

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-3662 322-3660 322-3901 322-6441

August 8, 1985

Charles R. Gill
Assistant City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

Re: Your Request for Advice
Our File No. A-85-167

Dear Mr. Gill:

We are in receipt of your letter of July 22, 1985, seeking advice relative to the proposed Chula Vista Bayfront Conservancy Trust. You have related the following facts:

FACTS

1. The Community Development Agency of the City of Chula Vista, in conjunction with the California Coastal Conservancy, is in the process of creating the Chula Vista Bayfront Conservancy Trust (herein referred to as "the Corporation"), a nonprofit corporation which will administer certain environmentally sensitive lands pursuant to the Local Coastal Plan.
2. The Board of Directors of the Corporation will be comprised of 10 members. The chairman of the Board will be the Mayor of Chula Vista or his or her designee and seven of the remaining nine members will be appointed by state or local agencies.
3. The City of Chula Vista will establish an assessment district to provide taxpayer funds for the Corporation.
4. For additional funding, the Corporation intends to seek grants from the State Coastal Conservancy.
5. The draft by-laws of the Corporation require that meetings of the Board of Directors be open to the public and held in accordance with the Ralph M. Brown Act.

Charles R. Gill
August 8, 1985
Page 2

6. The Tax Assessor has advised that the real property held by the Corporation will be exempt from property taxes.

QUESTION

You have asked whether the Board of Directors and officers of the Corporation are "public officials" within the meaning of the Political Reform Act.^{1/}

CONCLUSION

The Board of Directors and officers of the Corporation are public officials covered by the Act.

ANALYSIS

"Public official" is defined in Section 82048 as:

... every member, officer, employee or consultant of a state or local government agency....

"Local Government agency" is in turn defined in Section 82041 as:

... a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

In determining whether a particular entity is a private entity or a local government agency, the Commission in its Siegel Opinion,^{2/} stated that certain criteria should be considered. These criteria are:

(1) Whether the impetus for formation of the corporation originated with a government agency;

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

^{2/} Opinion requested by Samuel Siegel (No. 76-054, July 6, 1977), 3 FPPC Opinions 62.

(2) Whether it is substantially funded by, or its primary source of funds is, a government agency;

(3) Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and

(4) Whether the corporation is treated as a public entity by other statutory provisions.

Impetus for Formation

You have stated that the impetus for formation of the Corporation originated with the Chula Vista Community Development Agency and the California Coastal Commission; therefore, the first criteria is satisfied.

Funded by a Government Agency

The Corporation intends to seek grants from the State Coastal Conservancy. In addition, the City of Chula Vista plans to establish an assessment district in order to fund the Corporation. Clearly, government agencies are the primary source of funds for the Corporation.

Service Which Public Agencies Traditionally Perform

Section 1.2 of the Corporation's draft by-laws outlines the specific purposes of the Corporation which include: preserving land for scientific, ecological, recreational, scenic and open space opportunities; engaging in the restoration, enhancement and preservation of the Sweetwater Marsh; receiving and holding dedications of land; and increasing public knowledge of and support for natural resource conservation. Cities are broadly authorized to acquire, by purchase or otherwise, land for squares, parks, playgrounds, and places within the city and to improve, equip and maintain them. Section 40401. Additionally, "... anything calculated to promote the education, recreation, or pleasure of the public should be regarded as within the legitimate domain of public purposes." 45 Cal. Jur. 3d, Municipalities Section 136. Local agencies are also authorized to conserve open space areas. Section 50583. It is reasonable to conclude that the purposes of the corporation include activities and services which public agencies are legally authorized to perform and have traditionally performed.

Charles R. Gill
August 8, 1985
Page 4

Treated as a Public Entity by Other Statutes

Section 3.6 of the Corporation's draft by-laws requires that meetings of the Board of Directors be held in accordance with the Ralph M. Brown Act. As defined in the Brown Act, "local agency" includes:

... any nonprofit corporation, created by one or more local agencies, any one of the members of whose board of directors is appointed by such local agencies and which is formed to acquire, construct, reconstruct, maintain or operate any public work project.

Section 54951.7.

