

Los Cerritos Wetlands Authority

Date: November 3, 2016

To: Governing Board Members

From: Mark Stanley, Executive Officer

Subject: Item 9: Consideration of resolution to authorize the Executive Officer to execute a Memorandum of Agreement with Ascon Landfill Site Responsible Parties for restoration at Zedler Marsh for southern tarplant.

RECOMMENDATION: Los Cerritos Wetlands Authority authorizes the Executive Officer to execute a Memorandum of Agreement with Ascon Landfill Site Responsible Parties (Ascon RPs) and represented by Project Navigator, Ltd. (PNL) for restoration at Zedler Marsh for southern tarplant contingent upon the State Coastal Conservancy approval.

BACKGROUND: The LCWA approved Resolution 2016-10 at their May 5, 2016 Board Meeting to commit staff resources on the negotiations with Ascon RPs as represented by PNL to develop a Memorandum of Agreement (MOA) to accept mitigation funds for the Southern Tarplant Mitigation Plan (STMP). Since then, Staff has coordinated with the State Coastal Conservancy (SCC), Signal Hill Oil (SHP) and PNL to develop a concise and complete MOA.

The LCWA is required to coordinate with SCC for their approval of the MOA since the SCC has provided state grants funds to purchase Zedler Marsh, planning funds for the Conceptual Restoration Plan and various other state grant funds for the improvements of the Los Cerritos Wetlands Complex (Grant Agreement #00-221 Bryant/Phase 1 Acquisition, Grant Agreement #07-043 OTD Parcel Feasibility Study, and Grant Agreement #11-028 LCWA Conceptual Restoration Plan), and thus grant funds received from SCC stipulates the LCWA is not allowed the use of any portion of the real property for mitigation without the written consent of the SCC. Currently, LCWA and SCC Staff are working together to receive approval for these mitigation funds. In addition, SCC has requested from the LCWA an appraisal letter for the purpose of providing a valuation service of the proposed mitigation areas (Exhibit A: Proposed Mitigation Areas). The appraisal letter will provide the following values: 1) market value of each of the proposed mitigation areas and 2) fair market rent. The LCWA has hired an Appraiser, LanceDore, to complete the appraisal letter, and the valuation services will be completed and reviewed by the SCC before the MOA is approved and implemented.

The MOA would provide services from the Los Cerritos Wetlands Stewardship Program to fulfill Ascon's STMP. Currently, Staff and legal counsels from both the LCWA and Ascon RPs have reviewed the Draft MOA (Exhibit B: MOA) but more information is required to complete the MOA. Additional revisions of the MOA may be required given the following: 1) the appraisal letter requires completion in order to determine the endowment fees, 2) SHP will require review and approval of the proposed mitigation areas and 3) SCC will need to review and approve the appraisal letter and the MOA. Although the MOA may require additional revisions the MOA will be reviewed by all Staff, SCC, SHP and legal counsels; additionally it has been determined the MOA is consistent with the LCWA's mission to provide for a comprehensive program of acquisition, protection, conservation, restoration, maintenance, operation and environmental enhancement of the Los Cerritos Wetlands area consistent with the goals of habitat protection and restoration, flood protection, and improved water supply, water quality, groundwater recharge and water conservation.

Following are details of the mitigation requirements and proposed mitigation areas:

Southern Tarplant Mitigation Plan

The Southern Tarplant Mitigation Plan provides the concepts and direction for implementation and maintenance of the mitigation intended to compensate for impacts to southern tarplant (*Centromadia parryi* var. *australis*) associated with the Ascon Landfill Site Interim Removal Measure and the Ascon Landfill Site Remedial Action Project located in the City of Huntington Beach in the County of Orange. Staff provided PNL a tour of the LCWA's properties, and both parties expressed great interest of utilizing areas within Zedler Marsh for implementation of the STMP. Staff has reviewed the STMP and the Final Environmental Impact Report Mitigation Monitoring and Reporting Program (MMRP), assessed the required mitigation measures by the Department of Toxic Substances Control (DTSC) and based on the impacts to sensitive habitat including southern tarplant and coastal salt marsh habitat has drafted a MOA for receiving funds to fulfill the STMP and MMRP mitigation requirements.

