

Los Cerritos Wetlands Authority

Date: August 4, 2022

To: Governing Board Members

From: Sally Gee, Project Analyst

Through: Mark Stanley, Executive Officer

Subject: Item 14: Consideration of a resolution ratifying the First Amendment to the Option Agreement with Los Cerritos Wetlands, LLC to clarify timing and conditions precedent to exercise of the Option

RECOMMENDATION: That the Los Cerritos Wetlands Authority (LCWA) ratify the First Amendment to the Option Agreement with Los Cerritos Wetlands, LLC to clarify timing and conditions precedent to exercise of the Option.

PROJECT DESCRIPTION: This First Amendment to the Option Agreement (Exhibit A) with Los Cerritos Wetlands, LLC was drafted to resolve an inconsistency between two provisions, Section 3.b and Section 3.c of the Option Agreement, relating to the timing in which the Optionee must exercise the Option. The Option Agreement includes several conditions precedent that are required to be completed before the Los Cerritos Wetlands, LLC (“Optionee”) can exercise the Option. Section 3.b required an appraisal of both the Optionee Property and LCWA OTD Property to be completed, reviewed and approved by a third party public agency, and that a Land Exchange Agreement be executed before exercise of the Option. Section 3.c of the Option Agreement required that the Optionee exercise the Option within six (6) months after receipt of all entitlements and completion of all legal challenges, or within 8 years of the effective date of the Option Agreement, whichever occurred first. The definition of “entitlements” contained in the Option Agreement does not include the conditions precedent set forth in Section 3.b and Section 3.c did not otherwise acknowledge that the Option Agreement contained additional conditions precedent beyond those that were defined as “entitlements” under the Agreement.

At the date of execution of the First Amendment, all entitlements and legal challenges had been completed, but due to unforeseen delays, the conditions precedent in Section 3.b had not yet been satisfied. Due to this unforeseen circumstance, there is an inconsistency the timing in which the Optionee must exercise the Option and the Optionee’s ability to do so. The First Amendment language resolves the inconsistency by amending Section 3.c to acknowledge that all conditions precedent set forth in Section 3.b of the Option Agreement, including the execution of the Land Exchange Agreement, need be satisfied before the deadline for exercise of the Option contained in Section 3.c is triggered. All other terms remain the same.

The First Amendment to the Option Agreement was effective June 10, 2022, to ensure the amendment was made before the expiration of the six-month period from the receipt of all entitlements described in the Option Agreement and the completing of all legal challenges as originally described in Section 3.c.

BACKGROUND: On September 2, 2016, Los Cerritos Wetlands, LLC and the LCWA executed an [Option Agreement](#) that provides for the exchange of real property. The Agreement allowed the Optionee to exercise the Option for transfer of the LCWA OTD Parcel, approximately 5.11 acres,

for the Los Cerritos Wetlands, LLC property, approximately 154 acres, for wetlands habitat restoration, public access improvements, and the phase out of oil operations.

FISCAL INFORMATION: The Los Cerritos Wetlands, LLC provided a consideration in the amount of \$300,000 in connection with the original Option Agreement, which \$140,202.06 in funds remain.

**FIRST AMENDMENT TO
OPTION AGREEMENT DATED SEPTEMBER 2, 2016**

THIS FIRST AMENDMENT TO THE OPTION AGREEMENT DATED SEPTEMBER 2, 2016 (“First Amendment”), is effective as of this 10th day of June, 2022 (“Effective Date”), and is entered into by and between LOS CERRITOS WETLANDS, LLC, a California limited liability company (“OPTIONEE”), and the LOS CERRITOS WETLANDS AUTHORITY, a joint exercise of powers agency established pursuant to Government Code Section 6500 *et seq.* (“LCWA”). LCWA and OPTIONEE are sometimes referred to herein individually as a “Party” and together as the “Parties.”

PREAMBLE

A. WHEREAS LCWA and OPTIONEE entered into an Option Agreement dated September 2, 2016 (“Option Agreement”) that set out the Parties’ respective rights and obligations with respect to the OPTIONEE’s option to effect an exchange of certain property identified as the LCWA Site, described and depicted in Exhibit A to the Option Agreement, for the OPTIONEE Property, described and depicted in Exhibit B to the Option Agreement;

B. WHEREAS the Option Agreement included several conditions precedent that are required to be completed before the OPTIONEE can exercise its option under the Agreement, including Section 3.b of the Option Agreement, which requires the Parties to engage a qualified appraiser to conduct appraisals, at the OPTIONEE’s sole expense, of the LCWA Site and the OPTIONEE Property and that the appraisals shall be reviewed and approved by a mutually agreed upon public entity before the OPTIONEE may exercise its option under the Agreement, and the Land Exchange Framework attached as Exhibit G to the Option Agreement, which requires the Parties to execute a Land Exchange Agreement before the OPTIONEE may exercise its option under the Agreement;

