

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
4	07/25/11	Open	Action	07/14/11

Subject: Conditionally Awarding Contracts for Environmental Mitigation Banks for the South Sacramento Corridor Phase 2 Project

ISSUE

Whether or not to conditionally award Contracts for Environmental Mitigation Banks for the South Sacramento Corridor Phase 2 (SSCP2) Project.

RECOMMENDED ACTION

- A. Adopt Resolution No. 11-07-____, Conditionally Awarding a Contract for Environmental Mitigation Bank for 0.291 Acres of Wetland Creation Credits (Waters of the U.S.) to Westervelt Ecological Services for the SSCP2 Project; and
- B. Adopt Resolution No. 11-07-____, Conditionally Awarding a Contract for Environmental Mitigation Bank for 2.26 Acres of Vernal Pool Crustacean Habitat Preservation Credits to Conservation Resources for the SSCP2 Project; and
- C. Adopt Resolution No. 11-07-____, Conditionally Awarding a Contract for Environmental Mitigation Bank for 0.14 Acres of Vernal Pool Crustacean Habitat Creation/Restoration Credits to Westervelt Ecological Services for the SSCP2 Project; and
- D. Adopt Resolution No. 11-07-____, Conditionally Awarding a Contract for Environmental Mitigation Bank for 9.823 Acres of Giant Garter Snake Upland and Aquatic Habitat Credits to Westervelt Ecological Services for the SSCP2 Project; and
- E. Adopt Resolution No. 11-07-____, Conditionally Awarding a Contract for Environmental Mitigation Bank for 26.5 Acres of Swainson's Hawk Foraging Habitat to the City of Elk Grove's Delta Breeze Vineyard Mitigation Bank for the SSCP2 Project.

FISCAL IMPACT

Budgeted:	Yes	This FY:	\$ 1,264,437.50
Budget Source:	Capital	Next FY:	\$ 0
Funding Source:	New Starts/Proposition 1B/Measure A/STA/Developer Fees - WBS 410.02	Annualized:	\$ NA

The budget for these contracts is as follows:

Wetland Creation Credits	\$ 34,920.00
Vernal Pool Crustacean Habitat Preservation Credits	\$ 361,600.00
Vernal Pool Crustacean Habitat Creation/Restoration Credits	\$ 38,500.00
Giant Garter Snake	\$ 343,805.00
Swainson's Hawk	\$ 485,612.50
Total:	\$1,264,437.50

Approved:

Presented:

Final 7/19/11

General Manager/CEO

Director, Project Management

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DISCUSSION

RT and the Federal Transit Administration (FTA) are currently in the preliminary engineering phase of the South Sacramento Corridor Phase 2 (SSCP2) light rail extension project from Meadowview to Cosumnes River College. In October 2008, the RT Board of Directors adopted and certified the SSCP2 Subsequent Final Environmental Impact Report (FEIR) and adopted a Mitigation Monitoring Program (MMP) that staff was directed to implement.

The MMP identifies mitigation measures for SSCP2 impacts to local, state and federally-protected biological resources and/or habitats, including Vernal Pool Crustaceans, Giant Garter Snake and Swainson's Hawk. In accordance with the SSCP2 Subsequent FEIR and MMP, the loss of resources due to project-related activities must be mitigated by replacement at appropriate ratios to ensure no disturbance or net loss of that resource. RT's purchase of credits through U.S. Fish and Wildlife Services (USFWS) and California Department of Fish and Game (CDFG)-approved off-site mitigation bank(s) are identified as appropriate mitigation mechanisms.

On June 8, 2011, staff released an RFP to USFWS and CDFG-approved environmental mitigation banks and gave proposers the option of proposing on a single or multiple mitigation requirements. RT received 5 proposals on June 29, 2011 from: Conservation Resources; Gray and Thurn, Inc.; Westervelt Ecological Services; Muzzy Ranch Conservation Company; and Wildlands, Inc.

Evaluation of the proposals went through the following chronological steps:

1. Each proposed mitigation site was reviewed to ensure each was USFWS and/or CDFG approved. Those sites not having the necessary approvals were eliminated.
2. As required by Board Resolution No. 97-11-0291, the remaining mitigation sites were reviewed to determine if any were within the municipality of the project. No proposal sites were within the municipality.
3. Board Resolution No. 97-11-0291 directs staff to purchase credits from banks closest to the project site. RT measured the distances utilizing Google Maps Distance Calculator from each proposed mitigation bank to the confluence of the Morrison and Union House creeks. These measurements determined the initial rankings of each proposal.
4. Board Resolution No. 97-11-0291 requires that the closest proposal must provide a fair and reasonable price in relation to the other proposals in order to be selected. Staff compared selected mitigation banks based on distance from the project. The price of each selected proposal was compared to other proposals to determine if the price was fair and reasonable. In one case, the closest proposal price was determined to not be fair and reasonable. Because of this, the next closest proposal was selected.
5. The final step was to receive agency approval for each mitigation bank (the responsible agency is listed for each mitigation item in the table below). If the responsible agency did not approve staff's recommended mitigation site, which are based on RT Board policy, other sites were then proposed until approval was received by the necessary Agency.