The proposed mitigation areas (Exhibit A) are identified as areas suitable for establishing southern tarplant given the habitat is currently mapped as Southern Coastal Salt Marsh, Ruderal Upland and Vegetation Free Zones (Exhibit C: LCWA Plant Communities). With these areas already supporting a viable southern tarplant plant community, the STMP would enhance these plant communities and further restore Los Cerritos Wetlands. In addition, the proposed mitigation areas are within the Zedler Marsh, an ideal location for growing southern tarplant due to its existing hydrology, seamless extension from the LCWA's ongoing restoration areas and existing populations of southern tarplant.

Project History

The 38-acre Ascon Landfill Site was operated as a waste disposal facility from approximately 1938 through 1984. In the early years of operation, much of the waste came from oil drilling operations and included drilling muds, wastewater brines, and other drilling wastes. Prior to implementation of the Interim Removal Measure Project, approximately 660,476 individuals of southern tarplant were growing within the Ascon Landfill Site; and, as part of the final remedy to be performed, a combined total (including impacted/removed southern tarplants from the Interim Removal Measure) of approximately 189,774 southern tarplant individuals will be removed. Therefore, the Ascon RPs are required to replace impacts to southern tarplant at a 1:1 mitigation-to-impact ratio of individuals impacted. Impacts to southern tarplant on the Ascon Landfill Site will be mitigated by growing at least 189,774 new southern tarplants at offsite location(s), including within Fairview Park in Costa Mesa, an alternate location or a combination of the two, as necessary.

The Ascon RPs implemented the STMP in August 2012 at Fairview Park in Costa Mesa but since then the mitigation ratios have not been met. Therefore, the Ascon RPs determined that additional sites would be required to meet STMP performance standards. The Ascon RPs are required to grow a total of 189,774 southern tarplant individuals and sustain that population for a period of two consecutive years. The mitigation will be deemed successful when the following general standards are met:

1. A total of 189,774 new southern tarplant individuals are established, densities may vary, the number of individual plants shall be determined by plot sampling. It should be noted that variability in population densities may occur from year to year due to a variety of factors (e.g., amount of rainfall, temperature, weather, etc.).
2. The non-native vegetation does not present a threat to the sustainability of the southern tarplants, as determined by the Biologist/Restoration Specialist.

3. The mitigation area(s) is self-sustaining. Self-sustaining is defined as the site requiring no irrigation or supplemental planting for two consecutive years and the site resisting invasion by non-native species with no significant weeding being necessary for two consecutive years.

It is estimated that, between the sites at Fairview Park and the potential sites at Los Cerritos Wetlands Zedler Marsh, it will take three growing seasons to meet the STMP performance standards. Implementation of the STMP will first require the identification of suitable sites that are agreed upon by all parties and stakeholders. Once the locations of the restorative actions have been determined, the restoration sites will require preparation which may include soil surface contouring, erosion control measures, perimeter fencing, signage installation, temporary irrigation system installation, soil amendments, non-native weed control, tarplant seed collection and tarplant seed dispersal. The identification of the sites will be summarized and reported to the DTSC within 90 days after seed dispersal.

Annual Reporting

Once initiated, the restoration project will require regular management, maintenance, and monitoring. Management will include regular site visits by the restoration ecologist and/or project manager as well as communications about the project's needs, timelines, and achievements. Maintenance will include seasonal irrigation until established, weed control measures, general tarplant care and any repairs to facilities. Monitoring shall be conducted on a monthly basis during the first and second year until 189,774 southern tarplant individuals have been established, and semi-annual monitoring thereafter within the southern tarplant blooming period (i.e., May to November) to inspect for signs of plant stress, disease, insect infestation, and other problems.

Annual Monitoring Reports summarizing monitoring results shall be submitted to the DTSC in November each year beginning one year after completion of installation of the mitigation and continuing throughout the monitoring period. Monitoring reports shall discuss maintenance activities performed, the results of the monitoring, an assessment of the progress made towards achievement of the success criteria, and recommendations of any remedial actions or adaptive management measures that may be necessary. Reports shall also include photographs of the mitigation areas.

As it becomes apparent that all performance standards can be met, an endowment will be created to support the long-term management and maintenance of the mitigation sites. The mitigation will not be deemed "successful" until a conservation easement, deed restriction, or comparable legal instrument is recorded and a long-term management entity has been identified. The Ascon RPs shall also be responsible for providing the conservation easement with the appropriate contractual arrangements to ensure the mitigation area is managed and preserved.

Approval Process and Timeline:

1. Complete appraisal review and have the SCC review and approve the appraisal letter.
2. Develop an agreement with Signal Hill Petroleum for review and approval of the proposed mitigation areas which may impact their exclusive easement and vegetation maintenance areas.
3. Revise MOA if necessary.
4. SCC approval of the MOA.
5. Staff will determine if a Coastal Development Permit is required before implementation of the MOA.

The LCWA has successfully implemented and demonstrated to regulatory agencies the capacity to receive funds through similar projects, such as the Signal Hill Petroleum Coastal Development Permit E-10-011, Los Angeles County Department of Public Works Coastal Development Permit 5-10-204, Southern California Edison Memorandum of Agreement and Orange County Public Works Contract.

The Los Cerritos Wetlands Stewardship Program's success at receiving competitive grant program funding has resulted in a narrowing of applicable funding opportunities that have not already been awarded previously. Therefore, the program coordinator's creativity has been challenged in order to find funding to support programming to operate sustainably and afford trained restoration ecologists and educators, critical restoration tools, local native plant materials, and environmental education supplies. In-lieu fee program funding has been identified as an excellent funding source, and the LCWA Stewardship Program management team has previously attracted and successfully implemented mitigation projects for the LCWA which utilizes Zedler Marsh including Southern California Edison and Orange County Public Works.

FISCAL: The Ascon RPs desire to satisfy these mitigation requirements through annual fees and possibly endowments to the LCWA covering the pro-rata cost of restoration plan preparation, implementation per the MOA, monitoring and reporting for five years, or until plant establishment has occurred in accordance with the Southern Tarplant Mitigation Plan requirements. The Ascon RPs in partnership with the LCWA, has determined the best option would be to provide the LCWA with annual fee/endowment to continue restoration work at Zedler Marsh. The Memorandum of Agreement will be developed for a period of five years with a plant establishment period of two years for a continued source of funding of five years. The LCWA has the capacity to receive the funds, fully develop the restoration plan, successfully implement the restoration, and the capacity to fully comply with on-going monitoring and reporting as specified and in accordance with the Southern Tarplant Mitigation Plan requirements. In addition, the LCWA FY16/17 Budget will be amended once the mitigation funds are approved and received, as necessary.

LEGISLATIVE AUTHORITY AND LCWA ADOPTED POLICIES/AUTHORITIES: Resolution 2016-10 provided staff resources to begin negotiations with Ascon RPs and represented by PNL to develop a Memorandum of Agreement to accept mitigation funds for the Southern Tarplant Mitigation Plan.