C. WHEREAS Section 3.c of the Option Agreement requires that the OPTIONEE exercise its option within six (6) months after the receipt of all entitlements described in Section 6 of the Option Agreement and completion of all legal challenges to the EIR and the entitlements, or eight (8) years from the effective date of the Option Agreement, whichever occurred first;

D. WHEREAS as of the date of this Amendment all entitlements described in Section 6 of the Option Agreement have been received, there are no pending legal challenges to the EIR or entitlements, but due to unforeseen delays the Parties have not yet satisfied all conditions precedent set forth in Section 3.b or the Land Exchange Framework;

E. WHEREAS under these unusual and unforeseen circumstances, the Parties recognize that there is an apparent inconsistency between Section 3.c and Section 3.b and the Land Exchange Framework insofar as the timing in which the OPTIONEE must exercise its option and the OPTIONEE’s ability to do so given that conditions precedent set forth in those sections still remain outstanding; and

F. WHEREAS the Parties mutually agree that it is in the Parties best interest to resolve the apparent inconsistency between the two provisions and clarify the Parties' mutual rights and obligations under these circumstances.

AMENDMENT

NOW, THERFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree to amend the language of Section 3.c of the Option Agreement as follows:


3. **Condition Precedent to Exercise of the Option.**

c. OPTIONEE shall exercise the Option within six (6) months of satisfaction of conditions precedent to the exercise of the Option, including specifically those set forth in Section 3 a. and 3.b. of the Option Agreement, the execution of a Land Exchange Agreement as specified in the Land Exchange Framework attached as Exhibit G, and the receipt of all entitlements described in Section 6, below, and completion of all legal challenges to the EIR and the entitlements, or eight (8) years from the Effective Date of this Agreement, whichever occurs first.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date.

“LCWA”

LOS CERRITOS WETLANDS AUTHORITY

By: 
 3EF0743E521D4ED...
 June 9, 2022
 Its:
 Mark Stanley, Executive Officer

“OPTIONEE”

**LOS CERRITOS WETLANDS, LLC,
a California limited liability company**

By: _____
 Its: _____
 John McKeown, CEO

F. WHEREAS the Parties mutually agree that it is in the Parties best interest to resolve the apparent inconsistency between the two provisions and clarify the Parties' mutual rights and obligations under these circumstances.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree to amend the language of Section 3.c of the Option Agreement as follows:

3. **Condition Precedent to Exercise of the Option.**

c. OPTIONEE shall exercise the Option within six (6) months of satisfaction of conditions precedent to the exercise of the Option, including specifically those set forth in Section 3 a. and 3.b. of the Option Agreement, the execution of a Land Exchange Agreement as specified in the Land Exchange Framework attached as Exhibit G, and the receipt of all entitlements described in Section 6, below, and completion of all legal challenges to the EIR and the entitlements, or eight (8) years from the Effective Date of this Agreement, whichever occurs first.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date.

"LCWA"

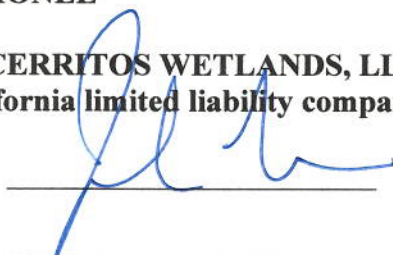
LOS CERRITOS WETLANDS AUTHORITY

By: _____

Its: _____
Mark Stanley, Executive Officer

"OPTIONEE"

**LOS CERRITOS WETLANDS, LLC,
a California limited liability company**

By:  _____

Its: _____
John McKeown, CEO

August 4, 2022 – Item 14

RESOLUTION 2022 – 12

RESOLUTION OF THE LOS CERRITOS WETLANDS AUTHORITY
RATIFYING THE FIRST AMENDMENT TO THE
OPTION AGREEMENT WITH LOS CERRITOS WETLANDS, LLC, TO CLARIFY
TIMING AND CONDITIONS PRECEDENT TO EXERCISE OF THE OPTION

WHEREAS, the Los Cerritos Wetlands Authority (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, On May 20, 2001 Southern California Edison made an irrevocable offer to dedicate fee title (OTD) to a 5.11 plus or minus parcel of real property known as APN 7237-019-809 (OTD Parcel) to the State Coastal Conservancy (Conservancy); and

WHEREAS, Under the terms of the OTD the Conservancy is required prior to acceptance of the OTD to make a determination that the OTD Parcel is suitable for the purpose of implementing a resource enhancement program at the Los Cerritos Wetlands; and

WHEREAS, The Conservancy Board on January 18, 2007 found that the OTD Parcel is suitable for the purpose of implementing a resource enhancement program at the Los Cerritos Wetlands and designated the Authority to accept the OTD Parcel and further authorized a grant to the Authority to prepare a feasibility analysis for use of the OTD Parcel as a natural resource for restoration purposes under the Los Cerritos Wetlands resource enhancement program; and

WHEREAS, The Authority accepted the a OTD and completed the feasibility analysis; and

WHEREAS, The Authority Board on August 12, 2015 authorized the Executive Officer to enter into negotiations with Synergy Oil and Gas Company, predecessor to Los Cerritos Wetlands, LLC (LCW) the owner in fee to an approximately 154 acre operating oil field, which includes approximately 4 acres of roadway, (Synergy Oil Field) located at 6433 E. Second Street between Pacific Coast Highway and Studebaker Road along 2nd Street/Westminster Boulevard in the City of Long Beach; and

WHEREAS, LCW intends: 1) to establish a mitigation bank and public access trail on the northerly approximately 77.3 acres of the Synergy Oil Field, and implement wetlands and habitat restoration pursuant to a mitigation bank and restoration plan (Mitigation Bank Restoration Plan) to be approved by the Interagency Review Team (Mitigation Bank Site); 2) to implement a habitat restoration plan (Restoration and Revegetation Plan) on the southerly approximately 69.92 (Revegetation Site) of the Synergy Oil Field as oil operations are removed; 3) to construct a public trail along the perimeter of the Mitigation Bank Parcel and improve an existing building and rehabilitate a parking lot on approximately 3 acres of the Synergy Oil Field in support of Authority's mission (Public Access Improvements); and

WHEREAS, In order to implement the Mitigation Bank Restoration Plan on the Mitigation Bank Site, the Restoration and Revegetation Plan, and make the Public Access Improvements LCW

intends to phase out oil operations on the Synergy Oil Field and relocate a portion of its oil production to the OTD Parcel; and

WHEREAS, on September 2, 2016, the Authority and LCW entered into an Option Agreement to set forth their respective rights to effect the Mitigation Bank Restoration Plan, Restoration and Revegetation Plan, make the Public Access Improvements, phase out oil operations on the Synergy Oil Field and exchange the OTD Parcel for the Mitigation Bank Site, Revegetation Site and Public Access Improvements; and

WHEREAS, the Option Agreement included several conditions precedent that are required to be completed before LCW can exercise its Option under the Agreement, including Section 3.b of the Option Agreement, which requires the parties to engage a qualified appraiser to conduct appraisals, at LCW's sole expense, of the respective parcels and that the appraisals shall be reviewed and approved by a mutually agreed upon public entity before LCW may exercise its Option under the Agreement, and that pursuant to the Land Exchange Framework, the parties execute a Land Exchange Agreement before LCW may exercise its Option under the Agreement; and

WHEREAS, Section 3.c of the Option Agreement requires that LCW exercise its option within six (6) months after the receipt of all entitlements described in Section 6 of the Option Agreement and completion of all legal challenges to the EIR and the entitlements, or eight (8) years from the effective date of the Option Agreement, whichever occurred first; and

WHEREAS, as of the date of this Amendment all entitlements described in Section 6 of the Option Agreement have been received, there are no pending legal challenges to the EIR or entitlements, but due to unforeseen delays the parties have not yet satisfied all conditions precedent set forth in Section 3.b or the Land Exchange Framework; and

WHEREAS, under these unusual and unforeseen circumstances, the parties recognize that there is an apparent inconsistency between Section 3.c and Section 3.b and the Land Exchange Framework insofar as the timing in which LCW must exercise its Option and LCW's ability to do so given that conditions precedent set forth in those sections still remain outstanding; and

WHEREAS, on June 10, 2022, the Authority and LCW entered into the First Amendment to the Option Agreement to resolve the inconsistency between the two provisions, Section 3.b and Section 3.c of the Option Agreement; NOW

Therefore, be it resolved, that the Los Cerritos Wetlands Authority hereby:

1. FINDS that entering into the First Amendment to the Option Agreement is exempt from the provisions of the California Environmental Quality Act (CEQA)
2. FINDS that the proposed amendment to further the land exchange, the wetlands and habitat restoration on the Mitigation Bank Parcel, restoration and revegetation of the Revegetation Site, making the public access improvements, and phasing out of oil operations on the Synergy Oil Field is a resource enhancement program at the Los Cerritos Wetlands and is consistent with the purposes and objectives of the LCWA.
3. Adopts the staff report dated August 4, 2022.

4. RATIFY the First Amendment to the Option Agreement with LCW to clarify timing and conditions precedent to exercise of the Option.

~ End of Resolution ~

Passed and Adopted by the Board of the LOS CERRITOS WETLANDS AUTHORITY
on August 4, 2022.

Joe Kalmick, Vice Chair

ATTEST:

Elizabeth St. John
Deputy Attorney General