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The following chart shows the Proposals received, the proposed locations of the mitigation banks; the governing authority (U.S. Army Corps of Engineers, USFWS, or CDFG) and its' determination of acceptance or rejection, and the prices offered.

Mitigation Item	Authority	Conservation Resources	Gray & Thurn	Westervelt	Muzzy Ranch	Wildlands
0.291 acres of Seasonal Wetland Credits (waters of the U.S.)	U.S. Army Corps of Engineers			Cosumnes Floodplain Sacramento County \$34,920.00 -ACCEPTED-	Putah Creek Mitigation Bank \$31,000.00 -REJECTED-	Toad Hill Ranch Mitigation Bank \$46,500.00 -REJECTED-
2.26 acres of Vernal Pool Crustacean Habitat Preservation Credits	USFWS	Gill Ranch Sacramento County \$361,600.00 -ACCEPTED-	Bryte Ranch Sacramento County \$452,000.00 -REJECTED-			Laguna Terrace East Sacramento County \$339,000.00 -REJECTED-
0.14 acres of Vernal Pool Crustacean Habitat Creation/ Restoration Credits	USFWS			Van Vleck Ranch Sacramento County \$38,500.00 -ACCEPTED-		Toad Hill Ranch Mitigation Bank \$35,000.00 -REJECTED-
9.823 acres of Giant Garter Snake Habitat Credits	USFWS			Sutter Basin Sutter County \$343,805.00 -ACCEPTED-		Ridge Cut Yolo County \$343,805.00 -REJECTED-
26.5 acres of Swainson's Hawk Mitigation	CDFG					Twin Cities Sacramento County \$230,440.00 -REJECTED-

Seasonal Wetland Credits Background

SSCP2 is within the service area of all three proposals. Muzzy Ranch's Putah Creek is the closest bank, but is not currently approved by the Army Corps of Engineers for Seasonal Wetland Credit mitigation. Westervelt's Cosumnes Floodplain Mitigation Bank is the next closest mitigation bank and its price was deemed fair and reasonable. The U.S. Army Corps of Engineers approved this mitigation purchase on July 13, 2011.

Vernal Pool Crustacean Preservation Credits Background

SSCP2 is within the service area of all three proposals. Gray and Thurn's Bryte Ranch Conservation Bank is the closest proposed bank to the SSCP2 project. However, the price was approximately 30% higher than the costs from the other proposals. Because of this, staff determined the price is not fair and reasonable and rejected the proposal. The next closest proposal is Wildlands Laguna Terrace East Conservation Bank. Following discussions with the USFWS, staff determined that this specific conservation bank was only approved to mitigate

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vernal pool fairy shrimp. The SSCP2 Biological Opinion states that this mitigation must be for both vernal pool fairy shrimp and vernal pool tadpole shrimp. Because of this, the Laguna Terrace East Conservation Bank was rejected. The next closest proposal is Conservation Resources Gill Ranch Mitigation Bank. The price has been determined by staff to be fair and reasonable. USFWS approved this mitigation purchase on July 15, 2011.

Vernal Pool Crustacean Creation Credits Background

SSCP2 is within the service area of both proposals. Staff's first choice was Westervelt's Van Vleck Ranch Mitigation Bank. Following discussions with USFWS, staff determined that this conservation bank was only approved to mitigate vernal pool fairy shrimp. However, because the second proposal, Toad Hill Ranch, also did not provide the necessary fairy and tadpole creation credits, USF&W approved VanVleck Mitigation Bank since it was the nearest proposal to the project site. Staff has determined the price to be fair and reasonable. USFWS approved this mitigation purchase on July 15, 2011.