Exhibit A:
Proposed Mitigation Areas



Proposed southern tarplant mitigation areas highlighted in blue, white, and green

Zedler Marsh Restoration Site

Funding Allocation Graphic



Los Cerritos Wetlands Authority

- = SCE In-Lieu Restoration Area
- = State/Fed Grant Restoration Area (USFWS, LAC, RMC, SCWRP, CCC)
- = Private Funding (CNPS, LCWLT)

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Exhibit B:

DRAFT Memorandum Of Agreement

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**Memorandum of Agreement
between
Ascon Landfill Site Responsible Parties
and
Los Cerritos Wetland Authority**

This Memorandum of Agreement (“MOA”) is entered into by and between the Ascon Landfill Site Responsible Parties (“Ascon RPs”), listed on **Exhibit A** and represented by Project Navigator, Ltd. (“PNL”), and the Los Cerritos Wetland Authority (“LCWA”). The Ascon RPs and the LCWA are sometimes referred to individually as a “Party,” and collectively as the “Parties.” The “Project” is defined as the approved workplan which will include a tasklist, timeline and budget that will be developed by the LCWA and reviewed and approved by the Ascon RPs to comply with the Department of Toxic Substances Control (DTSC) approved Mitigation and Monitoring Reporting Programs (MMRPs) for the Mitigated Negative Declaration Report that analyzed the Interim Removal Measure (IRM) Workplan and the Final Environmental Impact Report that analyzed the Remedial Action Plan for the Ascon Landfill Site remedy. This MOA shall take effect when an executed copy of this MOA is delivered to LCWA by the Project Coordinator for the Ascon RPs.

RECITALS

WHEREAS, the LCWA is a joint powers authority established between the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, State Coastal Conservancy, City of Long Beach and City of Seal Beach, with the purpose of providing for a comprehensive program of acquisition, protection, conservation, restoration, maintenance and operation and environmental enhancement of the Los Cerritos Wetlands area consistent with the goals of flood protection, habitat protection and restoration, and improved water supply, water quality, groundwater recharge and water conservation; and

WHEREAS, the Ascon RPs are listed on **Exhibit A**, who are working under DTSC’s oversight for the remediation of the Ascon Landfill Site located at 21641 Magnolia Street, Huntington Beach, California; which remediation includes offsite mitigation for southern tarplant populations disturbed during the proposed remedy and the prior IRM work; and PNL is the company representing the Ascon RPs; and

WHEREAS, on July 16, 2010, the Ascon RPs received the Interim Removal Measure mitigation requirement for southern tarplant (Addendum to Final Mitigated Negative Declaration for the IRM Workplan, Notice of Determination State Clearinghouse No. 2009101077), and on June 22, 2015, the RPs received the mitigation requirement for southern tarplants impacted during the remedial action (Final Environmental Impact Report, Notice of Determination State Clearinghouse No. 2013041010) from the DTSC for work performed at the Ascon Landfill Site in Huntington Beach; and as a condition of its IRM Mitigated Negative Declaration and Environmental Impact Report, the Ascon RPs are required to offset impacts to restore 189,774 southern tarplant individuals (the combined number of impacted tarplants from the IRM and final remedy) and sustain that population for a period of two years; and

WHEREAS, the Ascon RPs and LCWA have proposed, and the DTSC has preliminarily approved, the Zedler Marsh Restoration Area as an appropriate restoration site for meeting the Ascon RP's obligations under the MMRPs; and

WHEREAS, the Ascon RPs will fund all restoration costs related to this Project, including an endowment for the long-term management and maintenance of the Project; and

WHEREAS, the Funds are to be used by LCWA to undertake activities in the Los Cerritos Wetlands, specifically at Zedler Marsh, that will expand and create southern tarplant habitat and maximize the number of individual tarplants on site while balancing with existing native habitat ("Project"); and

WHEREAS, the LCWA will obtain all necessary regulatory permits and approvals for the Project, in accordance with the terms of this MOA; and

WHEREAS, the LCWA is not an agent, employee or representative of PNL or the Ascon RPs; and

NOW, THEREFORE, for consideration of the mutual covenants and representations herein, it is mutually agreed by and between the undersigned Parties as follows:

AGREEMENT

1.0 TRANSFER OF FUNDS

The annual budget (Attachment XX) for year 1 is estimated at \$87,939.50 and year 2 at \$54,849.50, with these costs being estimates and will be revised as necessary. And, with future Project costs to be negotiated on an annual basis until mitigation requirements are met. Funds will be transferred to the LCWA by PNL within 30 days of receipt of all invoices related to the implementation of the Project. Once the Project is completed, a one-time endowment that is expected to pay for future monitoring and maintenance will be negotiated, and those funds will be deposited into the LCWA interest bearing account, to be established and managed by the LCWA.

2.0 PROJECT IMPLEMENTATION

The LCWA shall use all Funds transferred to it, including any accrued interest, for the Project. Funds transferred to the LCWA pursuant to this MOA may only be utilized to pay necessary fees, costs and expenses associated with the Project.

Within 45 days of the date on which this MOA is signed, the LCWA shall submit a workplan which will include a tasklist, timeline and budget for review and approval by the Ascon RPs.

LCWA will be responsible for obtaining all necessary permits, including a coastal development permit (if required), and shall carry out and complete the Project.

The LCWA will perform all monitoring and reporting for the Project. The Ascon RPs will be responsible for complying with all the requirements contained in the MMRPs and the corresponding Southern Tarplant Mitigation Plans (Attachments 1 through 4), including the submission of annual monitoring reports to DTSC. The LCWA shall make all accounting records available for examination by the Ascon RPs upon request.

A Conservation Easement will be placed on areas where the Project is implemented (Attachment XX), and this easement is to be managed and maintained by the LCWA in perpetuity.

3.0 ACCOUNTABILITY

3.1 Administrative Costs

The LCWA shall use the Funds exclusively to finance the Project described herein. Administrative costs in implementing this MOA, computed in accordance with applicable State Administrative Manual sections, shall not exceed five (10%) of the total Funds.

3.2 GAAP

The LCWA shall maintain Generally-Accepted Accounting Principles (GAAP), financial management, and accounting system and procedures that provide for (1) accurate, current and complete disclosure of all financial activity for the Project; (2) effective control over, and accountability for, all funds, property and other assets related to the Project; (3) comparison of actual outlays with budgeted amounts; and (4) accounting records supported by source determination.

3.3 Records Retention

The LCWA shall retain all pertinent books, documents and papers, including, but not limited to, financial transactions and supporting documents for the entire period during which the Funds are being used by the LCWA under this MOA and for a period of three (3) years thereafter for potential examination by the Ascon RPs.

4.0 MISCELLANEOUS PROVISIONS

4.1 Good Faith

The Parties agree in good faith to work to fulfill the objectives of this MOA. The LCWA and Ascon RPs may mutually grant an extension of any time under this MOA for good cause, where there is reasonable justification or excuse for the delay.

4.2 Amendment

Neither this MOA nor any provision hereof may be waived, modified, amended, or discharged except by an instrument in writing signed by the Parties.

4.3 Entire Agreement

This MOA constitutes the entire understanding among the Parties with respect to the matters set forth herein and supersedes all prior or contemporaneous understandings or agreements among the parties with respect to the subject matter hereof, whether oral or written.

4.4 Severability

If a court of competent jurisdiction determines that a provision included in this MOA is legally invalid, illegal or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this MOA, and the balance of this MOA shall be reasonably interpreted to achieve the intent of the Parties.

The Parties further agree to replace such void or unenforceable provision of this MOA with a valid and enforceable provision that will achieve, to the extent possible, the purposes of the void or unenforceable provision.

4.5 Counterparts

This MOA and any amendment thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original, and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

4.6 Successors

This MOU shall be binding upon and shall inure to the benefit of the successors of the Parties.

4.6 Assignment

Neither of the Parties may assign any rights granted by this MOA without prior written approval of the other Party, which approval may be granted or withheld in any Party's reasonable discretion.

4.7 Effective Date and Term

This MOA shall become effective upon the last date of any Party to execute this MOA and shall be in effect from that date until the Project has achieved mitigation success, unless it is terminated or extended through an amendment, as provided in Section 4.2, above.

4.8 Governing Law

This MOA shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

5.0 NOTICES

5.1 Receipt of Notices

Any demand upon or notice required or permitted to be given by one Party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g. Federal Express), postage or fee paid, as appropriate, addressed to the Parties in Section 5.2.

Notice of a change of address or designated contact person shall be given by written notice in the manner set forth in this section within ten (10) business days of the change.

5.2 Designated Contact Persons

Tamara Zeier, P.E.
Ascon Landfill Site RP Project Coordinator
Project Navigator, Ltd.
One Pointe Drive, Ste 320
Brea, CA 2821
Telephone (714) 388-1804
Facsimile (714) 388-1839

Luz Quinnell
Los Cerritos Wetlands Authority
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702
Telephone: (626) 815-1019
Facsimile: (626) 815-1269

Any change in the Notification Contact shall be communicated to all Parties within ten (10) business days of the change.

SIGNATURES

IN WITNESS WHEREOF, the Parties through the signatures below of their authorized representatives agree to be bound by the terms of this Agreement.

by: _____ Date: _____

Mark Stanley
Los Cerritos Wetlands Authority
Executive Officer

by: _____ Date: _____

Tamara Zeier, P.E.
Project Navigator, Ltd.
Ascon Landfill Site Responsible Parties Project Coordinator

Exhibit A – Ascon Landfill Site Responsible Parties

ATLANTIC RICHFIELD COMPANY

CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY

CONOCOPHILLIPS COMPANY

THE DOW CHEMICAL COMPANY

EXXON MOBIL CORPORATION

NORTHROP GRUMMAN SYSTEMS CORPORATION (successor to TRW Inc.)

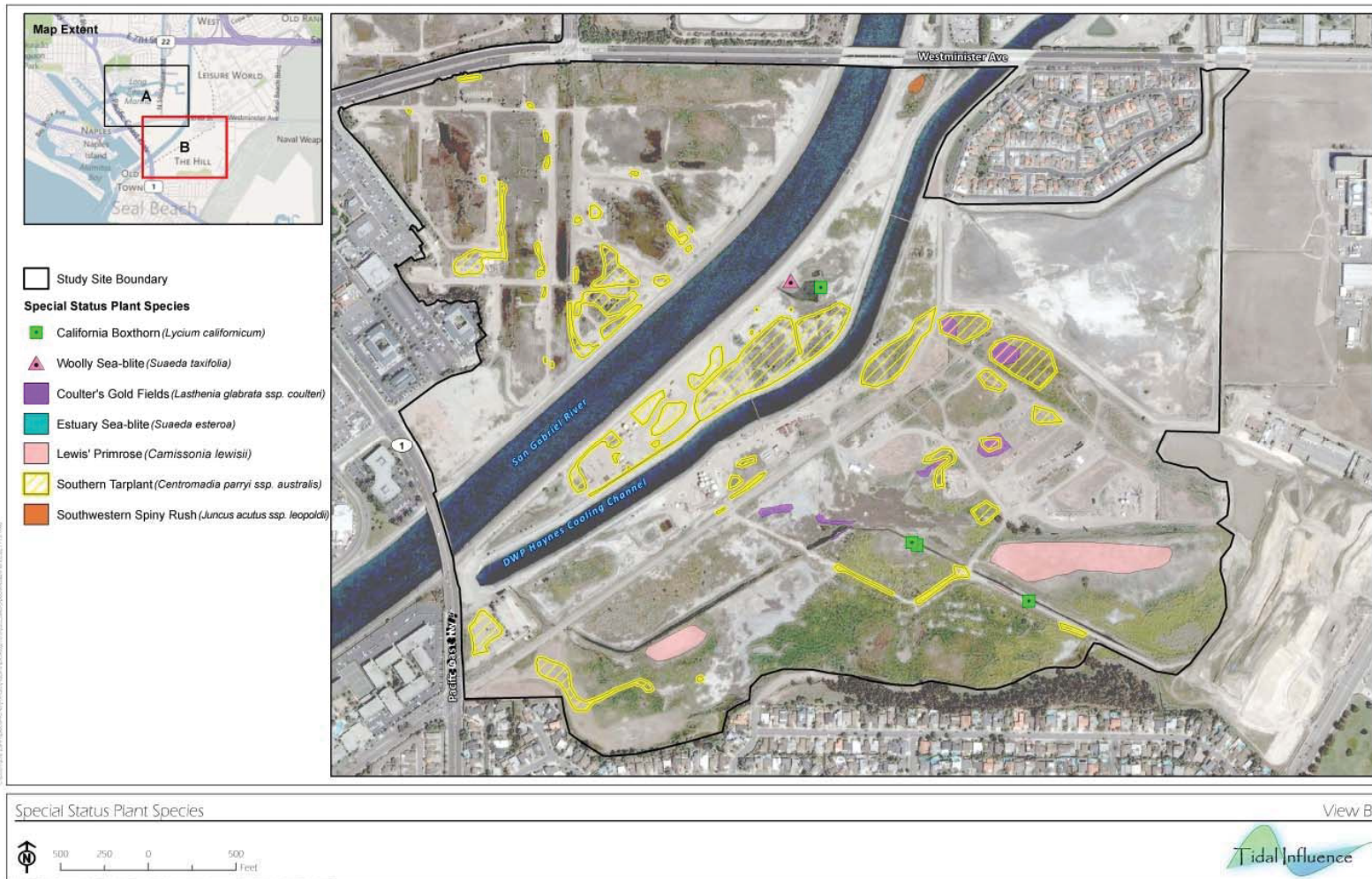
SHELL OIL COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY

Exhibit C: Los Cerritos Wetlands Plant Communities and Southern Tarplant Populations



Map of Los Cerritos Wetlands special status plant species including southern tarplant in yellow.



November 3, 2016 – Item 9

RESOLUTION 2016 – 18

RESOLUTION OF THE LOS CERRITOS WETLANDS AUTHORITY
AUTHORIZES THE EXECUTIVE OFFICER TO EXECUTE A
MEMORANDUM OF AGREEMENT WITH ASCON LANDFILL SITE
RESPONSIBLE PARTIES AND REPRESENTED BY PROJECT
NAVIGATOR, LTD. FOR RESTORATION AT ZEDLER MARSH FOR
SOUTHERN TARPLANT CONTINGENT UPON THE STATE COASTAL
CONSERVANCY APPROVAL.

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 Executive Officer to execute a Memorandum of Agreement with Ascon Landfill Site Responsible Parties and represented by Project Navigator, Ltd. for restoration at Zedler Marsh for southern tarplant contingent upon the State Coastal Conservancy approval; and

WHEREAS, Ascon Landfill Site Responsible Parties shall also be responsible for providing the conservation easement with the appropriate contractual arrangements to ensure the mitigation area is managed and preserved; and

WHEREAS, the proposed action is exempt from the provisions of the California Environmental Quality Act; NOW

Therefore be it resolved that the LCWA hereby:

1. FINDS that the actions contemplated by this resolution are 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 Executive Officer to execute a Memorandum of Agreement with Ascon Landfill Site Responsible Parties for restoration at Zedler Marsh for southern tarplant, subject to the State Coastal Conservancy approval.

4. Authorizes the Executive Officer as directed by this Board, and as necessary, after consultation with the Chair, to make revisions to the Memorandum of Agreement and the LCWA Budget as necessary.
5. Appoints the Executive Officer to execute the Memorandum of Agreement.
6. 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