

DEPARTMENT OF PARKS AND RECREATION

Public Interest Notice
For Publication November 26, 2010

DIRECTOR'S FINAL FINDINGS
Relating to Reconfiguration of
Candlestick Point State Recreation Area

Chapter 203, Statutes of 2009 (SB 792)

BACKGROUND

Chapter 203, Statutes of 2009, (SB 792) authorizes the Director of the Department of Parks and Recreation (Director) to enter into land exchange agreements with the State Lands Commission, the City and County of San Francisco (City) and the Redevelopment Agency of the City and County of San Francisco (Agency) in order to provide for the reconfiguration and improvement of the Candlestick Point State Recreation Area (CPSRA) and to facilitate implementation of a major redevelopment of the Hunters Point Shipyard/Candlestick Point areas of San Francisco, proposed by the City and the Agency (Redevelopment Project). Based on recent surveys, the current CPSRA (exclusive of underwater lots) is comprised of approximately 150 acres of property, approximately 96 of which is held in fee by the Department of Parks and Recreation (State Parks), with the remainder being leased to State Parks by the State Lands Commission, which holds the property in fee as trust lands.

In furtherance of the legislative goals articulated in SB 792, State Parks has negotiated the Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement (Agreement) with the Agency and the State Lands Commission which, inter alia, authorizes the conveyance of certain lands within the existing CPSRA to the Redevelopment Agency, in exchange for other lands, cash and other consideration, and upon certain specified terms and conditions.

In addition to the conveyances described in the Agreement, and as authorized by SB 792, State Parks negotiated with the State Lands Commission for an exchange of ownership interests of property currently in the CPSRA, whereby the State Lands Commission's ownership and trust interests will be consolidated along the shoreline band of the CPSRA (and leased to State Parks), and State Parks will hold a fee interest in the inland portions of the CPSRA. This exchange of ownership interests would be governed by the Hunters Point Shipyard/Candlestick Point Title Settlement, Trust Exchange and Boundary Line Agreement (Trust Exchange). Parties to the Trust Exchange also include the Agency and the City, which have agreed to make certain conveyances of lands to the State Lands Commission for the purpose of impressing certain lands with the Public Trust, in exchange for the termination of the Public Trust on other lands which are needed for the Redevelopment Project.

Following certification of the Environmental Impact Report for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (EIR), the Agency approved the Redevelopment Project, the Agreement, and the Trust Exchange on June 3, 2010. The City's Board of Supervisors made a number of approvals relating to the Redevelopment Project

including approval of the Trust Exchange, on July 27, 2010, and finally approved the Redevelopment Project on August 3, 2010.

Section 26 of SB 792 requires the Director to make certain written findings prior to executing any agreement to convey to the City or to the Agency any interest in real property held by the state within the existing boundaries of the CPSRA. Pursuant to SB 792, the Director published proposed findings in this Register more than 30 days prior to the issuance of these Final Findings. The Director received no public comment on the proposed findings.

FINDINGS

Unless otherwise noted, each of the documents cited in the findings may be found in the depository of documents found at www.parks.ca.gov/findings. In addition to those documents found in the depository, the Director considered other reference materials.

FINDING NO. 1:

STATE PARKS WILL RECEIVE MONETARY AND OTHER FORMS OF CONSIDERATION HAVING A TOTAL VALUE OF FIFTY MILLION DOLLARS (\$50,000,000.00), WHICH IS GREATER THAN THE FAIR MARKET VALUE OF THE PROPERTY PROPOSED TO BE REMOVED FROM THE CPSRA AND CONVEYED TO THE AGENCY PURSUANT TO THE TERMS OF THE AGREEMENT. PAYMENT OF CONSIDERATION FOR THE STATE PROPERTY TO BE CONVEYED AT EACH PHASE WILL BE PRORATED IN PROPORTION TO THE TOTAL AREA OF STATE PROPERTY TO BE CONVEYED.

Support for Finding No. 1:

State Parks will receive fifty million dollars (\$50,000,000.00) in monetary and other compensation. (**Agreement, sections 4.1 and 4.2.**)

The fair market value of the property proposed to be conveyed to the Agency pursuant to the Agreement was determined by an appraisal prepared by Clifford Associates "Appraisal Report, Hunters Point Shipyard/Candlestick Point Redevelopment Project Site," dated April 20, 2010 (Appraisal). The subject property analyzed in the Appraisal includes those portions of the CPSRA to be conveyed to the Agency. The Appraisal concludes that the fair market value of the State property was substantially below \$50,000,000.00. At the request of State Parks, the Real Estates Services Division of the Department of General Services has reviewed and approved the Appraisal. (**Appraisal Report.**)

The Agreement provides that the lands will be transferred to the Agency in several phases, subject to specified terms and conditions. Based on current acreage estimates, it is contemplated that a total of 26.84 acres of state property are going to be transferred to the Agency pursuant to the Agreement. Based on this estimate, and subject to adjustment in the Agreement (following the completion of land survey work), the Agreement requires that at each phased conveyance, the Agency will provide State Parks with at least \$1,862,891.20 in consideration for each acre to be

conveyed at that phase. (Agreement, Section 5.) This amount represents the pro rata share per acre of the \$50 million consideration.

FINDING NO. 2:

THE FORM OF CONSIDERATION FOR THE STATE PROPERTY TO BE CONVEYED OUT OF THE CPSRA CONSISTS OF THE FOLLOWING:

(A) THE PROVISION OF FUTURE FUNDING FOR THE OPERATION AND MAINTENANCE OF THE CPSRA IN THE AMOUNT OF TEN MILLION DOLLARS (\$10,000,000.00),

(B) THE AMOUNT OF FORTY MILLION DOLLARS (\$40,000,000.00) TO BE USED FOR THE COST OF PLANNING AND CONSTRUCTING IMPROVEMENTS IN THE RECONFIGURED CPSRA THAT WILL ENHANCE ITS USE AS A PARK AND FOR REIMBURSEMENT AS PROVIDED IN (D) BELOW,

(C) LAND WITHIN THE REDEVELOPMENT PROJECT AREA THAT WILL BE ADDED TO THE CPSRA,

(D) STATE PARKS WILL BE REIMBURSED FOR ITS LEGAL, TRANSACTIONAL, PLANNING AND OTHER COSTS ASSOCIATED WITH IMPLEMENTING THE PROVISIONS OF SB 792, AND

(E) THE DIRECTOR FURTHER FINDS THAT IT IS NOT APPROPRIATE TO REQUIRE ANY ADDITIONAL MONETARY COMPENSATION.

Support For Finding No. 2:

The Agreement requires the consideration to State Parks to be in the following forms:

(A) Section 4.1 of the Agreement provides that the Agency will provide \$10 million, in cash, to State Parks for the exclusive purpose of providing a dedicated source to augment funding for the operation and maintenance of the reconfigured CPSRA. (**Agreement, section 4.1.**)

(B) Section 4.2 of the Agreement provides that the Agency will provide \$40 million for planning and constructing park-related improvements within the reconfigured CPSRA (improvement fund), and for reimbursement to State Parks for legal, transactional, planning, and other costs associated with implementing the provisions of SB 792. (**Agreement, sections 4.2, 5.3, 5.5.**)

(C) Lands comprising approximately seven acres will be added to the reconfigured CPSRA in accordance with Section 3, and Exhibits B and C of the Agreement. (**Agreement, section 3, Exhibits B and C.**)

(1) The Agency will convey to State Parks all of its right, title and interest in lands identified in the Agreement as the “Yosemite Slough Trust Termination Parcel” and the “Park

Addition Trust Termination Parcel” pursuant to section 3.3 of the Agreement. (**Agreement, section 3.3.**)

(2) The Agency will convey to the State Lands Commission all of its right, title and interest in lands identified in the Agreement as the “Yosemite Slough Addition Public Trust Parcel” and the “Park Addition Public Trust Parcel”, pursuant to section 3.1 of the Agreement, and thereafter, in accordance with section 3.5 of the Agreement, the State Lands Commission will lease these two parcels to State Parks for inclusion in the reconfigured CPSRA for a period of 66 years. (**Agreement, sections 3.1, 3.5.**)

(D) Section 5.3 of the Agreement provides reimbursement to State Parks for legal, transactional, planning, and other costs associated with implementing the provisions of SB 792. (**Agreement, section 5.3.**)

(E) The Director determines that the payment of \$50 million of consideration in accordance with the above-described requirements is sufficient to compensate State Parks for the land that is being transferred out of the CPSRA to the Agency, and that it is not appropriate to require the payment of additional monetary compensation.

FINDING NO. 3:

THE AGREEMENT WILL PROVIDE AN OVERALL BENEFIT TO THE STATE RECREATION AREA AND WILL FURTHER THE OBJECTIVE OF PRESERVING THE PARK’S NATURAL, SCENIC, CULTURAL, AND ECOLOGICAL VALUES FOR PRESENT AND FUTURE GENERATIONS.

Support For Finding No. 3:

(A) The Agreement Will Provide An Overall Benefit To The State Recreation Area.

Land exchange. The existing CPSRA General Plan, as amended in March, 1988 (General Plan), states that the park unit is of statewide significance because it is the first State Park System unit purposely acquired to bring State Park System values into an urban setting. One of the purposes of the park unit is “...to make available to the people the recreational opportunities, passive and active, that are offered by the shoreline, waters, and environment of the San Francisco Bay, and the adjacent bay waters.” (**General Plan**)

The Agreement supports the stated unit purpose by adding approximately 5.8 acres of land to the CPSRA directly adjacent to the existing CPSRA along Jamestown Avenue, near Hermit’s Cove. The Agreement refers to this area as the Park Addition Parcels. (**Agreement, Exhibit C.**)

Although the Park Addition property is currently owned by the City and County of San Francisco and leased by the City to the San Francisco 49ers, the City has approved an Agreement For Transfer of Real Estate between the City and County of San Francisco and the Redevelopment Agency (Rec/Park Agreement), obligating itself to transfer the property to the Agency for subsequent conveyance to the State upon termination or expiration of the lease. Paragraph 9.16 of the Rec/Park Agreement expressly identifies State Parks as a third party

beneficiary giving State Parks the authority to enforce the transfer. (**Rec/Park Agreement, paragraph 9.16.**)

The conveyance of the Park Addition property by the Agency to the State will result in an increase in the width of the park along approximately 1,300 lineal feet of the existing CPSRA southern shoreline edge, at an area known as “The Neck”. The addition of this property will provide the CPSRA with additional land along the shoreline of the existing park where the land has eroded necessitating the placement of riprap in order to stabilize the road fill bank. Continued erosion is expected to occur, in part due to sea level rise and storm surges. Currently there is not enough land above mean high tide to provide the desired level of public access and there is no improved pedestrian access in this area. The increased width of the park at this location will allow space for a high quality segment of the Bay Trail to be constructed and beach day-use facilities, thereby providing increased visitor access to the bay shoreline. The additional land will also provide opportunity for erosion control and shoreline stability solutions to be constructed. (**Parks, Open Space and Habitat Concept Plan, at p. 115.**)

A portion of the CPSRA includes Yosemite Slough. State Parks, in partnership with the California State Parks Foundation (CSPF) and environmental organizations, has proposed a Yosemite Slough Restoration Project, which includes plans for habitat restoration, soil remediation, trail construction, and educational programming in the area surrounding Yosemite Slough. The Agreement promotes the Yosemite Slough Restoration Project, and therefore benefits the entire CPSRA, by obligating the Agency to convey to the State approximately 1.3 acres of land needed for the Restoration Project. (**Agreement, Sections 3.1, 3.3, and Exhibits B and C.**)

The Agency will convey the Yosemite Slough Addition to the State as part of the first phased closing under the Agreement, and will quitclaim the Park Addition to the State as part of the second phased closing. (**Agreement, section 5.2.**) As noted in Paragraph B of the Agreement, and in the Rec/Park Agreement, the Agency will not obtain title to the Park Addition Parcels until the City’s lease with the San Francisco 49ers terminates or expires. The transfer of any land out of the CPSRA after the first closing phase is contingent on the transfer of the Park Addition to the State. (**Agreement, sections 5.3(a), 13.2; see Rec/Park Agreement, paragraph B.**)