Giant Garter Snake Habitat Credits Background

SSCP2 is outside the service area of each proposal. It was determined that no Giant Garter Snake mitigation banks include the SSCP2 project within its service area. USFWS allowed staff to consider mitigation banks outside the project area due to this limitation. Both proposed banks are approved by USFWS to sell Giant Garter Snake mitigation credits, but neither is CDFG approved. Wildlands' Ridge Cut is less than a mile closer than the second proposal. However, following discussions with USFWS and CDFG, staff is recommending Westervelt's Sutter Basin Conservation Bank due to its imminent CDFG approval of this mitigation site to sell Giant Garter Snake credits. Staff expects CDFG GGS mitigation approval of Sutter Basin in August 2011. Staff has determined the price to be fair and reasonable. USFWS approved this mitigation bank on July 15, 2011. CDFG approved this mitigation purchase on July 7, 2011.

Swainson's Hawk Mitigation Background

RT received one proposal to mitigate 26.5 acres of Swainson's Hawk project impacts. The one proposal, Wildlands Twin Cities Wetland Preserve, was rejected due to the fact that the preserve is not a formally approved mitigation bank. CDFG suggested RT work with either Sacramento County or the City of Elk Grove to buy Swainson's Hawk credits through their respective mitigation programs.

Initial attempts to work with the County were unsuccessful. The County indicated they could not accommodate the mitigation due to its rules specifying that only County projects are eligible to buy into its mitigation bank. The City of Elk Grove had similar rules, but was willing to take a proposal to their City Council to approve this purchase. On June 23, 2010, the Elk Grove City Council voted to allow RT to purchase 26.5 acres of Swainson's Hawk mitigation credits through its Delta Breeze Vineyard Mitigation Bank to offset South Line 2 project impacts. While the cost per acre is higher than the RFP proposals, staff accepts this proposal in order to receive CDFG approval. CDFG approved this mitigation purchase on July 7, 2011.

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Because staff was finalizing approvals with the USFWS until only a few days ago, staff did not send out the Notice of Intent to Award to the unsuccessful proposers until July 18, 2011. Proposers that are not selected are entitled to protest a decision to award and must be granted a full 10 calendar days to submit their protest to RT. Because the Notice of Intent to Award was not sent out until July 18, 2011, proposers have until July 29, 2011 to protest the award. Therefore, staff recommends that the Board conditionally award the Environmental Mitigation Bank contracts conditioned upon the 10-day bid protest period elapsing and RT not receiving any protests.

Additionally, staff needs to expedite these contracts in order to advance SMUD 69kv utility pole relocations over Union House Creek. This work requires SMUD to install an access road over Union House Creek. In order to build this road, it is necessary to work in the Union House creek bed. RT's Streambed Alteration, which provides the necessary permission to work within the creek bed, states that all mitigation purchases for the South Line Phase 2 project must be completed and receipts provided to the key agencies before any work can take place. The Streambed Alteration also states that due to the fact that the access road work takes place within the habitat of the Federally and State protected Giant Garter Snake, construction crews can only work in the creek bed between April 1 and October 31. SMUD has indicated their work will take three months to complete. If RT delays the access road work beyond July, it jeopardizes SMUD's ability to relocate the 69kv poles during this work season. If SMUD is unable to do its work, the pole relocation will have to wait until April 1, 2012. This then causes the rest of the aerial structure work and ultimately the overall project to be delayed. Therefore, staff recommends that the Board approve the contracts contingent upon successful contract negotiations; thus, eliminating further delay in meeting a subsequent Board meeting date.

Staff recommends the Board conditionally award contracts to: Westervelt Ecological Services for 0.291 acres of Seasonal Wetland Credits (waters of the U.S.) in the amount of \$34,920.00; Conservation Resources for 2.26 acres of Vernal Pool Crustacean Habitat Preservation Credits in the amount of \$361,600.00; Westervelt Ecological Services for 0.14 acres of Vernal Pool Crustacean Habitat Creation/Restoration Credits in the amount of \$38,500.00; Westervelt Ecological Services for 9.823 acres of Giant Garter Snake upland and aquatic habitat credits in the amount of \$343,805.00; and Elk Grove for 26.5 acres of Swainson's Hawk Mitigation Credits in the amount of \$485,612.50. Staff further recommends that the General Manager/CEO be authorized to finalize contract negotiations with each successful mitigation banks.

RESOLUTION NO. 11-07-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

July 25, 2011

CONDITIONALLY AWARDING A CONTRACT FOR ENVIRONMENTAL MITIGATION BANK FOR 0.291 ACRES OF WETLAND CREATION CREDITS (WATERS OF THE U.S.) TO WESTERVELT ECOLOGICAL SERVICES FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract between the Sacramento Regional Transit District, therein referred to as "RT," and Westervelt Ecological Services, therein referred to as "Bank," whereby Bank agrees to provide 0.291 acres of Seasonal Wetland Credits (waters of the U.S.) at a U.S. Army Corps of Engineers-approved Environmental Mitigation Bank for the South Sacramento Corridor Phase 2 Project, for an amount not to exceed \$34,920.00, is hereby approved contingent upon: 1) the 10-day bid protest period elapsing without RT receiving any bid protests; and 2) upon successful contract negotiations with the mitigation bank.

