



Coastal Bend Bays & Estuaries Program, Inc.

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January 22, 2010

To: CBBEP Board of Directors

From: Ray Allen, Executive Director

Re: Proposed In-Lieu Fee Mitigation Bank Partnership with Texas General Land Office

CBBEP's Nueces Bay Causeway Marsh Restoration Project is a large and expensive effort. We had always hoped that a big portion of the project could be accomplished using mitigation dollars. The marsh restoration work will actually take place on state owned bay-bottom under the control of the Texas General Land Office (GLO).

The GLO is very interested in working with CBBEP to establish a mitigation bank at the site. CBBEP staff met on several occasions with GLO staff to explore this idea. A working draft document is attached. It has not been approved by either GLO or CBBEP.

Staff is seeking Board authorization to move forward with final negotiations subject to oversight and approval by Chairman Wallace and anyone else the Board would want to have included in the review and approval process.

DRAFT

TERMS SUMMARY – PSF Submerged State Tract 752 @ Portland Causeway North, Corpus Christi, Texas – Mitigation Project

Note: All terms subject to approval by Commissioner of the Texas General Land Office

- Lessor:** State of Texas on behalf of the Permanent School Fund (PSF).
- Lessee:** Coastal Bend Bays & Estuaries Program.
- Property Location:** East Nueces Bay, North of and adjacent to US Highway 81.
- Legal:** Approximately 91.5 acres, being a portion of State Tracts 752 and 753, to be described more particularly by Survey, and as depicted on Exhibit A.
- Survey:** A coastal boundary survey performed in accordance with TNRC 33.136 and approved by GLO will be required to identify the boundary between state and private land prior to construction.
- Borrow Sites:** Areas of submerged PSF land that are used for borrow in conjunction with restoring the coastal marsh habitat, if any, including sites from which plants will be harvested for planting in the new marsh, will be permitted for use with separate contracts from GLO.
- Permitted Use:** The property may be used only for tidal marsh habitat restoration and preservation; construction breakwaters, levees and associated structures such as access points; and maintenance of such improvements.
- Lease Term:** 50 years primary term with option to renew for additional 50 years, terms and conditions to be agreed to by parties at time of renewal.
- Habitat Creation For Mitigation:** The entire premises shall be used for habitat creation or restoration associated with an in-lieu fee mitigation project. Habitat built under this lease will be "sold" as mitigation credits, and will be built specifically in satisfaction of compensatory mitigation requirements incurred by third parties.
- Base Rental Rate:** Base Rental Rate is \$3 per acre, per year. Rent payments begin 90 days after the COE approves the Banking Instrument, and is payable in advance annually thereafter.
- Commercial Mitigation Rent Rate:** Terms of the sale of mitigation credits, including price and payment schedule will be approved by both parties to the lease. Rent distribution details are contained in Exhibit B.
- Notice To Participate in Mitigation Bank:** Within 18 months of the contract effective date, Lessee must notify Lessor of its intent to participate, or not, as Bank Sponsor in a

commercial mitigation bank using the premises described in Exhibit A. If Lessee elects not to participate in the mitigation bank then Lessee will relinquish any control over the site and, at the option of Lessor, this lease will terminate.

Permitting Obligations:

Lessee shall secure all permits required to develop the property at its expense.

Prior to the end of 18 months from the Participation Notice Date, Lessee must secure approval (Bank Instrument) from the USACE for an Umbrella In-lieu Fee Mitigation Project covering the entire premises and secure all permits necessary to perform the work associated with the Mitigation Project.

Lessee as Sponsor:

As Bank Sponsor, Lessee acquires all rights and obligations of a sponsor and agrees to implement all project obligations .

State Approvals:

Lessee must submit to the GLO any and all applications and required documentation related to any permits it seeks, and must receive GLO approval in advance of submission for review or approval by any regulating entity.

Construction:

It is expected that all construction for the mitigation project will be funded by the entity that is purchasing the corresponding mitigation credits and will be build subsequent to specific separate contracts with mitigation credit buyers.

Maintenance:

Lessee maintains the Property and improvements, including monitoring and maintenance of the habitat restoration in accordance with Special Conditions contained in the approved Banking Instrument, if any. Any conditions contained in the Banking Instrument shall be incorporated by reference into the Lease automatically when the Banking Instrument is approved by USACE.

Assignment & Sublease:

As may be required and under terms as may be required by the approved Umbrella In-lieu Fee Mitigation Instrument, Lessee may, subject to Lessor's approval, sublease and/or assign portions of the Property, or the lease in its entirety.

Early Termination:

Lessor may terminate the lease, including severance from the leasehold of any unimproved Property, at any time for non-performance of any Lease obligations. Subleases may survive termination of the master lease.