The lands to be removed from the CPSRA, in contrast, add little recreational value to the CPSRA. Approximately two-thirds of the area (17.5 acres) consists of the landward-most portion of an area that serves a parking lot for the adjacent 49ers football stadium. These lands consist of dirt, gravel and paved parking areas with no landscape beautification or park facilities and little or no ecological value. The remaining areas (approximately 9.2 acres total) include a paved parking area along the Hunters Point Expressway near the main entrance and an adjacent grassy area; a narrow strip along Harney Way; and portions of the Arelious Walker Drive right of way on either side of Yosemite Slough. The lands to be added to the CPSRA under the Agreement will provide substantially greater benefit to the CPSRA than is provided by the lands to be removed. (**Candlestick Point-Hunters Point Shipyard Phase II Development Plan EIR (“EIR”), Recreation Section, p. III. P-17-25, Comments and Responses pp. 753-54;**

Lennar Urban, Existing Candlestick Point State Recreation Area Land Quality & Proposed SRA Land Exchange, dated November 16, 2010 (map).)

The CPSRA, as reconfigured under the Agreement, will not be significantly adversely affected by adjacent vertical development, in particular by the effects of shadow. The Redevelopment Project design incorporates building height restrictions and allowable tower locations that will minimize shadowing on the CPSRA. The Tower Variant D option, developed by the Agency, in consultation with State Parks, to address shadow issues and adopted as part as the final Redevelopment Project, would result in shadowing of portions of CPSRA during approximately 3% of total daylight hours (**Candlestick Point-Hunters Point Shipyard Phase II Development Plan, Comments and Responses, C&R -7, Tower Variant D; Letter from CADP (shadow consultant) to Wells Lawson dated August 5, 2010.**) The amount of new shadow within the CPSRA created by the Redevelopment Project will not substantially affect the park.

Other consideration. The Agreement also supports and benefits the CPSRA insofar as it obligates the Agency to provide State Parks with \$10 million to augment funding for operation and maintenance expenses of the CPSRA (**Agreement, section 4.1.**), and \$40 million for planning and constructing park-related improvements within the reconfigured CPSRA (**Agreement, section 4.2.**), including reimbursement for the State's planning, or other costs associated with actions carried out pursuant to Section 27 of SB 792 (**Agreement, sections 4.2, 5.5.**). These park-related improvements are expected to include facilities to support wind surfing, picnicking, non-motorized boating, wildlife habitat enhancement and interpretive facilities. Costs for revising the 1988 General Plan currently underway are also being funded by the \$40 million improvement fund.

As required by SB 792, the Agreement earmarks both the park improvement funding and the operation and maintenance funding for use at CPSRA, assuring the funds will be used to benefit the CPSRA. (**Agreement, sections 4.1, 4.2, 14.**) The park improvement funding will substantially improve the recreational value of the CPSRA; it will allow State Parks to fully implement the vision of the CPSRA reflected in the General Plan, as it may be amended.

The operation and maintenance funding is also critical to the long term viability to the CPSRA. The operation and maintenance funding will ensure the CPSRA has a dedicated funding source for park operations and maintenance for years to come.

The Agreement also obligates the Agency to cooperate in providing State Parks with 3,000 square feet of community facilities space within Candlestick Point, that the Agency is to receive under the Redevelopment Project, without payment of a purchase price or base rent. (**Agreement, section 20.**) It is anticipated that State Parks will use this space for a welcoming or information center for the CPSRA, further enhancing the experience of visiting the park. In addition, provision of this community facilities space allows State Parks to better utilize the lands within the reconfigured CPSRA for shoreline related recreation.

Increased protection of the shoreline property. Overall support for the CPSRA is also found in the Trust Exchange referenced in paragraph A of the Agreement. By the Trust Exchange, State Parks, the State Lands Commission, the Agency and the City have agreed to make certain conveyances of lands for the purpose of impressing certain lands with the Public Trust, and

terminating the Public Trust on other lands, resulting in a consolidation of trust lands along the shoreline of the CPSRA. These shoreline lands will be leased by the State Lands Commission to State Parks for a period of 66 years pursuant to Section 3.5 of the Agreement, and will be operated by State Parks as an integral part of the reconfigured CPSRA. These trust lands will continue to be subject to Public Trust restrictions, enforced by the State Lands Commission, which restrictions provide additional assurance that these shoreline lands will be preserved in public ownership in perpetuity. (**Agreement, section 3.5; see Trust Exchange, section 3.**)

(B) The Agreement Will Further Preservation of The Park's Natural And Ecological Values.

Existing natural and ecological values of the CPSRA are noted in the Resources Element of the General Plan: “in the mud and sand beds are a number of invertebrates, including soft shell and bent nosed clams, ghost shrimp, marine worms, and many other small animals” and, “oysters and other invertebrates are found on the rocks along the shoreline. All of these invertebrates are important to the bay ecosystem... The Bay also supports a relatively large population of waterfowl and water-associated birds, many of which are migratory, and a smaller number that are resident... the bay... has great potential for future improvement and enhancement.” The General Plan recognizes that “the natural environment of significance is the San Francisco Bay itself”. (**General Plan**)

The Agreement helps preserve these natural and ecological values by maintaining these shoreline areas undisturbed. The increase of the width of the park at “The Neck” will widen the buffer between the bayshore and non-park development reducing potential risks to the shoreline habitats from impacts arising outside the CPSRA.

The Agreement protects the restoration of the slough by requiring that the design, planning and construction of the Yosemite Slough Bridge be coordinated with State Parks and CSPF. (**Agreement, Section 21.**) Implementation of the Yosemite Slough Restoration Project will provide suitable habitat for various bird species and other animals noted in the Natural Values section of the General Plan, and will also enhance the bay shoreline. The Yosemite Slough Addition lands, which will be conveyed to the State pursuant to the Agreement, are within the Restoration Project area and are needed to fully implement the Restoration Project.

