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# F11a

January 25, 2021

TO: Commissioners and Interested Parties

FROM: John Ainsworth, Executive Director  
Kate Huckelbridge, Deputy Director, Energy, Ocean Resources, and Federal Consistency Division

SUBJECT: Review of and Possible Commission Action to Authorize the Executive Director to Become a Signatory to the Upper Los Cerritos Mitigation Bank

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## SUMMARY OF STAFF RECOMMENDATION

Los Cerritos Wetlands (LCW), LLC seeks to establish the Upper Los Cerritos Mitigation Bank (Bank) on the northern portion of the Synergy oil field site located in Long Beach, Los Angeles County. The restoration work included in the Bank was approved by the Commission in December 2018 under CDP 9-18-0395 as part of the Los Cerritos Oil Consolidation and Restoration Project. To facilitate the use of Bank credits to provide mitigation for Coastal Act impacts, LCW, LLC (the Bank sponsor) seeks the Commission's concurrence that the Bank is structured in a manner that is consistent with mitigation requirements under the Coastal Act. Should the Commission concur that the Bank Enabling Instrument (BEI) is consistent with mitigation requirements under the Coastal Act, the motion and resolution included in Section I of the staff report ([page 4](#)) would authorize the Commission's Executive Director to become a signatory to the Bank. Becoming a signatory to the Bank would facilitate future applicants' ability to obtain mitigation credits from the Bank to address their projects' impacts on other coastal wetlands; however, it would not pre-authorize or pre-approve the use of the Bank for any particular, future mitigation. Rather, the Commission would make project-specific decisions about whether to approve the purchase of credits at this mitigation Bank, or whether other mitigation was needed or more appropriate, on a case-by-case basis.

Commission staff has worked for approximately four and a half years with LCW, LLC and an Interagency Review Team (IRT) comprised of federal and state agency staff to develop components of the Bank in a manner that addresses the regulatory mitigation needs of both the U.S. Army Corps of Engineers (USACE) and the Commission. The Bank Enabling Instrument and associated banking documents included in [Appendix A](#) describe how the restoration work described in the Development Plan (and approved under CDP 9-18-0395) is classified into different types of mitigation credits based on the existing condition of the Bank property and the anticipated ecological lift or improvement in ecological function provided by the restoration work.

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For example, the restoration work included in the Bank will result in three types of credits that could be used to mitigate future impacts to coastal wetlands and waters:

- Reestablishment of 20.66 acres of tidal salt marsh habitats
- Rehabilitation of 7.25 acres of tidal salt marsh habitat
- Preservation of 29.71 acres of tidal salt marsh within the Steamshovel Slough

The Bank also includes performance standards and a robust monitoring program that will be implemented over a minimum of five years to demonstrate that the Bank has achieved the anticipated ecological lift. Mitigation credits are released throughout the monitoring period on a set schedule that requires the Bank sponsor to demonstrate that the habitats are meeting annual performance standards. The Bank includes recordation of a conservation easement on the Bank property and requires that LCW, LLC obtain three different financial securities to provide financial assurances for the performance and completion of Bank construction, management, monitoring and any required remedial action. Finally, the Bank includes a Long-term Management Plan that describes ongoing maintenance and management actions that will be implemented by the property owner in perpetuity to preserve the habitat conservation values in accordance with the BEI and conservation easement. Long-term Management Plan activities are paid for through an endowment that is funded by the Bank sponsor.

Staff believes that the Bank is structured in a manner that is consistent with mitigation requirements under the Coastal Act and will facilitate efficient identification of appropriate mitigation for future projects that come before the Commission. Thus, Commission staff recommends that the Commission authorize the Executive Director to become a signatory to the Upper Los Cerritos Mitigation Bank. The motion is on [page 4](#).

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[Exhibit 3 – Oil Field Boundaries at Project Location](#)

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[APPENDIX A: Upper Los Cerritos Mitigation Bank Enabling Instrument and Accompanying Documents](#)<sup>[HK1]</sup>

## MOTION AND RESOLUTION

### MOTION:

I move that the Commission authorize the Executive Director to become a signatory to the Upper Los Cerritos Mitigation Bank as described in the staff report.