"Public work project" is not defined by the Brown Act; however, courts have held that "the kind of facility or activity classed as a public work or public works project is a matter of statutory interpretation, which varies with statutory objective and verbal context." Raley v. California Tahoe Regional Planning Authority (1977), 68 Cal. App. 3d 965, 982.

The statutory objective of the Brown Act is to ensure that public agencies, which exist to aid in the conduct of the people's business, conduct their deliberations openly. Section 54950. Since the Corporation will be administering environmentally sensitive lands pursuant to the Local Coastal Plan and will receive its funding for this purpose through State Coastal Conservancy grants and an assessment district established by the City of Chula Vista, it is clear that the Corporation will be aiding in the conduct of the people's business. Accordingly, the Corporation may well be treated as a public entity by the Ralph M. Brown Act. Even if not legally subject to the Brown Act's open-meeting requirements, you have advised that the provision was inserted into the Corporation's by-laws to provide the public with the assurance that the Corporation's sensitive work will be conducted in the open.

An examination of these four criteria set forth in Siegel leads to the conclusion that the Corporation is a public entity and, therefore, must be considered a "local government agency" within the meaning of the Political Reform Act.

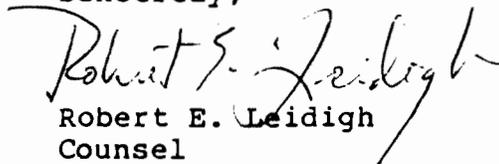
Furthermore, as indicated in the foregoing discussion, the public purpose of the Corporation and the sensitive nature of its work in managing valuable public assets dictate that its decisions be free of any possible taint from conflict of

Charles R. Gill
August 8, 1985
Page 5

interest. We think those purposes and the purposes of the Act are best served by our conclusion.

If you have any further questions regarding this advice, please contact me at (916) 322-5901. For assistance in preparing a Conflict of Interest Code you may wish to contact Ms. Jeanette Turvill at the same number. The Code should be adopted within 6 months of the establishment of the agency.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh



The City of Chula Vista

Office of the City Attorney

Jul 25 8 07 AM '85
(619) 691-5037

July 22, 1985

Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, CA 95814

Dear Commission:

The Community Development Agency of the City of Chula Vista is presently involved in the creation of a nonprofit corporation in conjunction with the California Coastal Conservancy which will administer environmentally sensitive lands currently under the ownership of a private land developing company.

The private land developing company, pursuant to the Local Coastal Plan approved by the California Coastal Commission, will deed these environmentally sensitive lands to the nonprofit corporation established by the City of Chula Vista and the California Coastal Conservancy. Enclosed herewith are the draft Articles of Incorporation and the Bylaws for the Chula Vista Bayfront Conservancy Trust. You will note that the Board of Directors of said nonprofit corporation are appointed by a variety of organizations including elected officials, community groups and educational institutions. During the process of drafting the Articles of Incorporation and Bylaws, this office became concerned that the Board of Directors and Officers of said nonprofit corporation might be public officials within the meaning of the Fair Political Practices Commission regulations.

In 3 FPCC Opinions 62, your Commission held that the members of the Board of Directors of the Pico Rivera Water Development Corporation were public officials within the meaning of Government Code §87100. Said opinion established four criteria by which the Commission will consider whether or not a corporation is a "local government agency" within the meaning of the Government Code. These criteria include:

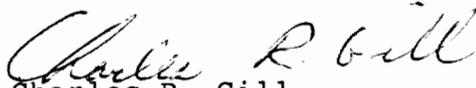
Fair Political Practices Commission
July 22, 1985
Page 2

- "1. Whether the impetus for formation of the corporation originated with the government agency;
2. Whether it is substantially funded by or its primary source of funds is, a government agency;
3. Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed;
4. Whether the corporation is treated as a public entity by other statutory provisions."

A review by this office of the four criteria listed above indicates that the impetus for formation of the corporation originated with the Chula Vista Community Development Agency and the California Coastal Commission; the corporation will be funded pursuant to an assessment district established by the City of Chula Vista for the maintenance of the environmentally sensitive lands pursuant to the Local Coastal Plan; the principal purpose to be undertaken by the corporation is to provide protection and maintenance for the environmentally sensitive lands which may be a service traditionally performed by a public agency. However, the corporation is not treated as a public entity by other statutory provisions.

