement nor a delegation or modification of their respective responsibilities under applicable provisions of law.

IX. AMENDMENT, TERMINATION AND WITHDRAWAL.

This MOU may be amended at any time in writing by agreement of the undersigned parties to this MOU. This MOU shall expire upon and with the completion of the Final EIS and other associated studies and terms outlined above unless otherwise extended by mutual consent of its signatories. However, any

party may, upon written notification to the other parties outlining the basis for such actions, withdraw from the MOU.

X. COUNTERPARTS.

This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

THEREFORE, the parties hereto have caused this MOU to be duly executed on the respective dates set forth opposite their signature.

CLAIRE T. DEDRICK
Executive Officer
State Lands Commission

Date

ERNIE SCHNEIDER
Director, Environmental
Management Agency
County of Orange

Date

WES BANNISTER
Mayor
City of Huntington Beach

Date

PETER DENNISTON
President
Signal Landmark, Inc.

Date

SHIRLEY DETTLOFF
President
Amigos de Bolsa Chica

Date