Staff recommends a **YES** vote on the motion. Passage of this motion will result in authorization for the Executive Director to sign the Bank Enabling Instrument for the Upper Los Cerritos Mitigation Bank. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

### RESOLUTION:

The Commission hereby authorizes the Executive Director to become a signatory to the Upper Los Cerritos Mitigation Bank as described in the staff report. A draft of the Bank Enabling Instrument, dated January 24, 2019, is included as [Appendix A](#); however, this draft may be revised slightly, as described in the staff report.

## I. FINDINGS AND DECLARATIONS

### A. Background and Permit History

The Upper Los Cerritos Mitigation Bank is located within the Los Cerritos Wetlands, a brackish and freshwater wetland complex at the mouth of the San Gabriel River in Long Beach, Los Angeles County (see [Exhibit 1](#)). Prior to development of the area, the Los Cerritos Wetlands complex covered approximately 2,400 acres and extended up to 2 miles inland of the coastline ([Exhibit 2](#)). Starting in the late 1800s/early 1900s, the vast majority of these wetlands were filled for oil production, farming, burn dumps as well as commercial and residential development. Currently, only a few remnant wetlands remain.

Beginning in the 1970s, the State of California and the Port of Long Beach began exploring options for restoring portions of the Los Cerritos Wetland complex. In the 1990s, the Port of Long Beach and the State Coastal Conservancy developed a conceptual restoration plan for the Los Cerritos Wetlands. The Los Cerritos Wetlands Authority, a joint powers authority consisting of the State Coastal Conservancy, the Rivers and Mountains Conservancy and the cities of Long Beach and Seal Beach, began development of a new conceptual restoration plan in 2011. The final Los Cerritos Wetlands Conceptual Restoration Plan was released in August of 2015, and the Programmatic Environmental Impact Report for the Plan was certified by the Los Cerritos Wetlands Authority on January 7, 2021.

The restoration proposed as part of the mitigation Bank is one component of the overall Los Cerritos Wetlands Conceptual Restoration Plan. The mitigation Bank would be located on the existing Synergy Oil field, on part of what is known as the “Bixby lease.”

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This land, originally owned and developed by the Bixby family, has been under continuous gas and oil production since 1926, and now includes 52 oil wells (22 active, 17 idle, 13 plugged) on the 150 acre Synergy site. The site can be divided into the 76.5 acre northern section, and the 73.1 acre southern section ([Exhibit 3](#)). All the existing oil production facilities are located on the southern portion of the site. The northern portion of the Synergy site contains the 30-acre Steamshovel Slough, a relatively pristine area of southern coastal salt marsh that is separated from the oil operations by an earthen berm. Steamshovel Slough is one of the only remaining remnants of historic tidal marsh areas in Southern California. South of the berm, the northern portion of the site also includes parts of the existing active oil field, although no wells or other production equipment are located in this area. On the west side of the site, just south of the mouth of Steamshovel Slough, a tide gate and series of pipes are used to restrict tidal influence into the active oil field. The rest of the oil field is not subject to tidal influence, although the site does support salt marsh habitat. The Newport-Englewood fault bisects the Synergy site.

In December 2018, the Commission approved CDP 9-18-0395, authorizing the Los Cerritos Wetland Oil Consolidation and Restoration Project with the goal of decommissioning and removing existing oil development operations on two sites within the Los Cerritos wetlands complex and consolidating oil production operations on two smaller sites. The purpose of that project is to transition oil operations out of a 106-acre area of the wetland complex over a 20-year period to make it available for wetland restoration and consolidate oil production operations on smaller non-wetland sites. In addition to authorizing the consolidation of oil operations off the Synergy site, CDP 9-18-0395 also authorized the restoration work on the northern portion of the site associated with the proposed mitigation Bank. In November 2020, the Commission approved CDP 9-20-0500 authorizing the remediation of approximately 0.47 acres of contaminated sediment at two locations within the Synergy Oil Field and also within the footprint of the proposed mitigation Bank.