We would appreciate an opinion from the Fair Political Practices Commission which establishes whether or not the officers and/or Board of Directors of the Chula Vista Bayfront Conservancy Trust must comply with the provisions of Government Code §87000, et seq. Should you have any questions relating to this matter, please do not hesitate to call.

Very truly yours,


Charles R. Gill
Assistant City Attorney

CRG:clb

enc.

cc: Jennifer Jennings
California Coastal Conservancy

0607a

DRAFT
Jul 25 8 01 AM '85

BY-LAWS

OF

CHULA VISTA BAYFRONT CONSERVANCY TRUST

ARTICLE I

NAMES, PURPOSES AND PRINCIPAL OFFICE

Section 1.1 Name.

The name of this corporation is Chula Vista Bayfront Conservancy Trust.

Section 1.2 Purposes.

The corporation is organized under the Nonprofit Public Benefit Corporation Law of California exclusively for charitable and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954.

The specific purposes of this corporation include, but are not limited to, preserving land for scientific, ecological, recreational, scenic and open space opportunities; engaging in the restoration, enhancement and preservation of the Sweetwater Marsh; receiving and holding dedications of land; and increasing public knowledge of and support for natural resource conservation.

Section 1.3 Principal Office.

The principal office of this corporation shall be located in the City of Chula Vista, State of California, at an address to be established by resolution of the Board of Directors.

ARTICLE II

MEMBERSHIP

This corporation shall have no members.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Powers.

This corporation shall have powers to the full extent allowed by law. All powers and activities of this corporation shall be exercised and managed directly by the Board.

Section 3.2 Number of Directors.

The authorized number of directors shall be ten (10).

Section 3.3 Selection of Directors.

The Board will consist of (1) the Mayor of Chula Vista or his/her designee, who will also be the chairman; (2) a representative of the San Diego Unified Port District; (3) a representative appointed by the County of San Diego Board of Supervisors; (4) a representative of the private land ownership north of "G" Street within the Coastal zone; (5) a representative of the educational community from the field of environmental sciences; (6) a representative of an environmental organization; (7) an appointee of the State Coastal Commission; (8) an appointee of the State Coastal Conservancy; (9) a citizen at large appointee of the Chula Vista City Council; and (10) a representative of the Department of Fish and Game (for purposes of advising the Bayfront Conservancy Trust on management of wildlife habitat not contained within Sweetwater Marsh, Vener Pond and "E" Street Marsh within the City of Chula Vista and described as wetlands comprising of 188+ acres in the City's Local Coastal Plan.

Special provisions apply to the following numbered seats:

- (4) At the time when special improvement districts are formed in the subject area, a representative of the collective private ownerships will be selected on an election basis supervised by the City of Chula Vista.
- (5) The Chairman shall request the Chancellor of the University of California, San Diego or the President of San Diego State University to designate the representative of the educational community. Said representative shall be alternated between the two universities.
- (6) The Chula Vista City Council will select, on a two-year rotation basis, a representative from a regionally recognized organization whose aim is the protection and conservation of the natural environment.
- (7), (8) and (10)

Those appointed may but need not be members of the governing boards of the State Coastal Commission, State Coastal Conservancy, or Department of Fish and Game, respectively.

Section 3.4 Term of Office of Directors.

The Mayor of Chula Vista, serving as a director by virtue of his/her elected public office, shall be a director during his/her entire tenure as Mayor and shall be succeeded as a director at the same time as he/she is replaced as Mayor. With respect to the remaining nine directors, for the first operating year of the corporation, five (5) directors shall serve for a term of one year, and four (4) directors shall serve for a term of 2 years. Thereafter, the term of directors shall be 2 years.

Section 3.4.1 The initial directors shall draw lots to determine those with one year and those with two-year terms.

Section 3.4.2 Each director shall hold office until the expiration of the term for which appointed, and until a successor has been appointed or elected.

Section 3.4.3 Appointed directors may be removed at any time by the appointing power during their term.

Section 3.4.4 With the exception of the Mayor of Chula Vista, no director may serve more than two consecutive terms.

Section 3.5 Vacancies.

A vacancy shall be deemed to exist in the event that the actual number of directors is less than the authorized number for any reason, including resignation or removal of the director by his/her appointing authority. Notice must be given to the Board of the removal of a director and the identity of the new appointee-director.