EXHIBIT B

Mitigation Rent Details

Process for Determining Mitigation Credit Value

Mitigation Credit Retail Value will ultimately be the amount that is agreed to by CBBEP and GLO. The value will be based in the number of expense categories and expected compensation and consideration. The Base Value of one mitigation acre is \$100,000. The Base Value will be adjusted every 2 years, according to an index or formula to be agreed to by the parties in advance of the first adjustment date.

Split of Mitigation Credit Revenue

Terms of the sale of all mitigation credits, including price and payment schedule will be approved by both parties to the lease.

Unless otherwise agreed to by the parties, and except for as provided below as "Exception", the following Retail Mitigation Sale Revenue Distribution Table establishes the distribution of revenue generated from the sale of mitigation credits. Based on the circumstances of each sale of credits, the parties reserve the right to mutually agree to a different split of revenue, on a case-by-case basis, which may include discounting from the Base Value. Each party will determine any discount, if any, that it will accept.

The revenue split established in this agreement is based, in part, on the obligation for CBBEP to perform as follows:

1. CBBEP will fund the entire amount of the costs and expenses associated with securing an approved In-lieu Fee Mitigation Project Banking Instrument, such costs and expenses to be referred to as Pre-development Entitlement Expenses.
2. CBBEP will pay for all costs and expenses related to construction of project habitat pursuant to the Banking Instrument requirements.
3. CBBEP will pay for all costs and expenses related to the long-term monitoring and maintenance of project habitat, in accordance with the requirements of the Banking Instrument.

Exception

The first dollars generated from the sale of mitigation credits, in excess of the expenses related to developing habitat associated with such sales, will be applied to reimburse CBBEP 100% of the approved Pre-development Entitlement Expenses. The costs and expenses will be itemized and submitted to GLO for its approval in advance of reimbursement from credit sale proceeds.

Retail Mitigation Credit Sale Revenue Distribution Table

When credits are sold for \$100,000 (Base Value) or less, revenue is distributed according to this percentage of gross revenue.	CBBEP	GLO
	74%	26%
When credits are sold for over \$100,000 revenue from the first \$100,000 is split as described in Box A. Revenue over \$100,000 per credit is split by this percentage of gross over the Base Value.	40%	60%

DRAFT

TERMS SUMMARY – 68.5 acres of PSF Submerged State Tract 752 @ Portland Causeway North, Corpus Christi, Texas – Habitat Restoration Project

Note: All terms subject to approval by Commissioner of the Texas General Land Office

- Lessor:** State of Texas on behalf of the Permanent School Fund (PSF).
- Lessee:** Coastal Bend Bays & Estuaries Program.
- Property Location:** East Nueces Bay, North of and adjacent to US Highway 81.
- Legal:** Approximately 68.5 acres, being a portion of State Tracts 752 and 753, to be described more particularly by Survey.
- Survey:** A coastal boundary survey performed in accordance with TNRC 33.136 and approved by GLO will be required to identify the boundary between state and private land prior to construction.
- Borrow Sites:** Areas of submerged PSF land that are used for borrow in conjunction with restoring the coastal marsh habitat, if any, including sites from which plants will be harvested for planting in the new marsh, will be permitted for use with separate contracts from GLO.
- Permitted Use:** The property may be used only for tidal marsh habitat restoration and preservation; construction breakwaters, levees and associated structures such as access points; and maintenance of such improvements.
- Lease Term:** 20 years.
- Habitat Creation:** The entire premises shall be used for habitat creation or restoration.
- Base Rental Rate:** Base Rental Rate begins at \$3 per acre, per year for years 1 through 10. Rent for years 11 through 20 is \$4 per acre per year. Survey will determine final number of acres to be used as rent multiplier.
- Permitting Obligations:** Lessee shall secure all permits required to develop the property at its expense.
- State Approvals:** Lessee must submit to the GLO any and all applications and required documentation related to any permits it seeks, and must receive GLO approval in advance of submission for review or approval by any regulating entity.
- Master Plan:** Within 30 days from the effective date of the contract, Lessee will submit to Lessor for Lessor's approval, a master plan for the

intended improvements. The plan must include; locating project phases on a site map, identifying the sequence in which phases will be developed, identifying the size of project phases, establishing a target time for completing each project phase. The master plan must demonstrate that the improvements will all be constructed by the end of year 20 of the Lease. Lessee must commit to meeting or exceeding the projected development timeline or risk early termination of the Lease.

Construction:

Lessee constructs all improvements at its expense. All improvements must be constructed by the end of year 20 of the Lease.

Maintenance:

Lessee maintains the Property and improvements, including monitoring and maintenance of the habitat restoration in accordance with Special Conditions (typical COE and GLO conditions).

Sublease:

Lessee may, subject to Lessor's approval, sublease and/or assign portions of the Property, or the lease in its entirety.

Early Termination:

Lessor may terminate the lease, including severance from the leasehold of any unimproved Property, at any time for non-performance of any Lease obligations. Subleases may survive termination of the master lease.