### **B. Proposed Upper Los Cerritos Mitigation Bank**

Los Cerritos Wetlands (LCW), LLC, a subsidiary of Beach Oil Minerals, the permittee for CDP 9-18-0395, seeks to establish a mitigation bank on the northern portion of the Synergy site, consistent with the USACE's regulations governing compensatory mitigation. The USACE's regulations, also called the "Mitigation Rule," were issued in 2008 and revised in 2015 (Title 33 C.F.R. parts 325 and 332). In addition to providing mitigation for activities regulated by the USACE, LCW, LLC also intends for the Bank to be able to provide mitigation for Coastal Act impacts and thus seeks the Commission's concurrence that the Bank is structured in a manner that is consistent with mitigation requirements under the Coastal Act. [Appendix A](#) includes the Bank Enabling Instrument (BEI) for the Upper Los Cerritos Mitigation Bank, which sets forth the procedures and standards for establishment, use, operation, and maintenance of the Bank. Should the Commission concur that the BEI is consistent with mitigation requirements under the Coastal Act, the motion and resolution included in Section I of the staff report ([page 4 above](#)) would authorize the Commission's Executive Director to become a signatory to the Bank. Becoming a signatory to the Bank would facilitate future applicants' ability to obtain mitigation credits from the Bank to address their projects' impacts on other coastal wetlands; however, it would not pre-authorize or pre-approve the use of the Bank for any particular, future mitigation. Rather, the Commission would make project-specific

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decisions about whether to approve the purchase of credits at this mitigation Bank, or whether other mitigation was needed or more appropriate, on a case-by-case basis.

For the past four and a half years, Commission staff participated, along with scientists from the Environmental Protection Agency, NOAA National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and the California State Water Resources Control Board, on an Interagency Review Team (IRT) that worked with the USACE and LCW, LLC to develop the various components of the Bank. Throughout the Bank development process, Commission staff collaborated with the other agencies to ensure that the Bank was designed to address the regulatory mitigation needs of both the USACE and the Commission. This included developing performance criteria, monitoring protocols and a credit release schedule that all agencies could agree to. These components of the Upper Los Cerritos Mitigation Bank are discussed in more detail below:

### **Development Plan**

The Upper Los Cerritos Mitigation Bank establishes compensatory mitigation credits associated with preservation of Steamshovel Slough and restoration of a portion of the Synergy Oil Field to tidal wetlands. As described in Section A above, the restoration work associated with the mitigation Bank was authorized under CDP 9-18-0395. This work will result in the creation of new tidal habitat through re-establishment and rehabilitation of tidal salt marsh habitat within the former oil field and will also preserve the existing high-quality habitat within Steamshovel Slough. These restoration and preservation activities are organized in the BEI by mitigation “type” (i.e., re-establishment, rehabilitation and preservation as defined in the USACE Mitigation rule and described in more detail in the Bank Credits Section below) and include the following:

- Reestablishment of 20.66 acres of tidal salt marsh habitats through strategic grading and removal of segments of a constructed berm that currently restricts historic tidal connections between Steamshovel Slough and the oil field portion of the property.
- Rehabilitation of 7.25 acres of coastal salt marsh habitat.
- Preservation of 29.71 acres of tidal salt marsh within Steamshovel Slough.

In addition, the Bank will:

- Provide 1.80 acres of non-tidal transitional habitat with high-marsh species Buffer.
- Provide 7.44 acres of saltbush/goldenbush scrub Buffer.
- Provide 1.04 acres of mulefat scrub in the Buffer.
- Construct flood protection between the Bank property and the adjacent Synergy oil field site.
- Construct the Studebaker trail adjacent to the upland Buffer near the eastern boundary of the Bank property.

[Exhibit 4](#) shows the tidal habitat areas that will be re-established, rehabilitated or preserved. Table 1 shows the type and acreage of restored or preserved habitat types within the Bank. Table 2 shows the breakdown of various mitigation types by elevation.

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Table 1: Summary of Mitigation Bank Components

Habitat Type	Acreage	Restoration Type	Jurisdiction
<b>Tidal</b>			
Steamshovel Slough	29.71	Preservation	USACE, CCC
Coastal Salt Marsh	7.25	Rehabilitation	USACE, CCC
Coastal Salt Marsh	20.66	Reestablishment	USACE, CCC
<i>Tidal Habitat Subtotal</i>	<i>57.62</i>		
<b>Non-Tidal</b>			
Transitional Habitat	1.80	Buffer	N/A
Saltbush/Goldenbush	7.44	Buffer	N/A
Mulefat Scrub	1.04	Buffer	N/A
<i>Non-Tidal Habitat Subtotal</i>	<i>10.28</i>		
<b>Total Bank Habitat</b>	<b>67.90</b>		