Section 3.6 Meetings.

The meetings of the Board of Directors shall be open to the public and held in accordance with the Ralph M. Brown Act, Government Code Section 54950 et seq.

Section 3.7 Annual Meeting.

The annual meeting of the Board of Directors shall be held on the third Tuesday of September of each year.

Section 3.8 Regular Meetings.

The Board of Directors, by resolutions, may establish a schedule of regular monthly meetings of the Board of Directors.

Section 3.9 Special Meetings.

Special meetings of the Board of Directors may be called by the chairman, or by any two (2) directors, by written notice delivered personally or by telephone or telegraph to each of the directors, or mailed by first class mail at least four (4) days or more prior to any such meetings. The notice shall state the the time, place, and subject matter of such special meeting.

Section 3.10 Quorum.

A majority of the directors then in office shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 3.11 of this Article III. Every act or decision by a majority of the directors present shall be regarded as the act of the Board of Directors, subject to the provisions of the California Nonprofit Public Benefit Corporation Law including, without limitations, those provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (ii) creation of and appointments to committees of the board, and (iii) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 3.11 Adjournment.

A majority of the directors present, whether or not constituting a quorum may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 3.12 Standard of Care.

A. General. A director shall perform the duties of a director, including duties as a member of any committee of the board on which the director may serve in good faith, in a manner such director believes to be in the best interests of this corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;
- (2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a director in accordance with the foregoing shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director.

B. Non-Liability of Directors. The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

C. Indemnification by Corporation of Directors, Officers, Employees and Other Agents. To the extent that a person who is, or was, a director, officer, employee or other agent of this corporation has been successful on the merits in defense of any civil, criminal, administrative or investigative proceeding brought to procure a judgment against such person by reason of fact that he or she is, or was, an agent of the corporation, or has been successful in defense of any claim, issue or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by this corporation but only to the extent allowed, by and in accordance with the requirements of Section 5238 of the California Nonprofit Public Benefit Corporation Law.

D. Insurance for Corporate Agents. The corporation shall have the right to purchase and maintain insurance to the

full extent permitted by law on behalf of any agent of the corporation, including a director, officer, employee or other agent of the corporation, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's, employee's, or agents status as such.

Section 3.13 Prohibited Transactions.

A. Loans. This corporation shall not make any loan of money or property to or guarantee the obligation of any director or officer; provided, however, that this corporation may advance money to a director or officer of this corporation for expenses reasonably anticipated to be incurred in performance of the duties of such officer or director so long as such individual would be entitled to be reimbursed for such expenses absent the advance.

B. In addition to the above prohibition, the actions of a director or officer shall comport with all applicable provisions of the Corporations Code, Government Code and the Public Contracts Code.

Section 3.14 Compensation.

At all times, fifty-one percent (51%) or more of the directors shall be persons who have not been compensated, within the previous twelve months, by this corporation for services performed for this corporation. In this Section, the term "persons" includes individuals related by blood or marriage.

ARTICLE IV

COMMITTEES

Section 4.1 Committees of Directors.

The Board of Directors may designate one (1) or more committees, each consisting of three (3) or more directors to serve at the pleasure of the board. Appointments to all committees shall be made by majority vote of the directors then in office. Any committee, to the extent provided in the board resolution, shall have all the authority of the board, except that no committee, regardless of board resolution may:

- A. Fill vacancies on the Board of Directors or on any committee;
- B. Expend any corporate funds for any purpose without the express authorization of the Board of Directors;
- C. Amend or repeal bylaws or adopt new bylaws;
- D. Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable of repealable;

E. Appoint any other committees of the Board of Directors.

Section 4.2 Meetings.

Meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of Article III of these bylaws concerning meetings of directors, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

Section 5.1 Officers.

The officers of this corporation shall be chairman, vice-chairman, secretary and treasurer. The corporation may also have at the discretion of the directors, such other officers as may be appointed by the directors. Any number of offices may be held by the same person, except that neither the secretary nor the treasurer may serve concurrently as the chairman of the board.