THAT, the General Manager/CEO is hereby authorized and directed to execute said contract upon satisfaction of the foregoing contingencies.

DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 11-07-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

July 25, 2011

**CONDITIONALLY AWARDING A CONTRACT FOR ENVIRONMENTAL MITIGATION
BANK FOR 2.26 ACRES OF VERNAL POOL CRUSTACEAN HABITAT
PRESERVATION CREDITS TO CONSERVATION RESOURCES FOR THE SOUTH
SACRAMENTO CORRIDOR PHASE 2 PROJECT**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract between the Sacramento Regional Transit District, therein referred to as "RT," and Conservation Resources, therein referred to as "Bank," whereby Bank agrees to provide 2.26 acres of Vernal Pool Crustacean Habitat Preservation Credits at a U.S. Fish and Wildlife Services -approved Environmental Mitigation Bank for the South Sacramento Corridor Phase 2 Project, for an amount not to exceed \$361,600.00, is hereby approved contingent upon: 1) the 10-day bid protest period elapsing without RT receiving any bid protests; and 2) upon successful contract negotiations with the mitigation bank.

THAT, the General Manager/CEO is hereby authorized and directed to execute said contract upon satisfaction of the foregoing contingencies.

DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 11-07-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

July 25, 2011

CONDITIONALLY AWARDING A CONTRACT FOR ENVIRONMENTAL MITIGATION BANK FOR 0.14 ACRES OF VERNAL POOL CRUSTACEAN HABITAT CREATION/RESTORATION CREDITS TO WESTERVELT ECOLOGICAL SERVICES FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract between the Sacramento Regional Transit District, therein referred to as "RT," and Wildlands, Inc., therein referred to as "Bank," whereby Bank agrees to provide 0.14 acres of Vernal Pool Crustacean Habitat Creation/Restoration Credits at a U.S. Fish and Wildlife Services-approved Environmental Mitigation Bank for the South Sacramento Corridor Phase 2 Project, for an amount not to exceed \$38,500.00, is hereby approved contingent upon: 1) the 10-day bid protest period elapsing without RT receiving any bid protests; and 2) upon successful contract negotiations with the mitigation bank.

THAT, the General Manager/CEO is hereby authorized and directed to execute said contract upon satisfaction of the foregoing contingencies.

DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 11-07-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

July 25, 2011

CONDITIONALLY AWARDING A CONTRACT FOR ENVIRONMENTAL MITIGATION BANK FOR 9.823 ACRES OF GIANT GARTER SNAKE UPLAND AND AQUATIC HABITAT CREDITS TO WESTERVELT ECOLOGICAL SERVICES FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract between the Sacramento Regional Transit District, therein referred to as "RT," and Westervelt Ecological Services, therein referred to as "Bank," whereby Bank agrees to provide 9.823 acres of Giant Garter Snake upland and aquatic habitat credits at a U.S. Fish and Wildlife Services-approved Environmental Mitigation Bank for the South Sacramento Corridor Phase 2 Project, for an amount not to exceed \$343,805.00, is hereby approved contingent upon: 1) the 10-day bid protest period elapsing without RT receiving any bid protests; and 2) upon successful contract negotiations with the mitigation bank.

THAT, the General Manager/CEO is hereby authorized and directed to execute said contract upon satisfaction of the foregoing contingencies.

DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 11-07-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

July 25, 2011

CONDITIONALLY AWARDING A CONTRACT FOR ENVIRONMENTAL MITIGATION BANK FOR 26.5 ACRES OF SWAINSON'S HAWK FORAGING HABITAT TO THE CITY OF ELK GROVE'S DELTA BREEZE VINEYARD MITIGATION BANK FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract between the Sacramento Regional Transit District, therein referred to as "RT," and Elk Grove Mitigation Bank, therein referred to as "Bank," whereby Bank agrees to provide 26.5 acres of Swainson's Hawk foraging habitat at a California Department of Fish and Game-approved Environmental Mitigation Bank for the South Sacramento Corridor Phase 2 Project, for an amount not to exceed \$485,612.50, is hereby approved contingent upon: 1) the 10-day bid protest period elapsing without RT receiving any bid protests; and 2) upon successful contact negotiations with the mitigation bank.

THAT, the General Manager/CEO is hereby authorized and directed to execute said contract upon satisfaction of the foregoing contingencies.

DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary