

Los Cerritos Wetlands Authority

Date: May 4, 2023

To: Governing Board Members

From: Sally Gee, Project Manager

Through: Mark Stanley, Executive Officer

Subject: **Item 11: Consideration of a resolution authorizing the Executive Officer to negotiate and execute a contract for independent appraisal technical assistance to facilitate completion of an appraisal for the Option Agreement with Los Cerritos Wetlands, LLC**

RECOMMENDATION: That the Los Cerritos Wetlands Authority (LCWA) Governing Board authorize the Executive Officer to negotiate and execute a contract for independent appraisal technical assistance to facilitate completion of an appraisal for the Option Agreement with Los Cerritos Wetlands, LLC.

PROJECT DESCRIPTION:

Exhibit A – Subject Properties

To fulfill conditions in the Option Agreement for the Land Swap Project, the Parties, LCWA and the Los Cerritos Wetlands, LLC, negotiated and agreed on a methodology and scope of work for the appraisals of the LCWA OTD Parcel and Synergy Oil Field (subject properties) in 2020. Extenuating circumstances prevented the timely completion of the appraisals, however, and in the interim, changes in the environment, including zoning changes for the subject properties, have created potential ambiguities in the interpretation of the negotiated and agreed upon scope of work which the parties seek to amicably resolve. In recognition of these changes, the parties mutually agreed to pause the completion of the appraisals until questions regarding the interpretation of the scope of work and methodologies could be resolved. However, despite best efforts, as of the date of this report, the parties have not been able to amicably resolve these issues on their own, in large part because neither the LCWA nor Los Cerritos Wetlands, LLC have appraisers on staff to provide technical guidance about appropriate appraisal standards, guidelines, and interpretation. This resolution will allow the parties to engage a separate third-party appraiser to provide the technical guidance, or appraisal consultant services, needed to resolve any potential ambiguity and facilitate the completion of the appraisals called for by Section 3.b of the Option Agreement. The parties have agreed that it would benefit the transaction to retain the technical services of a California Licensed appraiser with experience in complex transactions involving wetlands/open space valuation to determine the appropriate appraisal standards for this complex project. The work product created would be a clear statement of the methodology to be applied in the context of this transaction that would then be provided to a separate appraiser to perform the appraisal(s) moving forward. Engaging an independent third-party appraiser to provide such technical assistance will allow the parties to freely engage with the appraisal consultant and avoid risking potential ethical issues that may arise from having substantial direct substantive communications with the appraiser performing the appraisal(s).

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.

The Option Agreement includes several conditions precedent that are required to be completed before the Los Cerritos Wetlands, LLC (“Optionee”) can exercise the Option. The First Amendment, effective June 10, 2022, solely resolved an inconsistency with respect to the timing by which the Optionee had to exercise the Option. This amended 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 to be satisfied before the deadline for exercise of the Option contained in Section 3.c is triggered. Section 3.b requires an appraisal of both the Optionee Property and LCWA OTD Property to be completed, reviewed and approved by a third-party public agency.

The appraisals were originally contemplated to be completed within 6 months of the original execution of the Option Agreement in 2016, however at the time of this report, final appraisals have not yet been completed and approved. In 2016, the parties had engaged a third party appraiser to perform the appraisals, however, those appraisals were ultimately rejected by the public entity the parties agreed to use for review and approval of the appraisals in accordance with Section 3.b of the Option Agreement. As such, the 2016 appraisals did not and could not be used to satisfy the requirements of Section 3.b of the Option Agreement. As a result, the LCWA and the Los Cerritos Wetlands, LLC engaged in extensive negotiations to develop a scope of work and methodologies for the appraisals that would be acceptable to and approvable by the public entity reviewer, as contemplated by the Option Agreement. This resulted in the scope of work and methodologies developed in 2020 currently in need of a third-party appraiser to provide technical guidance to resolve any potential ambiguity and facilitate the completion of the appraisals called for by Section 3.b of the Option Agreement.

FISCAL INFORMATION:

There will be no fiscal impact to the LCWA. The Option Agreement states that the Optionee will bare the cost of appraisal services for this project. Staff and legal services to negotiate the contract is provided through a consideration from the Optionee in the amount of \$300,000 in connection with the original Option Agreement.