

**BANKING INSTRUMENT
FOR THE LOS CARNEROS MITIGATION BANK BETWEEN
THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT AND
THE UNITED STATES ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT**

This BANKING INSTRUMENT regarding the establishment, use, operation, and maintenance of the Los Carneros Mitigation Bank (hereinafter, the "Bank") is made and entered into as of this ____ day of June, 2004 by and among the Santa Barbara County Flood Control and Water Conservation District (hereinafter, "Sponsor" or "District") and the U.S. Army Corps of Engineers, Los Angeles District (hereinafter, "Corps"), with reference to the following:

WITNESSETH THAT:

WHEREAS, the purpose of this Banking Instrument is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, which result from activities authorized under section 404 of the Clean Water Act of 1972 and section 10 of the River and Harbor Act of 1899, provided such use has met all applicable requirements and is authorized by the appropriate authority; and

WHEREAS, the City of Goleta owns 154 acres of land at Los Carneros County Park between Calle Real, Covington Way, La Patera and Los Carneros Road in Goleta, California (Exhibit A), and the Sponsor has developed a mitigation plan to create, enhance, and/or maintain 28 acres of mixed wetland, riparian and upland habitat; and

WHEREAS, under this Banking Instrument the Sponsor will create, enhance, and/or maintain 13 acres of aquatic habitat and 15 acres of transitional upland habitat in accordance with the provisions of this Banking Instrument and the Los Carneros Mitigation Bank Development Plan (hereinafter, "Bank Plan") (June 2000, as amended in August 2002) (Exhibit B), and shall then maintain the Bank in such condition for 20 years in accordance with the bank closure procedures or until all credits are used, whichever is later. The Bank area shall consist of a total of 28 acres and include approximately 6.8 acres of created seasonal wetlands and willow riparian woodland, 3.3 acres of *Baccharis* scrub enhancement, 0.75 acre of native tree planting, 11.9 acres of native plantings and exotic vegetation removal, 4.3 acres of willow riparian woodland enhancement, and 1.4 acres of seasonal wetland enhancement; and

WHEREAS, the proposed mitigation bank site currently supports a mix of native and non-native vegetation and includes two small, seasonal wetlands as well as uplands and transitional areas. Most of the upland and transitional areas are dominated by ruderal vegetation including pampas grass, eucalyptus groves, and non-native annual grassland. The seasonal wetlands support willow riparian woodland as well as ruderal vegetation and provide important habitat components for numerous reptile, amphibian, and avian species. Please refer to the Bank Plan for a more complete discussion of baseline conditions; and

WHEREAS, in accordance with the provisions of this Banking Instrument and upon satisfaction of the success criteria contained herein, a total of 24.25 credits (13 acres of aquatic habitat at 1 credit/acre of restoration and 15 acres of transitional/upland habitat at 0.75 credits/acre of restoration) will be available to be used as mitigation in accordance with all applicable requirements; and

WHEREAS, the Mitigation Banking Review Team consists of the Corps only; and

WHEREAS, this Banking Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties; and

WHEREAS, the following exhibits are incorporated as appendices to this Banking Instrument:

1. Exhibit A, Bank Location and Service Area
2. Exhibit B, Bank Development Plan titled “Los Carneros Mitigation Bank, June 2002”
3. Exhibit C, Crediting and Debiting Procedure for the Bank
4. Exhibit D, Real Estate Provisions
5. Exhibit E, Financial Assurance
6. Exhibit F, Maintenance Provisions

WHEREAS, the establishment, use, operation and maintenance of the Bank is carried out in accordance with the following Federal authorities:

1. Clean Water Act of 1972, as amended (33 U.S.C. §§ 1251 et seq.)
2. River and Harbor Act of 1899 (33 U.S.C. § 403)
3. Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.)
4. Regulatory Programs of the Corps of Engineers, Final Rule (33 C.F.R. Parts 320-330)
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230)
6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
7. Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 F.R. 58605 et seq.)

NOW, THEREFORE, the Sponsor and the Corps agree as follows:

AGREEMENT

ARTICLE I. ESTABLISHMENT OF THE BANK

A. The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Banking Instrument, to create, enhance and/or maintain 28 acres of mixed habitat, as shown in Exhibit B, until it is demonstrated to the satisfaction of the Corps that the project complies with all conditions contained herein, or until all credits are used. Work shall include implementing the Bank Plan.

B. The Sponsor will obtain all appropriate environmental documentation, permits or other authorizations needed to establish and maintain the Bank. This Banking Instrument does not fulfill or substitute for such authorization.