The chairman shall be the Mayor of Chula Vista or his/her designee. The treasurer of this corporation shall be selected from the membership of the Board of Directors, and must be a member of the board. Other officers of the corporation need not be members of the Board of Directors.

Section 5.2 Election.

The officers of this corporation, with the exception of the chairman, shall be chosen annually by the directors, and each shall serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

Section 5.3 Removal.

Subject to the rights, if any, of an officer under any contract of employment, any officer, with the exception of the chairman, may be removed by a majority vote of the Board of Directors pursuant to applicable law.

Section 5.4 Resignation.

An officer may resign at any time by given written notice to this corporation. The resignation shall take effect at

the date of the receipt of that notice or at any later time specified by that notice, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5.5 Vacancies.

A vacancy in any office for any reason shall be filled in the manner described in these bylaws for regular appointments to that office.

Section 5.6 Chairman.

The chairman shall be the chief executive officer of the corporation, shall preside at all meetings of the Board of Directors and shall, subject to control of the board, generally supervise, direct and control the business and the officers of the corporation.

Section 5.7 Vice-Chairman.

In the absence of the chairman, the vice-chairman shall preside at all meetings of the Board of Directors, and shall, subject to the control of the board, have the powers and duties of the chairman.

Section 5.8 Secretary.

The secretary shall keep a full and complete record of the proceedings of the board and committees of the board, shall keep the seal of the corporation and affix the same to such papers and instruments as may be required in the regular course of business, shall make service of such notices as is required by these bylaws or as may be proper, shall supervise the keeping of the books of the corporation, and shall discharge such other duties as pertain to the office or as prescribed by the directors. The secretary shall keep or cause to be kept, at the corporation's principal office, a copy of the Articles of Incorporation and bylaws.

Section 5.9 Treasurer.

The treasurer shall have charge and custody of all funds of the corporation, shall deposit such funds in the manner required by the board, shall keep and maintain adequate and correct accounts of the corporation's properties and business transactions, shall render reports and accountings as required, and shall discharge such other duties as pertain to the office or

as prescribed by the directors. The books of account shall be open to inspection by any officer at all reasonable times. The board may require the treasurer to give the corporation a bond in the amount and with the surety or sureties specified by the board for faithful performance of the duties of the office and for restoration to the corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the chief financial officer on his or her death, resignation, retirement, or removal from office.

ARTICLE VI

REPORT TO DIRECTORS

Section 6.1 Annual Report. The chairman shall furnish a written report within 120 days after the end of the corporation's fiscal year to all of the directors containing the following information:

- A. The assets and liabilities, including the trust funds, of this corporation as of the end of the fiscal year;
- B. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- C. The revenue or receipts of this corporation, both unrestricted and restricted for particular purposes, for the fiscal year;
- D. The expenses or disbursements of this corporation, for both general and restricted purposes during the fiscal year;
- E. The amount and circumstances of any indemnifications or advances aggregating more than TWO THOUSAND DOLLARS (2,000.00) paid during the fiscal year to any officer or director of the corporation.

The annual report shall be accompanied by a report on the corporation by independent accountants or, if there is no such report, by the certificate of an unauthorized officer of the corporation that such statements were prepared without audit from the corporation's books and records.

Section 6.2 Inspection by Directors.

Every director shall have the absolute right at any reasonable time to inspect the corporation's books, records,

documents of every kind and the corporation's property. The right of inspection includes the right to copy and make extracts of documents.

Section 6.2.1 The corporation's books, records, documents of every kind shall be public records available for inspection by the public.

ARTICLE VII

AMENDMENTS

Section 7.1 Amendment of Articles of Incorporation.

Proposed amendments to this corporation's Articles of Incorporation must be submitted in writing to the directors at least one (1) month in advance of the board meeting at which they will be considered for adoption. The vote of two-thirds (2/3) of the directors present at any meeting shall be required to adopt an amendment to the Articles of Incorporation.

Section 7.2 Amendments to Bylaws.

Proposed amendments to this corporation's bylaws must be submitted in writing to the directors at least one (1) month in advance of the board meeting at which they will be considered for adoption. The vote of 2/3 of the directors present at any meeting shall be required to adopt an amendment to the bylaws of this corporation.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Fiscal Year.

The fiscal year of this corporation shall end each year on _____.

Section 8.2 Corporate Seal.