Table 2: Summary of Re-establishment and Rehabilitation Habitat Areas by Elevation

Elevation (ft NGVD)	Re-establishment (acres)	Rehabilitation (acres)
Subtidal (-1.5 - -0.9)	0.00	0.16
Mudflats (0.9 - +0.8)	4.06	1.82
Low Marsh (+0.8 to +1.5)	3.48	3.62
Mid Marsh (+1.5 to +3.4)	12.70	1.38
High Marsh (+3.4 to 4.3)	0.42	0.27
<b>Total</b>	<b>20.66</b>	<b>7.25</b>

Habitat credits were divided into coastal salt marsh and buffer because under the USACE Mitigation Rule, the USACE can approve mitigation of impacts to tidal wetlands through the restoration of buffer habitat or the purchase of buffer credits, even if the buffer area itself is not tidally influenced. However, in its previous actions, the Commission has generally required that compensation of tidal wetland impacts occur through creation, substantial restoration, enhancement or preservation of tidal habitats only, and not upland or buffer habitat. Thus, dividing the credits into these categories instead of lumping them together would allow the USACE to approve purchase of tidal and buffer credits in accordance with its regulations, but also would allow the CCC to approve purchase of tidal credits only as mitigation for tidal wetland impacts if merited by the circumstances surrounding a specific project.

**Service Area**

A mitigation bank’s “service area” refers to the geographic area within which permitted impacts may be compensated through the purchase of credits from the mitigation bank. One of the goals in defining the service area is to ensure that it is sufficiently large such that the bank is commercially viable, but sufficiently small to ensure that mitigation occurs

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within relative proximity to the site of the impact. Mitigation banks often include both primary and secondary service areas, and this Bank is no exception. The first priority is for Bank credits to be used to mitigate impacts within the primary service area, which generally includes areas closest to the Bank site. However, if an impact occurs within the secondary service area, and meets several criteria, Bank credits can be used to compensate for the impact. The secondary service area criteria include: 1) the impact site is not within the primary service area of another mitigation bank; 2) permittee-responsible mitigation is determined to be impracticable and/or inconsistent with the USACE watershed approach; and 3) the number of credits would be increased to account for increased distance from the impact site.

For this Bank, Exhibit B-2 of the BEI (see [Appendix A](#)) describes the primary service area as including areas within the Coastal Zone spanning from Redondo Beach to just south of Newport Bay ([Exhibit 5](#)). The secondary service area includes areas within the Coastal Zone that extend north of the primary service area up to and including Point Mugu, and south of the primary service area to San Onofre. Within both the primary and secondary service area, impacts to non-tidal freshwater habitats may not be mitigated using credits from the Bank.

### **Performance Standards and Monitoring (Interim Management Plan)**

LCW, LLC worked with the IRT, including Commission staff, to develop a comprehensive set of performance standards and monitoring protocols to ensure that the Bank achieves its restoration and preservation goals. The BEI includes both qualitative and quantitative monitoring over a minimum five-year monitoring period. Qualitative monitoring includes a monthly general site walkover to make general observations about the fitness and health of planted species, pest problems, weed establishment, mortality, habitat conversion, natural recruitment and observations on wildlife use. In addition, LCW, LLC will conduct assessments using the California Rapid Assessment Method (CRAM) in years 3 and 5, with the goal of increasing the CRAM score over the five-year period. All monitoring activities and performance criteria are discussed in more detail in the Interim Management Plan ([Exhibit D-4 of Appendix A](#)).

Quantitative monitoring includes final (Year Five) performance criteria and annual interim performance targets to track the Bank's progress towards successfully achieving its Year 5 requirements. Performance criteria include both absolute and relative standards covering physical (i.e., habitat type elevations, tidal range, and sediment surface elevations), biological (cover and diversity of marsh vegetation and density and diversity of invertebrates, fish and bird species) and water quality (i.e., dissolved oxygen and water temperature) elements. Absolute standards, including water quality criteria, require that the Bank meet a specific target. For example, the BEI requires that absolute native plant cover within the restored marsh reaches 86% by year 5. Relative standards, including many biological criteria, require that the Bank meet a target relative to a reference site. For example, the BEI requires that fish species abundance and diversity in the restored marsh areas at the Bank property shall be at least 80% of values measured at a reference site. Different performance criteria are included for Steamshovel Slough and the restored marsh areas within the Bank. Within Steamshovel Slough, performance criteria must demonstrate that restoration work within the Bank does not degrade existing high-quality



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habitat, and thus existing levels of vegetation cover and density and diversity of wildlife are maintained. Within the restored areas, performance criteria are slightly lower in recognition of the degraded initial condition of these areas. [Exhibit 6](#) includes a comprehensive list of performance standards, monitoring parameters, methods and frequency that LCW, LLC will employ to determine compliance with performance standards.

In addition to the specific monitoring activities described above, LCW, LLC will employ an adaptive management approach to ensure the Bank's resources are maintained and address any unanticipated problems. Interim management and maintenance tasks include monitoring and removal of invasive plants, trash and debris removal, irrigation, pest control and plant replacement or seeding. These tasks are also described in detail in Exhibit D-4 of the BEI (see [Appendix A](#) of the staff report).

### **Financial Securities**

To ensure that the elements of the Development Plan and the Interim Management Plan are carried out, LCW, LLC, as the Bank sponsor, is required to provide financial assurances for the performance and completion of Bank construction, management, monitoring and any required remedial action. More specifically, the Bank BEI includes three financial securities: a construction security, a performance security and an interim management security.

The construction security covers the cost of habitat restoration activities including construction of the sheetpile wall, berm and tidal gates that provide a barrier between the Bank and the Synergy oil field. The performance security covers the cost to achieve Bank performance between release of the first credit and satisfaction of all performance standards. The interim management security covers the cost of implementing the IMP, including full funding of the endowment for long-term management (see below for additional details). It is standard practice for California mitigation banks to provide these financial securities in the form of an irrevocable standby letter of credit. For the Bank, LCW, LLC proposes to follow this practice by providing a letter of credit for both the performance and interim management security. However, due to the relatively unique situation at this Bank, requiring the construction of high-cost protective structures such as the sheetpile wall, berm and tidal gates, LCW, LLC has requested to provide the construction security for these elements in the form of a performance bond combined with a letter of credit for the remainder of the construction costs. In addition, LCW, LLC has also requested that the performance security, generally calculated as 20% of the construction security, be calculated based on the total construction security minus the cost of the sheetpile wall, berm and tidal gates. To ensure that the risks associated with maintenance of the sheetpile wall, berm and tidal gates are adequately mitigated, LCW, LLC and the USACE agreed to incorporate the maintenance obligation into the Clean Water Act Section 404 permit required by the USACE prior to construction of Bank structures. The Section 404 permit will be issued to Synergy Oil and Gas (the operator of the adjacent oil field) and will include a requirement that Synergy post a performance bond for the cost of maintaining the sheetpile wall, berm and tidal gates prior to the first credit transfer from the Bank.

The IRT agencies have agreed that the financial securities proposed by the Bank Sponsor are adequate to ensure the success of the Bank. Under an MOU that governs mitigation

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banking process in California, this request will require approval from all state and federal agencies involved in mitigation banking in California that are signatory to the MOU<sup>1</sup>, which has not yet been granted. If the agencies do not grant the request, LCW, LLC would be required to provide for the full cost of the construction security, including the cost of the sheetpile wall, berm and tidal gates, with a letter of credit.

### **Long Term Management Plan**

The purpose of the Long-Term Management Plan is to outline measures that will be implemented to manage, monitor and maintain the Bank to provide the required mitigation resources in perpetuity (see [Exhibit D-5 of Appendix A](#)). For the Bank, the property owner will implement the Management Plan in accordance with the Bank's BEI and a required Conservation Easement that covers the entirety of the Bank property. The Management Plan includes three goals: 1) Maintain vegetation cover of the Bank property, 2) Maintain coastal salt marsh and subtidal habitat processes and functions, and 3) Minimize human impacts to sensitive habitats and wildlife. Measurable objectives are assigned to each goal to guide monitoring activities and ensure the Bank's goals are met. These objectives include:

- maintaining an absolute cover of native vegetation species of at least 75% across the Bank property
- ensuring control of invasive species
- maintaining a tidal range equivalent to the tidal range in the Los Cerritos Channel
- supporting multiple nesting pairs of Belding's savannah sparrow and other appropriate bird species
- maintaining water quality levels equal or better to water quality in the Los Cerritos Channel
- maintaining buffers to minimize anthropogenic disturbance
- ensuring the Bank property is free of trash and debris
- limiting public access consistent with the ecological values of the Bank
- prevent contamination of the Bank from adjacent oil operations

In addition to the specific objectives listed above, the endowment includes funding for general adaptive management tasks that may become necessary in the future. Adaptive management may include addressing changes from climate change, fire, flood, sediment management, changes in natural resource land management practices, and other natural changes through time.