C. Establishment of the Bank will be performed in phases as described in Section VII of the Bank Plan and the credits will become available in accordance with the schedule specified in Article II, Sections D through G of this Banking Instrument. In the event the Sponsor determines that modifications must be made to the Bank Plan to ensure successful establishment of habitat within the Bank, the Sponsor shall submit a written request for such modification to the Corps for written approval. Documentation of implemented modifications shall be made consistent with Article I, Section F *infra*.

D. The Sponsor agrees to provide the following financial assurances for the work described in this Banking Instrument. The Santa Barbara County Flood Control and Water Conservation District receives funding on an annual basis through Benefit Assessment and a portion of Real Property taxes. This money is assured to the District in perpetuity by the enabling legislation that established the District in 1955 and is not subject to appropriation by other agencies of either County or State government. The South Coast Flood Zone, in which the Bank is located, has sufficient money to fund the District's routine maintenance and mitigation work each year. Additionally, the District has money in reserve that it uses to fund emergency work or special projects. These ongoing revenue sources ensure the District's ability to establish and maintain the Bank as described in the Bank Plan.

E. The County of Santa Barbara recorded a conservation easement on the Bank land in favor of the Sponsor or its successor (Exhibit D). The conservation easement preserves the Bank land as wetlands and wildlife habitat in perpetuity including "for the purpose of the present and future construction, reconstruction, operation, repair, and maintenance of a mitigation bank for flood control operations, together with access thereto...."

F. The Sponsor agrees to submit an as-built report for each phase of the Bank within 90 days following completion of the establishment of that phase of the bank. The as-built report will describe, in detail, any deviation from that described in the Bank Plan, and a plan showing finish grades, and surface and groundwater elevations, as appropriate.

ARTICLE II. OPERATION OF THE BANK

A. Service Area

The Bank is established to provide mitigation to compensate for impacts to waters of the United States, including wetlands, within the South Coast region of Santa Barbara County as shown in Figure 7 of Exhibit A. Decisions authorizing use of credits from the Bank will be made by the Corps on a case-by-case basis in accordance with applicable requirements.

B. Access to the Site

The Sponsor will allow, or otherwise provide for, access to the site by all signatory parties, as necessary, for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Banking Instrument. Inspecting parties shall provide reasonable notice by telephone or facsimile, of not less than 24 hours, to the Sponsor, prior to inspection of the Bank. A member of the Sponsor's staff shall accompany any inspecting parties for the purpose of answering questions and providing information about the function or use of the Bank.

C. Projects Eligible to Use the Bank

For projects requiring authorization under section 404 of the Clean Water Act of 1972 and/or section 10 of the River and Harbor Act of 1899, the Corps will determine the eligibility of projects to use the Bank on a case-by-case basis. In general, it is agreed that the Bank would be used primarily for District maintenance projects included in the Annual Routine Maintenance Plan. Typically, these projects include desilting and reshaping channels, installation of limited bank stabilization and grade control structures, repair of flood control devices, and construction of access ways. Additional credits may be used for other projects that are not covered in the Annual Routine Maintenance Plan. However, no projects in this category have been identified to date.

D. Assessment Methodology

Credits and debits will be assessed using wetland acreage, as described in Exhibit C and in Section E below. Monitoring and reporting will occur annually by the Sponsor for the first five years after plant installation and then biannually until 10 years after planting. If the Corps determines that additional monitoring is needed beyond 10 years, the Sponsor and the Corps will determine the new schedule.

E. Success Criteria

1. The following criteria will be used to assess project success:

a. Interim Three-Year Success Criteria: Once the pampas grass is removed or the grading for the biofilter is completed, the Sponsor will begin restoration of these areas as well as the upland habitat areas of the mitigation bank as described in the Bank Plan. In order to establish shade within many of the restoration areas, and increase the likelihood of understory plant survival, the first plants to be installed within the mitigation bank will be the tree species. The understory plants will be planted approximately one to one and half years after the tree installation, depending upon the growth rate of the trees and timing of installation. Installation

of the plants within the biofilter will be timed to take advantage of the rainy season. Therefore, depending upon the timing of the grading, biofilter plant installation may need to wait several months. Keeping the above plant installation timing in mind, the three-year interim success criteria are as follows:

- Three years after tree installation (as 1-gallon-sized plants), the trees will meet the following mean height requirements derived from measurement of a random sample of at least 30% of the individuals by species:

Willows:	8 ft
Sycamore:	5 ft
Cottonwood:	7 ft
Ca. Bay:	5 ft
Coast live oak:	3 ft
- Overall plant mortality will not exceed 30% of the initial number planted.
- Native understory plants are installed within the riparian woodland areas.
- Seasonal wetland species will have been installed within the biofilter and will cover at least 30% of the biofilter floor.

b. Five-Year Success Criteria: Due to the size of the Bank as well as the advantage of phasing the restoration to allow for different aged habitats, it is anticipated that five years after the beginning of this Bank, several of the habitat areas will be at different levels of maturity or completeness. Keeping this in mind, the five-year criteria are as follows:

- Five years after tree installation, the trees will meet the following mean height requirements derived from measurement of a random sample of at least 30% of the individuals by species:

Willows	15 ft
Sycamore	9 ft
Cottonwood	12 ft
Ca. Bay	9 ft
Coast Live Oak	5 ft
- Overall plant mortality will not exceed 15% of the number surviving at the end of the three-year monitoring.
- As appropriate, plants are producing fruits and/or seeds for forage and reproduction (i.e., species such as elderberry, toyon, coffeeberry, sages, rose, etc. readily produce fruits and/or seeds at relatively young ages whereas oaks and some of the other tree species do not).
- Ongoing wildlife surveys show that wildlife known to use the Los Carneros property is using the restoration areas for at least cover and foraging activities.
- In all areas where native plantings were initially installed, plant species diversity of no less than 80% of the original planting palette will be demonstrated.
- The biofilter will show recruitment of native wetland plant species

sufficient to make the system self-sustaining without supplemental irrigation or plantings. In addition, plant species diversity of no less than 85% of the original planting palette will be demonstrated as well as at least 85% vegetative cover.

- Large noxious weed species such as castor bean, mustard, thistle and pampas grass are not established in patches within the restoration areas.

F. Schedule of Credit Availability

Upon submittal of all appropriate documentation by the Sponsor and subsequent approval by the Corps, it is agreed that credits will become available for use by the Sponsor as follows:

One acre of “up front” credit will be available for debiting when the pampas grass is removed and an additional one acre of “up front” credit will be available for debiting when the grading for the biofilter is completed as described in the Bank Plan for a total of two acres of “up front” credits. When the interim three-year success criteria are met within each of the polygons as they are restored, half of the credits for that particular polygon will become available. When five-year success criteria are met within each of the polygons, the balance of the polygon’s credits will become available.

G. Conditions on Debiting

Two acres of “up-front” credit will be available to the Sponsor when the pampas grass is removed and the grading for the biofilter is completed. As stated in Article I, Section D, the Sponsor is funded by benefit assessment through property taxes. This funding mechanism ensures that funds will be available to complete the restoration that was initiated to provide the two credits allotted to the Sponsor. Additional credits will become available when the Corps determines that the three-year and five-year success criteria have been met.

H. Provisions For Uses of the Mitigation Bank Area:

1. The Sponsor shall **NOT**:
 - a. Grant additional easements, rights-of-way, or any other property interest in or to the project areas without the written consent of the Corps.
 - b. Use or authorize the areas within the Bank for any purpose which interferes with its conservation purposes other than the possibility that buried utility lines would be installed in existing easements on the property. If any utility needs to be constructed through the area the Sponsor and the Corps will coordinate with the project proponent to ensure that the construction is accomplished with the least possible environmental impacts and that the area is restored to its pre-construction condition.

ARTICLE III. MAINTENANCE AND MONITORING OF THE BANK

A. Maintenance Provisions

The Sponsor agrees to perform all necessary work to maintain the Bank in a manner consistent with the maintenance criteria established in the Bank Plan and specified in Exhibit F. The Sponsor shall continue such maintenance activities until closure of the bank. Upon closure of the Bank, the Sponsor shall implement the management requirements established in Article I, Section F and as described in the Bank Closure Plan, where applicable. Deviation from the approved Bank Plan is subject to review and written approval by the Corps.

B. Monitoring Provisions:

The Sponsor agrees to perform all necessary work to monitor the Bank to demonstrate compliance with the success criteria established in this Banking Instrument. Monitoring will include vegetation surveys, wildlife surveys, and photo documentation to document the health and success of the vegetation and use by wildlife as described in Article II, Section E of this Banking Instrument.

C. Reports

The Sponsor shall submit to the Corps a report describing the conditions of the Bank and relating those conditions to the success criteria described above. Reports will be submitted by March 31 of each calendar year and contain information sufficient for the Corps to determine whether the success criteria have been met. Reports shall contain information including, but not limited to the following:

1. A detailed narrative summarizing the condition of the Bank and all regular maintenance activities.
2. Appropriate topographic maps (e.g., one- to two-foot contours) showing location of sampling plots, permanent photo points, and locations of survey transects.
3. Vegetation survey results including visual estimates of overall percent cover and percent cover by each vegetation layer, species diversity, percent cover of exotic vegetation in each vegetation layer, total percent cover of wetland indicator and upland species in each vegetation layer, survival rate of planted vegetation, estimates of natural recruitment, and plant vigor as measured by evidence of reproduction.
4. Results of other surveys such as bird, mammal, macroinvertebrate, and fish surveys, as appropriate.

D. Accounting Procedures

On an annual basis in conjunction with submittal of the District's Annual Routine Maintenance Plan, the Sponsor shall submit a statement to the Corps requesting authorization to utilize credits from the Bank. This statement shall provide justification for why on-site compensation is either not practicable or use of a mitigation bank is environmentally preferable

to on-site compensation. The statement shall also include an accounting of all credits debited from the Bank during the previous year.

E. Contingency Plans/Remedial Actions

1. In the event the Bank or a specific phase of the Bank fails to achieve the success criteria specified in Article II, Section E of this Banking Instrument, the Sponsor shall develop necessary contingency plans and implement appropriate remedial actions for the Bank or for that phase in coordination with the Corps. In the event the Sponsor fails to implement necessary remedial actions within 90 calendar days after notification by the Corps of necessary remedial action to address any failure in meeting the success criteria, the Corps will notify the Sponsor and the appropriate authorizing agencies and recommend appropriate remedial actions.

2. If the authorizing agencies determine that the Bank is operating at a deficit, debiting of credits will immediately cease, and the Corps will determine what remedial actions are necessary to correct the situation. As determined by the Corps in coordination with the Sponsor, if conditions at the bank site continue to deteriorate or do not improve within 90 days from the date that the need for remediation was first identified in writing to the Sponsor by the Corps, the Bank will no longer be available for debiting unless and until conditions are appropriately addressed and the Corps determines that the Bank is no longer operating at a deficit. Because the terms of this Instrument specify that credits would only become available when success criteria are achieved, it is not expected that the Bank would ever operate at a deficit.

3. At the request of the Sponsor, the Corps will perform compliance visits to determine whether interim and final success criteria have been achieved. Upon satisfaction of the success criteria, any remaining credits will be available to the Sponsor.

F. Long-Term Management

At the end of the active monitoring period, the Santa Barbara County Flood Control and Water Conservation District will manage the Bank in perpetuity as described in Exhibit D. The District will obtain funds required for management of the Bank by the methods described in Article I, Section D of this Banking Instrument.

ARTICLE IV. RESPONSIBILITIES OF THE CORPS

A. The Corps agrees to:

1. Provide appropriate oversight in carrying out provisions of this Banking Instrument.

2. Review and provide comments on all project plans, regular or annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank in a timely manner. Comments on the monitoring reports and credit review reports will be reviewed within 60 calendar days from the date of complete submittal, except for good cause.

3. To review and confirm reports on evaluation of success criteria prior to approving credits within each phase of the Bank.

4. Conduct compliance inspections, as necessary, as determined in consultation with the Sponsor, verify credits available in the Bank, and recommend corrective measures (if any), until the terms and conditions of the Bank Plan have been determined to be fully satisfied or until all credits have been used, whichever is later.

ARTICLE V. OTHER PROVISIONS

A. Force Majeure

The Sponsor will not be responsible for bank failure that is attributed to natural catastrophes such as flood, drought, disease, regional pest infestation, etc., which the Corps determines is beyond the control of the Sponsor to prevent or mitigate. In such circumstances, the Sponsor will not be responsible for replacement of credits utilized up to the date of failure.

B. Dispute Resolution

Resolution of disputes about application of this Banking Instrument shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 et seq., November 28, 1995).

C. Validity, Modification, and Termination of the Banking Instrument

This Banking Instrument will become effective when signed by both the Sponsor and the Corps. This Banking Instrument may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this Banking Instrument by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth.

D. Specific Language of Banking Instrument Shall Be Controlling

To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Banking Instrument by reference, and that are not legally binding, the specific language within the Banking Instrument shall be controlling.

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IN WITNESS WHEREOF, the Banking Instrument is executed by the Santa Barbara County Flood Control and Water Conservation District, acting by and through its Manager or his designee, pursuant to Resolution No. _____ authorizing such execution, and by the U.S. Army Corps of Engineers, through its authorized officer.

For the Santa Barbara County Flood Control and Water Conservation District:

PHILIP DEMERY
Director of Public Works
Santa Barbara, County
Date:_____

For the U. S. Army Corps of Engineers:

RICHARD G. THOMPSON
Colonel, US Army
District Engineer
Date:_____