

Los Cerritos Wetlands Authority

Date: November 3, 2016

To: Governing Board Members

From: Mark Stanley, Executive Officer

Subject: Item 10: Consideration of resolution to adopt an expenditure plan for the Los Cerritos Wetlands, LLC Memorandum of Option Agreement funds.

RECOMMENDATION: That the LCWA adopt an expenditure plan for the Los Cerritos Wetlands, LLC Memorandum of Option Agreement funds.

BACKGROUND: The Los Cerritos Wetlands Authority (LCWA) authorized the Executive Officer to enter into a term sheet agreement with Los Cerritos Wetlands LLC (LCWLLC) for the conveyance of real property. The LCWA proposes to transfer the property commonly referred as "Offer to Dedicate" (OTD) Parcel, described as APN 7237-019-809, approximately 5.11 acres to the Los Cerritos Wetlands LLC for their property commonly referred as Steamshovel Slough, described as APNs 7237-017-010; 7237-017-011; 7237-017-012; 7237-0217-013; 7237-017-014; 7237-017-019; 7237-017-805; 7237-017-806; 7237-017-807; 7237-017-808; 7237-017-809, approximately 154 acres. The LCWA approved Resolution 2015-06 on August 12, 2015 which authorized the Executive Officer to enter into a non-binding term sheet agreement with Los Cerritos Wetlands, LLC for the conveyance of real properties and on August 4, 2016 the LCWA approved Resolution 2016-14 which superseded the non-binding term sheet agreement and authorized the Chair to execute an Option Agreement with Los Cerritos Wetlands, LLC.

The Option Agreement took effective on September 2, 2016; following is a brief summary of the recitals.

1. For the Option Consideration LCWA received \$300,000 as a separate and individual consideration for granting the Option Agreement to the LCWLLC. The Option Consideration was delivered to LCWA within seven days of the effective date.
2. Completion of appraisals of the LCWA and the LCWLLC Properties shall be conducted by a qualified appraiser approved by both parties within 45 days of the effective date at the LCWLLC's sole expense. The appraisals may be updated, if determined necessary by LCWA prior to execution of the Land Exchange Agreement. In the event the appraised value of the LCWA Site exceeds the appraised value of the LCWLLC Property, the LCWLLC may elect to exercise the Option and compensate LCWA for the difference in value or terminate the Option.
3. The LCWLLC will implement a Mitigation Bank on LCWLLC Properties, as follows:
 - Mitigation Bank will encompass 77.3 acres on northern portion of LCWLLC Properties
 - IRT = Interagency Review Team will review and approve the Mitigation Bank and will consist of the various regulatory agencies, including US Army Corp of Engineers, US Fish and Wildlife Services, California Department of Fish and Wildlife, National Marine Fisheries, California Coastal Commission, and the Environmental Protection Agency.

- LCWLLC Mitigation Bank Process:
 - Restoration plan and biological studies are prepared and will be included in Draft Prospectus
 - LCWLLC will develop and traverse the Bank Enabling Instrument (BEI) approval process with IRT
 - Once BEI is approved and all the permits are acquired, then LCWLLC will implement restoration plan
 - LCWA will own the property upon adoption of the Final EIR
 - LCWLLC will fund and manage restoration and 5-year interim management plan
 - Upon achievement of all performance standards and dispersal of all credits, bank manager duties will be transferred to the LCWA
 - LCWA will manage and maintain Bank Property in perpetuity in accordance with the long-term management plan
 - LCWA will be provided with an Endowment Fee approved by IRT to maintain the Mitigation Bank in perpetuity

- 4. The LCWLLC proposes the following construction schedule of their properties, as follow:
 - Northerly Portion
 - Restoration of the 77.3-acre tidal wetlands
 - Development of Public Access Trails
 - Southerly Portion
 - Rehabilitation of existing building for the LCWA Education Interpretive Center
 - Construction of parking lot and connector public access trails
 - Abandonment of 35-oil wells and remove associated facilities (pipes, tanks, electric, etc.)

- 5. The LCWLLC proposes the following construction schedule for their oil production facilities on the LCWA OTD Parcel, as follow:
 - Site Grading
 - Drilling and Construction of 70 oil and water injection wells within 3 cellars
 - 2 tanks: 28,000 barrel oil and 5,000 barrel water injection
 - Associated pipeline system including connection to pumpkin patch and offsite oil and gas shipping pipelines
 - 3 natural gas powered turbines
 - 22-foot high perimeter screen wall and perimeter landscaping
 - Driveway improvement from Studebaker Road and a new driveway from 2nd Street

- 6. The LCWLLC proposes to Revegetation Areas as follows:
 - Ongoing oil operations will continue on lower 72 acres of the site. However, upon completion of entitlement effort, approximately 95% of above-ground obsolete pipelines and tank farms will be removed
 - In addition, disturbed areas on the lower 72 acres (not including access roads or active wells) will be revegetated with native habitat
 - As oil operations cease and are removed, all un-vegetated disturbed areas surrounding oil facilities will also be revegetated with native habitat
 - 50% of oil wells will be removed within 20 years of completion of entitlements. The remaining 50% will be removed within the next 20 years.

7. The term of this agreement shall be for four (4) years from the effective date of this Agreement, which term may be extended for an additional four (4) years. The LCWLLC shall have the right, but not the obligation, to terminate the Option upon the occurrence of any of the events set forth in Sections 14.a.-14.e.
8. Title Reports completed by Commonwealth Title and Fidelity Title for the OTD Parcel are currently being reviewed since these reports are inconsistent.
9. Southern California Edison counsel is working on the quitclaim deed to the LCWA and the easement to be granted by LCWA to Southern California Edison.

Per the Option Agreement, the LCWA must reimburse the LCWLLC if the agreement terminates in accordance with Section 14.a through 14.f as follows: if the agreement terminates before twelve (12) months from the effective date, then the LCWA shall reimburse the LCWLLC a total amount of \$200,000; if the agreement terminates before twenty-four (24) months then the LCWA shall reimburse the LCWLLC a total amount of \$100,000 and if the agreement terminates after the second anniversary of the effective date, then the LCWA is not obligated to reimburse the LCWLLC any portion of the funds. Funds subject to reimbursements are termed “unearned revenue” fund not subject to reimbursement are “earned revenues”.

Given the constraints on these funds, Staff is recommending expending up to 90 percent of earned revenue for Year One (FY16/17) and for each progressive year thereafter, no more than 90 percent of earned revenue for Year Two (FY17/18) and Year Three (FY18/19). The purpose of this expenditure policy provides sufficient reserve funds in the event the LCWA may need to reimburse the LCWLLC prior to Year 3 if the agreement is terminated, and secondly maintains a balance for contingency funds.

FY16/17 Yr1(90%) - obligated = Yr1unspent
 FY17/18 Yr1unspent + Yr2(90%) = Yr2balance(90%)
 Yr2balance(90%) – obligated = Yr2unspent
 FY18/19 Yr2unspent + Yr3(90%) = Yr3balance(90%)
 Yr3balance(90%) – obligated = Remaining balance plus contingency balance

Anticipated expenditures for Year One, FY16/17 are estimated at:

1. Project Management	\$25,000
2. Legal Services	\$12,000
3. Technical Reviews	<u>\$20,000</u>
Total	\$57,000

Under this scenario a balance of unspent non-reimbursable funds, earned revenue, for Year One would be \$33,000 to carryover to Year Two. Year Two starting balance would be \$33,000 plus \$100,000 less 10% equals \$123,000 of earned revenue.

The funding formula as stated would allow the opportunity for projects associated with the restoration of the wetlands. This could be accomplished with a Board approved short term (60 days) transfer for expenses while awaiting grant reimbursement. Staff recommends transfers be limited to 50% of the balance remaining in earned revenue at the time of the approval.

FISCAL: The LCWA Budget FY16/17 will be amended to reflect receipt of \$300,000 and the funds will be deposited in an interest bearing account.

LEGISLATIVE AUTHORITY AND LCWA ADOPTED POLICIES/AUTHORITIES: Resolution 2015-06 approved on August 12, 2015 executed the non-binding term sheet agreement and Resolution 2015-14 approved on August 4, 2016 executed the Memorandum of Option Agreement which superseded the term sheet agreement.

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RESOLUTION 2016 – 19

RESOLUTION OF THE LOS CERRITOS WETLANDS AUTHORITY TO
ADOPT AN EXPENDITURE PLAN FOR THE LOS CERRITOS
WETLANDS, LLC MEMORANDUM OF OPTION AGREEMENT FUNDS.

WHEREAS, the Los Cerritos Wetlands Authority has been established between the Coastal Conservancy, the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, the City of Seal Beach and the City of Long Beach to facilitate the acquisition, protection, conservation, restoration, maintenance and operation an environmental enhancement of the Los Cerritos Wetlands; and

WHEREAS, the LCWA has further been established to focus on projects which will provide open space, habitat restoration, and watershed improvement projects within the Los Cerritos Wetlands; and

WHEREAS, this action will authorize the LCWA adopt an expenditure plan for the Los Cerritos Wetlands, LLC Memorandum of Option Agreement funds; and

WHEREAS, the proposed action does not require completion of the California Environmental Quality Act; NOW

Therefore be it resolved that the LCWA hereby:

1. FINDS that the actions contemplated by this resolution is not exempt from the environmental impact report requirements of the California Environmental Quality Act.
2. FINDS that this action is consistent with the purposes and objectives of the LCWA.
3. Authorizes the LCWA to adopt an expenditure plan for the Los Cerritos Wetlands, LLC Memorandum of Option Agreement fund and make necessary budget revisions
4. ADOPTS the staff report dated November 3, 2016.

~ End of Resolution ~

Passed and Adopted by the Board of the
LOS CERRITOS WETLANDS AUTHORITY ON November 3, 2016.

Sam Schuchat, Chair

ATTEST:

David Edsall
Deputy Attorney General

Item 10: Option Agreement Expenditure Plan