This corporation shall have a seal which shall be specified by resolution of the Board of Directors. The seal shall be affixed to all corporate instruments, but failure to affix it shall not affect the validity of the instrument.

Section 8.3 Contracts.

All contracts entered into on behalf of this corporation must be authorized by the Board of Directors.

Section 8.4 Execution of Checks.

Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of the corporation shall be signed by such individuals as are authorized by the Board of Directors.

0469a

ARTICLES OF INCORPORATION
OF

DRAFT

CHULA VISTA BAYFRONT CONSERVANCY TRUST

I

The name of this corporation is Chula Vista Bayfront Conservancy Trust.

II

- A. This organization is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.
- B. The specific purposes for which this corporation is organized include, but are not limited to: preserving land for scientific, ecological, recreational, scenic and open space opportunities; engaging in the restoration, enhancement and preservation of Sweetwater Marsh; receiving and holding dedications of land; and increasing public knowledge of and support for natural resource conservation.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Name: Paul G. Desrochers, Community Development Director

Address: City of Chula Vista
276 Fourth Avenue
Chula Vista, CA. 92010

IV

- A. The corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.
- B. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal

Revenue Code or (2) by a corporation contributions to which are deductible under Section 170(c)(2) of said Code, or the corresponding provisions of any future statute of the United States.

- C. No substantial part of the activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall the corporation participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

V

The Chula Vista Bayfront Conservancy Trust shall be governed by a ten-member Board of Directors. The Board will consist of (1) the Mayor of the Chula Vista or his/her designee, who will also be the Chairman; (2) a representative of the San Diego Unified Port District; (3) a representative appointed by the County of San Diego Board of Supervisors; (4) a representative of the private land ownership north of "G" Street within the Coastal Zone; (5) a representative of the educational community from the field of environmental sciences; (6) a representative of an environmental organization; (7) an appointee of the State Coastal Commission; (8) an appointee of the State Coastal Conservancy; (9) a citizen at large appointee of the Chula Vista City Council; and (10) a representative of the Department of Fish and Game (for purposes of advising the Bayfront Conservancy Trust on management of wildlife habitat not contained within the 188-acre property).

Special provisions apply to the following numbered seats:

- (4) At the time when special improvement districts are formed in the subject area, a representative of the collective private ownerships will be selected on an election basis supervised by the City of Chula Vista.
- (5) The Chairman shall request the Chancellor of the University of California, San Diego or the President of San Diego State University to designate the representative of the educational community. Said representative shall be alternated between the two universities.
- (6) The Chula Vista City Council will select, on a two-year rotation basis, a representative from a regionally recognized organization whose aim is the protection and conservation of the natural environment.

(7), (8) and (10)

Those appointed may be members of the governing boards of the State Coastal Commission, State Coastal Conservancy, or Department of Fish and Game, respectively.

VI

- A. The property of this Corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of the corporation shall ever inure to the benefit of any director, trustee, member of officer of this corporation, or to any private person.
- B. Upon the dissolution of the corporation, any assets remaining after payment of, or provision for payment of, all debts and liabilities shall be distributed to a governmental entity described in Section 170(b)(1)(A)(v) of the Internal Revenue Code, or to a non-profit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes, which has been established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, and which is qualified to receive "qualified conservation contributions" within the meaning of Section 170(h) of said Code, or the corresponding provisions of any future statute of the United States.
- C. In the event of a liquidation of this corporation, all corporate assets shall be disposed of in such manner as may be directed by the court consistent with applicable provisions of the Corporations Code.

IN WITNESS WHEREOF, the undersigned, being the Incorporators of Chula Vista Bayfront Conservancy Trust named in these Articles of Incorporation, have executed these Articles of Incorporation on _____, 1985.

INCORPORATORS

Incorporator

Incorporator

- DECLARATION

We are the persons whose names are subscribed below. We collectively are all of the incorporators of Chula Vista Bayfront Conservancy Trust named in the Articles of Incorporation, and we have executed these Articles of Incorporation. The foregoing Articles of Incorporation are our act and deed, joint and severally.

Executed on _____, 1985, at _____, California.

We, and each of us, declare that the foregoing is true and correct.

Incorporator

Incorporator

0468a