The Agreement obligates the Agency to provide funding resources equivalent to \$50 million. These resources will assist with providing additional enhancement of habitats and renovation of the CPSRA's ecological systems, helping fulfill the potential for future improvement, including improvement discussed in the current General Plan. The improvements will be further described in the General Plan revision now under way, and are expected to include enhancements of existing tidal wetlands, improvements to planned areas of grasslands and expansion of tree canopies and large shrub habitat. (**General Plan**)

With regard to construction of a bridge across Yosemite Slough, Section 21.2 of the Agreement provides that “...the Agency and State Parks shall (a) reasonably cooperate to identify and incorporate into the construction and design plans for the Bridge features that will: (i) be consistent with the wetland and aquatic habitat objectives set forth in the Wetland Restoration and Management Plan, Yosemite Slough, WRA Environmental Consultants, January, 2006 (“Restoration Plan”), which may include, but are not limited to, providing new or restored

habitat to compensate for any portion of the wetland or aquatic habitat (or any upland habitat that is immediately adjacent to the Bridge abutments) that is proposed to be created or restored in the Restoration Plan but cannot be created or restored due to Bridge construction; (ii) provide vista points in the park and on the Bridge offering views of the Bay and the Slough; (iii) ensure that Bridge design and aesthetics meet a high standard of excellence; (iv) provide for substantial views of the Bay beyond the bridge from the Slough; (v) ensure consistency with the public access and recreational objectives of the Restoration Plan, including the ability to navigate small human-powered craft between the Slough and the Bay and which may include, but are not limited to, providing new or enhanced recreational or public access improvements to compensate for any portion of the proposed creation of such improvements under the Restoration Project (as that project is described in the Restoration Plan) that cannot be created due to Bridge construction; and (b) use their best efforts to reach mutual agreement on the final Bridge design, construction plans, and associated enhanced restoration plans...”

In addition, Section 21.1 of the Agreement provides that the Agency “shall not undertake, approve, or permit construction of the Bridge unless all of the following conditions are met: (a) the Bridge is required to function primarily for public transit, bicycle, and pedestrian use, and is closed to private motor vehicle traffic except for no more than 20 days per year; (b) the Bridge will serve as a part of the open space network on all days when it is not open to private motor vehicle traffic; (c) any traffic lane on the Bridge that will carry private vehicle traffic will be no wider than 10 feet; (d) no more than four private vehicle traffic lanes will exist on the Bridge; and (e) the bicycle and pedestrian lanes on the Bridge will be integrated with the bicycle and trail system in the CPSRA.” These provisions will ensure, among other things, that the size and function of the bridge are limited and that the bridge will not preclude the accomplishment of the objectives of the Restoration Plan.

(C) The Agreement Will Further Preservation of The Park’s Scenic Values.

The existing General Plan states that “[T]he setting of Candlestick Point State Recreation Area next to the San Francisco Bay provides important opportunities for satisfying the recreation and open space needs of people living or visiting in the San Francisco area. It is the policy of the department to protect the scenic values...while fully realizing the potential of the area for fulfillment of outdoor recreation needs.” The General Plan also notes that the recreation area includes “areas of seclusion and panoramic views, including distant views of the San Bruno Mountain, East Bay hills, and San Francisco Bay, which impart a relaxing sense of solitude.”
(General Plan)

These scenic values will be preserved by the Agreement. The shoreline areas and key observation points from which visitors observe San Bruno Mountain, the East Bay hills, and San Francisco Bay remain within the CPSRA, preserving these scenic vistas. “The Neck” area of the shoreline defines the northerly shore of Hermit’s Cove which contains a very large sand beach and provides exceptional viewing areas looking southwest towards San Bruno Mountain. The widening of “The Neck” area of the park, which will result from the land transfers described in the Agreement, will result in creating a buffer between the new development and the shoreline, moving noise and other disturbances from roadway traffic away from the Park, thereby enhancing the sense of solitude enjoyed by park visitors. Also, the Candlestick Point SRA General Plan revision currently underway contemplates use of a portion of the \$40 million

improvement fund provided in Section 3 of the Agreement for construction of enhancements and improvements to the shoreline which will preserve and improve the scenic value of the CPSRA as viewed from the Bay and other shoreline areas.

In addition, if a bridge is built across Yosemite Slough, the Agreement ensures that State Parks will be a participant in the design of any bridge, and that the Agency will cooperate with State Parks to incorporate design features that will provide vista points in the park and on the bridge offering views of the San Francisco Bay and Yosemite Slough, and provide for substantial views of the bay beyond the bridge from the slough. (**Agreement, section 21.2.**)

(D) The Agreement Will Further Preservation of The Park's Cultural Values.

The existing General Plan notes that the Candlestick Point area consists principally of fill materials deposited since 1955. State Parks is currently unaware of any archaeological sites within the CPSRA. There are however, Native American shellmounds known to occur in the general area, outside of the boundaries of CPSRA and there is also potential for shellmound(s) to occur beneath the fill material within CPSRA. (**General Plan**)

Off shore areas of the CPSRA are known to include at least four hulks embedded in the underwater mud just off shore at Candlestick Cove, an area near the southwest edge of CPSRA. This area was used for marine salvage operations between 1910 and 1940, and it is believed that the four hulks are the remains of salvaged wooden ships. Additional hulks maybe buried in the filled areas around CPSRA, however the existence of such is undocumented.

The Agreement does not contemplate any activity which would disturb or destroy the known cultural resources; these resources will remain buried and protected beneath the fill material within CPSRA.