Long-term management tasks are funded through the Endowment Fund. The required endowment amount is based on a cost estimate of anticipated monitoring and management activities and is described in detail in Exhibits D-2 and D-3 of the BEI (see [Appendix A](#)). LCW, LLC as the Bank sponsor will contribute funds to the endowment

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<sup>1</sup> The MOU concerning Mitigation and Conservation Banking and In-Lieu Fee Programs in California was originally signed in September of 2011 by the following agencies: CA Natural Resources Agency, CA Department of Fish and Game, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, NOAA's National Marine Fisheries Service, U.S. Environmental Protection Agency, USDA Natural Resources Conservation Service and the State Water Resources Control Board. The Coastal Commission is not a signatory to this MOU.

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based on a schedule included in the BEI, with full funding occurring prior to the last credit release.

### **Bank Credit Release**

The Bank will release credits for purchase over a multi-year period starting with final authorization of the Bank and ending when all performance standards are met. In accordance with the USACE Mitigation Rule and the mitigation banking template adopted as part of the multi-agency MOU, the BEI allows for 6 credit releases as follows:

- Credit Release 1: 15% of tidal wetlands credits
  - Occurs upon final authorization of the Bank by the signatory agencies (Bank Establishment Date)
  - Financial assurances must be in place
  - No endowment funding required
- Credit Release 2: up to an additional 25% of tidal wetlands credits
  - Occurs once construction of the Bank is complete, and the as-built drawings have been submitted and approved
  - Bank sponsor has funded a minimum of 30% of the total Endowment amount
- Credit Release 3: up to an additional 15% of tidal wetlands credits
  - Occurs after a minimum of two years of monitoring and attainment of Year 2 Performance Standards
  - Bank sponsor has funded a minimum of 55% of the total endowment amount
- Credit Release 4 up to an additional 15% of tidal wetlands credits, up to 33% of subtidal preservation credits
  - Occurs after a minimum of one additional year of monitoring after Credit Release 3 and attainment of Year 3 Performance Standards
  - Bank sponsor has funded a minimum of 70% of the total endowment amount
- Credit Release 5: up to an additional 15% of tidal wetlands credits, up to 33% of subtidal preservation credits
  - Occurs after a minimum of one additional year of monitoring after Credit Release 4 and attainment of Year 4 Performance Standards
  - Bank sponsor has funded a minimum of 100% of the total endowment amount
  - Bank sponsor has submitted a delineation of aquatic resources on the bank property
- Final Credit Release: remaining tidal wetlands and subtidal credits
  - Occurs after a minimum of one additional year of monitoring after Credit Release 5 and attainment of Final Performance Standards
  - Bank sponsor has submitted the final Monitoring Report
  - Any required Remedial Actions are completed

The Bank will offer seven types of mitigation credits:

- Tidal Wetland Preservation (Steamshovel Slough)
- Tidal Wetland Rehabilitation
- Tidal Wetland Re-establishment

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- Subtidal Habitat Preservation (Steamshovel Slough)
- Buffer: Transitional Habitat Re-establishment
- Buffer: Saltbrush/Goldenbrush Habitat Establishment
- Buffer: Mulefat Scrub Establishment

The terms “preservation,” “rehabilitation,” “establishment” and “re-establishment” are defined in the USACE Mitigation Rule.<sup>2</sup> “Preservation” refers to the removal of a threat to, or preventing the decline of, aquatic resources. “Preservation” protects existing resources but does not result in a gain of aquatic resource area or functions. “Establishment” is similar to “creation” and can be defined as the development of an aquatic resource that did not previously exist. Both “re-establishment” and “rehabilitation” are a subset of the more general term, “restoration.” “Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource, and results in an increase in aquatic resource area and functions. “Rehabilitation” is the manipulation of a site with the goal of repairing natural/historic functions to a degraded aquatic resource and results in a gain in aquatic resource function but not aquatic resource area. As described above, buffer credits may only be used to satisfy USACE mitigation requirements and must be sold in conjunction with tidal wetland credits.

