

16
3-19-13

Cosumnes Floodplain Mitigation Bank
AGREEMENT FOR SALE OF MITIGATION CREDITS
SPK-2005-00070

This Agreement is entered into this 19 day of March, 2013, by and between WESTERVELT ECOLOGICAL SERVICES (Bank Sponsor) and the EL DORADO COUNTY (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

A. The Bank Owner has developed the Cosumnes Floodplain Mitigation Bank located in Sacramento County, California; and

B. The Bank was approved by the U.S Army Corps of Engineers (USACE), U.S Environmental Protection Agency (USEPA) and California Department of Fish and Game (DFG) (jointly referred to as "Agencies") on **September 30, 2009**, and is currently in good standing with these agencies; and

C. The Bank has received approval from the Agencies to offer riparian wetlands and seasonal wetlands under the Clean Water Act and riparian forest, Scrub Shrub, and Shaded Riverine Aquatic (SRA) credits through the *Cosumnes Floodplain Mitigation Bank Enabling Instrument* (Bank Agreement); and

D. Project Applicant is seeking to mitigate for the implementation of the Silva Valley Parkway Project described on Exhibit "A" attached hereto (Project), which has unavoidably and adversely impacts to Riverine Seasonal Wetlands, Riverine Riparian Wetland, Riverine Perennial Marsh, Slope Seep Wetlands, Perennial Drainage habitat and seeks to compensate for the loss of this habitat by purchasing Floodplain Mosaic Wetland credits from the Bank; and

E. Project Applicant has been authorized by the U.S. Army Corp of Engineers (SPK-2005-00070) to purchase from the Bank **1.45 Floodplain Mosaic Wetland and 1.77 Enhanced Riparian Habitat credits** upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank and Bank desires to sell to Project Applicant **1.45 Floodplain Mosaic Wetland credits and 1.77 Enhanced Riparian Habitat credits**;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank **1.45 Floodplain Mosaic Wetland credits and 1.77 Enhanced Riparian Habitat credits** for the purchase price of **\$277,000**. The Bank will then deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B". The purchase price for said credits shall be processed for payment by Project Applicant to the State Controllers Office within 30 days.

2. The sale and transfer herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Applicant. Bank shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Credits by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant hereby commits to purchase the Credits and in association therewith shall process payment for the Credits no later than 30 days from the date of this Agreement.

6. Upon purchase of the credits specified in paragraph D above, the Bank shall submit to the parties listed in the Notices section of the Bank Agreement / Bank Enabling Instrument, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated inventory / ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Service File Number; vi) U.S. Army Corps of Engineers File Number (if applicable); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The inventory / ledger should include all sales data from bank opening/establishment to the present.

7. Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, P.E., Deputy Director of Engineering, Department of Transportation, or successor.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK:

WESTERVELT ECOLOGICAL SERVICES, LLC
Cosumnes Floodplain Mitigation Bank Sponsor

By:  Date: 3/26/2013

PROJECT APPLICANT:

-- COUNTY OF EL DORADO --

By:  Dated: 3/19/13

Board of Supervisors
"County"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By:  Dated: 3/19/13
Deputy Clerk

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

El Dorado County is looking to implement the Silva Valley Parkway Interchange.

Exhibit "B"

BILL OF SALE

In consideration of \$277,000, receipt of which is hereby acknowledged, *Cosumnes Floodplain Mitigation Bank* Sponsor does hereby bargain, sell and transfer to EL DORADO COUNTY, 1.45 Floodplain Mosaic Wetland credits and 1.77 Enhanced Riparian Habitat credits in the *Cosumnes Floodplain Mitigation Bank* in Sacramento County, California, developed, and approved by the U.S. Army Corps of Engineers, U. S. Environmental Protection Agency, and California Department of Fish and Game.

Westervelt Ecological Services represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Westervelt Ecological Services covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: 4/25/2013

Cosumnes Floodplain Mitigation Bank Sponsor

By: [Signature]