The Agreement provides partial funding for preparation of the CPSRA General Plan Amendment revision currently underway. (**Agreement, section 4.2.**) The revision contemplates new interpretive opportunities of the archeological and historical resources of the site and vicinity that will be funded from the \$40 million improvement fund guaranteed by the Agreement. (**Agreement, section 4.**)

FINDING NO. 4:

FOLLOWING THE CONVEYANCES DESCRIBED IN THE AGREEMENT, THE RECONFIGURATION OF THE CPSRA WILL SUBSTANTIALLY CONFORM TO THE CONFIGURATION SHOWN ON THE DIAGRAM REFERENCED IN SECTION 27 OF SB 792, AND AS MORE PARTICULARLY ILLUSTRATED ON THE MAP ON FILE WITH CITY'S PLANNING DEPARTMENT ENTITLED, "PROPOSED STATE PARK LAND EXCHANGE" AND DATED SEPTEMBER 3, 2009.

Support For Finding No. 4:

The diagram referenced in Section 27 of SB 792 and the September 3, 2009 map referenced in Section 26 (a) (4) of SB 792 (collectively, "statutory configuration") are attached to the

Agreement as Exhibit E. Exhibits A, B and C to the Agreement depict the parcels of land that will be transferred out of, and added to the CPSRA. The reconfiguration of the CPSRA following the conveyances depicted on Exhibits A, B and C will be the same as the statutory configuration, except for an approximately 63 foot strip of land along the Arelious Walker Street right of way on the north side of the Slough which will be also transferred out of the CPSRA to the Agency.

The Director finds that the transfer of this approximately 0.8 acre strip of land out of the CPSRA is minor and is not a substantial departure from the statutory configuration. This minor departure from the statutory configuration is necessitated by the Director's decision that construction of the Yosemite Bridge abutments/footings along Arelious Walker Street should not occur on State Parks land; therefore this property will be conveyed to the Agency, subject to the State's reversionary interest if the bridge is not constructed within a specified time period. (**Agreement, section 2.2, Exhibits A, B, C and E.**)

FINDING NO. 5:

THE REDEVELOPMENT PROJECT, INCLUDING THE RECONFIGURATION OF THE STATE RECREATION AREA, WILL NOT RESULT IN A SIGNIFICANT ADVERSE EFFECT ON BIOLOGICAL RESOURCES, AND WILL INCLUDE HABITAT ENHANCEMENT MEASURES TO BENEFIT MIGRATORY BIRDS AND OTHER WILDLIFE. IN MAKING THIS DETERMINATION, THE DIRECTOR HAS TAKEN INTO CONSIDERATION THE MITIGATION MEASURES INCORPORATED INTO THE REDEVELOPMENT PROJECT EIR.

Support for Finding No. 5:

(A) The Redevelopment Project Will Not Result In A Significant Adverse Effect On Biological Resources:

Based upon the information presented in the EIR, the Redevelopment Project, as mitigated, will not have a substantial adverse effect on any special-status plant or wildlife species, riparian habitat, federally-protected wetlands, or other sensitive natural communities. The Redevelopment Project will also not substantially interfere with the movement of any native resident or migratory fish or wildlife species, wildlife corridors, or wildlife nursery sites. The Redevelopment Project will not have any significant and unavoidable impacts to biological resources. (**EIR, Chapter V.**) The Redevelopment Project does not conflict with any local policy or ordinance that protects biological resources, or with a regional habitat conservation plan or natural community conservation plan.

PBS&J, an environmental consultant for the EIR, completed a biological study of the Redevelopment Project Site and the aquatic areas, including Yosemite Slough, during the summer of 2007 and in 2008. This study included a field survey documenting existing habitats, the plants and animals occurring in those habitats, and any significant habitat types that may be protected by state and federal law. PBS&J determined that landscaped/ornamental and non-native annual grassland habitats occupy much of Candlestick Point, while the Hunters Point Shipyard Phase II area consists largely of urban/developed areas, that small areas of freshwater

wetlands and nontidal salt marsh are present at the Hunters Point Shipyard Phase II area, and that narrow strips of tidal salt marsh are present along the shoreline at scattered places on Candlestick Point and portions of the Hunters Point Shipyard Phase II area. PBS&J also concluded that no special-status plants have been recorded, and none are expected to occur, on the site although several special-status animal species are present (**EIR, Appendix N1 “Candlestick Point/Hunters Point Shipyard Redevelopment Project Biological Technical Report,” Executive Summary.**)

The Redevelopment Project proposes the construction of non-park development on lands transferred out of the CPSRA that will be set back from the bayshore in significant measure so that redevelopment will not affect valuable bay habitats. (**EIR, Figure II-4, Proposed Land Use Plan.**)

The lands to be removed from the CPSRA consist of approximately 21.5 acres of parking lot area and approximately five acres of disturbed, non-native grassland. Non-native grassland areas serve as foraging habitat for raptors such as red-tailed hawk and American kestrel. (**EIR, pp. III.N -76-78.**) The removal and subsequent development of approximately five acres of these areas, along with the alteration of other such grasslands elsewhere on the Redevelopment Project site, would diminish raptors’ ability to forage on the non-native grasslands. However, an adopted mitigation measure (MM BI-7b) for the Redevelopment Project requires the creation of new grassland foraging habitat, including approximately 43 acres of new native grasslands on the southern portion of the shipyard (as discussed further below). (**EIR, p. III.N-78.**) The mitigation measure also requires trees and shrubs to be planted outside these grassland areas to provide foraging, nesting, and roosting habitat for birds. These measures will not only reduce impacts to foraging habitat to a less than significant level, they would provide an overall habitat enhancement, as discussed further below.

The Redevelopment Project would involve removal and/or modification of areas that have the potential to contain special-status animal species, including: seven potentially breeding avian species, one bat species, and four fish species (green sturgeon, Chinook, steelhead, and longfin smelt). The Redevelopment Project also has the potential to affect designated critical habitat of the green sturgeon and Central California Coast steelhead, thus directly impacting threatened and/or endangered species through habitat conversion or unauthorized take. In addition, Redevelopment Project activities would occur within habitats of locally rare or sensitive species such as Pacific herring and Olympia oysters, as well as avian species protected by the Migratory Bird Treaty Act and the California Fish and Game Code.

However, implementation of ecological Redevelopment Project design features described in the Parks, Open Space, and Habitat Concept Plan and required by mitigation measure MM BI- 7b, would result in multiple measures to avoid, limit, and mitigate for impacts to special-status and legally protected species. Specifically, the Redevelopment Project design components would remove invasive species; restore, preserve, and enhance wetland, aquatic and grassland habitats; create stormwater treatment wetlands; revegetate the site with extensive planting of trees and shrubs; increase the vegetative cover for foraging and dispersing animals; and maintain and enhance habitat connectivity along the shoreline. Additionally, mitigation measure MM BI- 6a.1 requires impact avoidance and pre-construction surveys for nesting special-status and legally protected avian species, and protection of active nests. Mitigation measures MM BI- 4 a. 1 and 4

a. 2 protecting water quality, wetlands, and aquatic habitats, and requiring compensatory mitigation for lost wetlands and aquatic habitats; MM BI-5 b. 1, 5 b .2, 5 b .3 and 5 b. 4 requiring avoidance and minimization of impacts to eelgrass, and compensatory mitigation for lost eelgrass habitats; MM BI-9 b to avoid pile-driving impacts on aquatic species; and MM BI-12 a.1, 12 a.2, 12 b.1 and 12 b.2 to reduce impacts to fish and their habitats will all provide additional protection of these sensitive species and provide mitigation for loss of their habitat as necessary to reduce impacts to less than significant levels. Additional mitigation measures describe specific survey and protection protocols for two species with particular needs, the burrowing owl and the American peregrine falcon. Implementation of these mitigation measures will ensure that any impacts to these species are less than significant. **(EIR, p. III.N-73-74, 112, Parks, Open Space And Concept Plan, pp. 158-164.)**

The Redevelopment Project could impact wetlands and other aquatic habitat in connection with shoreline improvements and the construction of the Yosemite Slough Bridge, through direct filling or shading. **(EIR, pp. III.N-56- 68, 115 116.)** Permanent impacts to these areas and other wetlands impacted by the Redevelopment Project are subject to mitigation requiring the restoration or creation of wetlands having an area at least equal to the areas permanently filled, and additional restored or created wetlands equal to at least 50 % of the area impacted by shade. **(EIR, pp. III.N-56-68.)** Such restoration or creation would be performed in accordance with the Wetlands and Jurisdictional Waters Mitigation and Monitoring Plan. **(EIR, pp. III.N-60-62.)**

In addition, mitigation measure MM BI-4a.2 requires that temporarily impacted sensitive habitats be restored to their pre-construction condition following the completion of construction activities, and that all temporarily impacted wetlands, and other jurisdictional waters, whether in tidal or non-tidal areas, shall be restored to pre-construction contours following construction. Such impact areas include areas that are dewatered (e.g., using coffer dams) and/or used for construction access. Temporarily impacted wetlands that were vegetated prior to construction shall be revegetated in accordance with a Wetlands and Jurisdictional Water Mitigation and Monitoring Plan, as described above. **(EIR, pp. III.N-60-62.)** A further mitigation measure requires Best Management Practices for construction, including erosion control measures and culverts to maintain wetlands' hydrologic connections to drainages. **(EIR, pp. III.N-62-63.)** These mitigation measures will reduce wetland impacts to a less than significant level.

The Yosemite Slough Restoration Project will create and restore aquatic, wetland, and adjacent upland habitat in and around Yosemite Slough, which is also the site of the proposed Yosemite Slough Bridge. However, the bridge would not significantly affect the proposed restoration. The bridge would at most result in a negligible amount (0.0003 acre) of permanent fill in the areas that are to become new or restored wetlands under the Restoration Project, and would indirectly impact approximately 0.012 acres of new or restored wetlands with shading. These impacts will be compensated by the creation or restoration of similar habitat in accordance with the Wetlands and Jurisdictional Waters Mitigation and Monitoring Plan. **(EIR, pp. III.N-60-62.)**

Following implementation of the Yosemite Slough Restoration Project, and construction of the Yosemite Slough Bridge, some reduction in wildlife use of the bridge footprint and immediate adjacent areas is expected to occur. However, reduction in use by wildlife species is not expected to rise to the level of significance. **(EIR, Comments and Responses (C&R) p. 53.)**

The species and habitats that presently occur or are expected to occur on the site are found throughout the Bay Area; Yosemite Slough does not, and will not, following implementation of the Restoration Project, support biological resources that are unique to the site or that do not occur in much greater abundance in other parts of the Bay Area. The Redevelopment Project area currently supports a relatively low number of common wildlife species and habitats due to its urban and heavily disturbed condition; these species occur in greater numbers at numerous other locations in the Bay Area. Therefore, any reduction in common species and habitats at the site would be insignificant in the regional context. Any impacts that would occur would be offset through implementation of the Habitat Plan (**EIR, pp. III.N-50-51**) and restoration and creation of wetland and aquatic habitats in accordance with the aforementioned Wetlands and Jurisdictional Waters Mitigation and Monitoring Plan. (**EIR, pp. III.N-60-62.**)

Stephen C. Rottenborn, Ph.D., of H.T. Harvey and Associates, provided analysis of biological resource impacts in the EIR, including the potential impacts of the proposed Yosemite Slough Bridge. His analysis of the bridge is included in part in the Comment and Response section of the EIR. Several differing professional opinions regarding the effect of the Yosemite Slough Bridge on special-status bird species, including Dr. Rottenborn's, have been expressed. The Director has determined that Dr. Rottenborn's opinions are well founded. Dr. Rottenborn concluded that nesting special-status bird species are not likely to be adversely affected by use of the bridge. According to Dr. Rottenborn, those species are not expected to nest on the constructed "bird islands" that are proposed as part of the Yosemite Slough Restoration Project because the islands would not provide suitable habitat for these species (**EIR, p. C&R-35.**)

Dr. Rottenborn also concluded that: (1) increase in lighting from the Yosemite Slough Bridge is not expected to result in a significant impact to wildlife use of Yosemite Slough, and (2) loud noise from traffic, noise, and human use of the site and Yosemite Slough Bridge would not deter wildlife (particularly bird) use of high quality habitat areas once animals have habituated to the bridge and to vehicular noise levels.

These conclusions are based on observations of bird use at eight different reference sites within the Bay Area. Those sites are: 1) Coyote Creek Ranch 1A waterbird pond and South Coyote Slough (San Jose); 2) San Jose-Santa Clara Water Pollution Control Plant (San Jose); 3) Pond 16A New Chicago Marsh and Triangle Marsh (Alviso); 4) Shoreline Park (Mountain View); 5) Palo Alto Baylands (Palo Alto); 6) South Bayside System Authority Plant (Redwood City); 7) Crissy Field (San Francisco); and 8) East San Francisco Bay shoreline along I-580 north of the Bay Bridge.

Dr. Rottenborn predicts that bird use at Yosemite Slough would not be substantially reduced as a result of the bridge. He cites four reference areas where birds routinely fly over roads that are wider and/or more heavily used by traffic than is likely to occur on the Yosemite Slough Bridge. Those reference areas are: 1) Highway 92 in Hayward, where waterbirds move between the Eden Landing Ecological Reserve on the south side of the highway and Hayward Regional Shoreline on the north (and between the Bay mudflats adjacent to each of these two areas) by flying over the highway; 2) Highway 84 in Menlo Park and Fremont, where birds move between ponds and along the bayshore on both ends of the Dumbarton Bridge by flying over the highway; 3) Highway 37 west of Vallejo, where birds move between San Pablo Bay to the south and the

Napa River and associated marshes to the north by flying over the highway; and 4) Highway 101 southeast of Mill Valley, where birds move between the portions of upper Richardson Bay on either side of the highway by flying over the highway.

Based upon the bird behavior at the above reference sites, Dr. Rottenborn concludes that waterbirds using Yosemite Slough, either presently or after implementation of the restoration Redevelopment Project, would move between Yosemite Slough and South Basin/SF Bay Areas to the east if they perceive the habitat value of Yosemite Slough to be high enough.

Dr. Rottenborn also states that exhaust emissions due to the traffic use of the Yosemite Slough Bridge, even on game days, would not result in substantial adverse effects on habitats of the slough, including restored habitats under the Restoration Project. This statement was based upon conditions at four reference sites in the Bay Area. Those reference sites are: 1) Palo Alto Flood Control Basin along Highway 101 and its frontage road in Palo Alto; 2) marshes near Inner Bair Island along Highway 101 in Redwood City; 3) tidal salt marsh at the Bay edge at the I-80/I-880 junction at the east end of the Bay Bridge in Oakland; and 4) tidal marsh along Highway 37 at the San Pablo Bay National Wildlife Refuge. **(EIR, pp. C&R-47-50.)**

The portion of the Bay adjacent to the CPSRA and the rest of the Redevelopment Project site is designated as Essential Fish Habitat (EFH) in three federal fisheries management plans: the Pacific Coast Salmon Plan, the Coast Pelagics Fishery Management Plan, and the Pacific Groundfish Fishery Management Plan. **(EIR, p. III.N-88.)** The National Marine Fisheries Service has also designated this part of the Bay as critical habitat for green sturgeon and Central California Coast steelhead, both special-status species. **(EIR, p. III.N-85.)** The construction of Yosemite Slough Bridge and other shoreline improvements associated with the Redevelopment Project could cause temporary impacts to EFH and critical habitat from sediment suspension and turbidity during construction and some loss of such habitat from placement of permanent fill, but these potential impacts will be reduced to a level of insignificance by mitigation measures requiring seasonal restrictions on in-water construction to avoid times when special-status species are present, worker training, best management practices during construction, and compensatory provision of habitat for any filled areas. **(EIR, pp. III.N-85-93.)** Moreover, by removing piers and reducing coastal erosion, the Redevelopment Project would increase the amount and quality of open water on the site, thus providing new EFH and critical habitat and benefiting the species. **(EIR, pp. III.N-85-90.)**

Additional support for the finding that the Redevelopment Project will not significantly impact biological resources is found in the EIR and its supporting documents.

(B) The Redevelopment Project Will Include Habitat Enhancement Measures To Benefit Migratory Birds And Other Wildlife:

The following Habitat Enhancement Measures will be implemented as part of the Habitat Plan to enhance wildlife habitat conditions within the Redevelopment Project site:

Control of non-native invasive species – Invasive, non-native plant species would be removed during initial habitat enhancement efforts to provide areas for creation of higher-quality habitats and to prevent their spread into restored native habitats. Monitoring and ongoing

control/removal of these species would be implemented. (**Parks, Open Space, and Habitat Concept Plan, p. 158**).

Restoration of grasslands – A Grasslands Ecology Park will be developed on the Hunters Point Shipyard area, and will create at least 43 new acres of native grassland through the removal of non-natives, and seeding and/or plugs of native grass and forb species. Detailed design of the grassland restoration areas will be performed by a qualified restoration ecologist. A list of native grasses and forbs that may be used is included in the Habitat Plan. (**Parks, Open Space, and Habitat Concept Plan, pp. 158-160**.)

Increase in tree/shrub cover – Approximately 10,000 net, new trees will be planted throughout the Redevelopment Project area. While some of these trees will be planted as street trees or for ornamental purposes, a large number will be planted specifically with wildlife habitat in mind. Within parks such as the Grasslands Ecology Park (outside of the designated grassland restoration areas), trees, shrubs and ground cover will be planted in clusters to provide dense, multi-layered clumps of vegetation that will provide food, cover, and roosting, nesting, and foraging sites for a variety of wildlife species. Enhancement of raptor foraging habitat under the Draft Final Parks, Open Space, and Habitat Concept Plan will include restoration and management of grasslands and an increase in tree and shrub cover. (**EIR, MM-BI-7b**.) A list of native trees and shrubs that could be planted is included in the Plan, as well as detail about how the planting palette will allow for wildlife diversity. (**Parks, Open Space, and Habitat Concept Plan, pp. 160- 62**.)

Maintenance of habitat connectivity –To help maintain habitat connectivity throughout the site, vegetated areas providing cover for dispersing mammals, reptiles, and amphibians would be provided. For example, along the southern edge of the Hunters Point Shipyard Phase II area, vegetated areas providing cover for dispersing mammals, reptiles, and amphibians would be provided. In some areas, restored tidal marsh will provide some habitat connectivity along the shoreline. “Hardened” shoreline treatments, such as rock, will provide interstitial spaces to provide cover for these small animals as well. (**Park, Open Space, and Habitat Concept Plan, p. 162**.) The Agreement further provides for the addition of property to the reconfigured CPSRA which will result in the widening of the CPSRA along the southwestern shoreline at an existing “pinch point”, allowing habitat enhancement and improving connectivity along CPSRA shoreline. (**Agreement, sections 3.1, 3.3, and 3.5**.)

Maintenance of refugia for waterbirds – At least one shoreline area at least 200 feet from the nearest formal trail or shoreline observation area will be provided where waterbirds can roost at high tide. Here, waterbirds would be able to roost on riprap, beach, or some other open area removed from concentrated human activity. In addition, the bases of three piers in the southeastern corner of the Hunters Point Shipyard Phase II area will be removed to prevent mammals from accessing these piers. The remainder of each of these three piers will be left in place to provide roosting sites for gulls, cormorants, pelicans, and terns. Preventing mammalian predators from accessing these piers will make them safer for roosting waterbirds, and may also encourage some waterbirds to begin nesting on the piers. (**Parks, Open Space, and Habitat Concept Plan, pp. 162-163**.)

Increase in open water habitat – New subtidal and intertidal habitat will be created along much of the eastern shoreline of the Hunters Point Shipyard Phase II area when existing pier walls are removed and the edges of the existing shoreline “laid back.” The Redevelopment Project as a whole will result in a net increase of eight acres of open water that can serve as habitat for fish and benthic organisms. **(Parks, Open Space, and Habitat Concept Plan, pp. 163-164.)**

In addition, the EIR includes a discussion of how the Redevelopment Project will benefit the main wildlife groups:

Extensive planting of native vegetation would enhance the vegetation community as well as enhance habitat for common butterflies, birds, small mammals, reptiles, and amphibians on the Redevelopment Project site;

In the case of migratory birds, the Redevelopment Project would result in a net benefit that would have regional or flyway-level implications, as the Redevelopment Project would enhance foraging habitat that is used by birds breeding and wintering in areas far from the Study area;

Neotropical and other long-distance migrants, the landbird group using the site that is of greatest conservation concern, would receive a considerable net benefit from the Redevelopment Project. Increases in foliage height diversity and vegetation volume resulting from the planting of numerous trees and shrubs on the site, most of which currently supports little woody vegetation, would result in increase in the diversity and abundance of both breeding and migratory birds.” [Three references are provided for this statement: 1) MacArthur, R.H. and J.W. MacArthur. 1961. On bird species diversity. *Ecology* 42:594-598, 2) Karr, J.R. 1968. Habitat and avian diversity on strip-mined land in east-central Illinois. *Condor* 70:348-357, 3) Mills, G.S., J.B. Dunning, Jr., and J.M. Bates. 1991. The relationship between breeding bird density and vegetation volume. *Wilson Bulletin* 103:468-479]; and

The Redevelopment Project’s revegetation component and the addition of new parklands will provide a net enhancement of breeding, wintering, and migratory stopover habitat for birds in the Redevelopment Project area. **(EIR, pp. III.N-50-54.)**

FINDING NO. 6:

THE AGREEMENT SATISFIES APPLICABLE REQUIREMENTS OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965 (16 U.S.C. SEC. 4601- et seq.)

Support For Finding No. 6:

The federal Land and Water Conservation Fund Act of 1965, provides that property acquired or developed or improved with the assistance of the federally-created Land and Water Conservation Fund (LWCF) cannot be “converted” to uses other than public outdoor

recreation unless the conversion is approved by the Secretary of the Interior. The Secretary may approve a conversion if it is “in accord with the then existing comprehensive statewide outdoor recreation plan, and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.” (16 U.S.C. sec. 4601(f) (3).)

Approximately 35 acres of land within the existing CPSRA is subject to LWCF restrictions. (David Siegenthaler, Department of Interior letter to Barbara Baker, State Parks, dated March 29, 2010.) Of that 35 acre area, approximately 3.7 acres is proposed to be removed from the existing CPSRA and conveyed to the Agency by State Parks, including 0.7+/- acres of water pipeline, 0.20+/- acres of sewer line and 2.8+/- acres of land improved with a paved parking area and an adjacent grassy area. The proposed substitute or replacement property consists of 4.8+/- acres of land located directly adjacent to the existing CPSRA along Jamestown Avenue, and 0.9+/- acres of land located near Yosemite Slough. (Agreement, Exhibit A.) (BMS Design Group, Map of Proposed 6 (F) (3) Lands, August 24, 2010.)

State Parks is transmitting a formal application for conversion approval to the Department of Interior. The California Outdoor Recreation Plan (2008) is California’s comprehensive statewide outdoor recreation plan; the proposed conversion is consistent with that Plan. The proposed substitute or replacement property is of reasonably equivalent usefulness and location, as the property proposed to be removed from the existing CPSRA.

State Parks’ obligation to transfer the LWCF protected land to the Agency is expressly conditioned upon the approval of the Secretary of Interior. No conversion will take place under the Agreement until this approval has been obtained by the Secretary. (Agreement, section 13.4.)


FINDING NO. 7:

TWENTY PERCENT OF THE TOTAL CONSIDERATION VALUE PROVIDED BY THE AGREEMENT WILL BE PROVIDED IN THE FORM OF OPERATION AND MAINTENANCE FUNDING.

Support for Finding No. 7:

Section 4.1 of the Agreement obligates the Agency to provide \$10 million to State Parks for the exclusive purpose of a dedicated source of operation and maintenance of the reconfigured CPSRA, which is twenty (20) percent of the value of the \$50 million total consideration provided for in the Agreement. (Agreement, section 4.1.)

Date: 11/17/10



Ruth Coleman

Director
California Department of Parks and Recreation