The number of credits of each credit type available for purchase is provided in Exhibits F-1a and F-1b of the BEI (see [Appendix A](#)) based on design parameters. The final number of credits will be confirmed (or adjusted as necessary) based on the results of the jurisdictional delineation required before the 5<sup>th</sup> credit release. Once credits are available, agencies, including the Commission, may approve purchase of credits by a project applicant to fulfill mitigation needs on a case-by-case basis.

### **Bank Signatories**

In addition to the Commission, three agencies have indicated their intent to become signatories: The USACE, Los Angeles District; the U.S. Fish and Wildlife Service, Carlsbad Office; and the U.S. Environmental Protection Agency, Region IX.

The NOAA National Marine Fisheries Service (NMFS) has indicated that it will not become a signatory to the Bank, although it does not foresee objecting to USACE’s approval of the Bank at this time.

On January 20, 2021, staff from the U.S. Fish and Wildlife Service provided comments to the Bank sponsor requesting revisions or clarification on the Development Plan, Interim Management Plan, Long Term Management Plan and Conservation Easement. These comments request that the Bank sponsor provide the following:

- Clarification on the materials used to construct and maintain the planned trail.
- Clarification that the agreement binding Synergy Oil and Gas to maintain the sheetpile wall, tidal gates and fencing will apply to any successors if the oil or surface rights are sold.

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<sup>2</sup> Definitions taken from <https://www.epa.gov/cwa-404/compensatory-mitigation-methods>.

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- Updated 2019 Monitoring Report including all data used to establish a baseline condition in Steamshovel Slough.
- Discussion of how the Bank sponsor will mitigate impacts to Belding savannah sparrows if restoration works results in a decline in abundance.
- Clarification that the survey methodology for Belding savannah sparrow is appropriate and consistent with baseline surveys.
- Clarification on the goal for post-restoration Belding savannah sparrow population
- Clarification that tidal range monitoring is feasible in the proposed locations.
- Clarification that sediment surface elevations will be measured relative to a static benchmark.
- Identification of the sediment surface transect location on the northern side of Steamshovel Slough.
- Revision of the sediment surface elevation performance criteria to indicate that a change of six inches automatically triggers remedial or management action.
- Clarification on the methodology for invasive plant management, relative to the costs in the PAR.
- Inclusion of additional local water quality monitoring (i.e., spot check) to determine if conditions are degrading locally due to water quality.
- Clarification on what management actions need to be approved by the IRT.
- Clarification on the quantity and type of signs, fences and gates that will be maintained.
- Minor edits and correction of typos in the Long-Term Management Plan
- Clarification and a requirement for IRT approval on how boat tours will be managed
- Clarification on the status of the oil and mineral rights easements for the bank site.

On January 22, 2021, the Bank sponsor committed to addressing all the concerns raised by the USFWS and obtaining concurrence from the IRT that each issue is addressed sufficiently prior to submitting the final banking documents to the agencies for signature. Thus, the final version of the banking documents will contain several revisions to the documents provided in [Appendix A](#) specifically to address the concerns above.

### **C. Conclusion**

By signing on to the Bank, the Commission will streamline the ability for future project applicants to use Bank credits to mitigate their projects' impacts to tidal wetlands and open coastal waters, saving both time and resources for applicants and Commission staff. The Bank's inclusion of performance criteria, financial securities, and interim and long-term management plans will ensure that the Bank's ecological benefits are real, verifiable, and permanent, and would therefore provide mitigation credits that would satisfy the Commission's Coastal Act obligation to provide certain and adequate mitigation for projects' wetlands impacts. Furthermore, the robust vetting process provided by the Interagency Review Team in developing and monitoring the progress of the Bank provides additional assurances that the Bank will be successful in providing the described resources. By signing on to the Bank Enabling Instrument, however, the Commission is not committing to approve the use of Bank mitigation credits in any particular future instance. Rather, it will have the opportunity to determine whether use of such credits is appropriate under the circumstances of each future case. For these reasons, staff

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recommend that the Commission authorize the Executive Director to become a signatory to the Bank.