


State of California

Memorandum

To: Ann Malcolm
Deputy General Counsel
Office of the General Council

Date: April 20, 2004

From: Scott Dawson 
Senior Environmental Scientist
Department of Fish and Game – Eastern Sierra-Inland Deserts Region

Subject: **Request for Assistance in Transferring Ownership for the Barry Jones Wetlands Mitigation Bank**

I request your assistance in transferring ownership of the Barry Jones Wetlands Mitigation Bank, located in western Riverside County. Enclosed are the transfer request, assignment and assumption agreement, conservation easement, and endowment acknowledgement. Please inform me of the staff person assigned to this task, so that I may coordinate this effort with them. If you have any questions on this request, please call me at (909) 606-2404.

Attachments

Cc: Tina Bartlett, HCPB
Dee Sudduth, ESIDR

Scott Dawson - Re: Bank Team action item

From: Tina Bartlett
To: Dawson, Scott
Date: 2/3/2004 4:07 PM
Subject: Re: Bank Team action item

Hi Scott, I do have an example in Word. However, as I mentioned at the bank team meeting it is missing the notices information for the new assignee. I recommend checking the name of the assignee in the California Business Portal to make sure the business name is accurate. Also, make sure to include items in the PDF example I sent out that are not covered in the Word example.

Tina

>>> Scott Dawson 02/03/04 03:18PM >>>

Tina:

Do you have the assumption agreement in Word format?

Scott

>>> Tina Bartlett 01/08/04 01:59PM >>>

Hi,

I am sending you an example assignment and assumption agreement for your template files to follow up on an action item from our last meeting. Please see the attached document.

Tina

Scott Dawson - Re: Barry Jones Mitigation Bank

From: Tina Bartlett
To: Dawson, Scott; Sudduth, Dee
Date: 11/25/2003 1:13 PM
Subject: Re: Barry Jones Mitigation Bank
CC: Presley, Gail

(916) 698-1036
Gail P cell

Hi Dee and Scott,

I recommend sending the information to Ann Malcom, Deputy General Counsel, and a request for assistance with the transfer of ownership processes. You should ask that she inform you of the staff person that is assigned to the task so you can coordinate. Nancy Templeton did some work on the bank but I don't know to what extent and am not sure of her availability. Please cc me on your request and other correspondence.

The bank agreement refers to an "Approved Holding Entity" for the endowment. Who is that? Has Pacific Bay Homes made the endowment deposits? I am sure you are considering making sure the loose ends are tightened with Pacific Bay before the transfer occurs. If you have or receive any of these records, please forward a copy to me for our records.

Thanks for keeping me informed.
Tina

>>> Dee Sudduth 11/21/03 03:56PM >>>
Hi Tina,

We just got a notice that Pacific Bay Properties the owner of the Barry Jones wetlands mitigation bank is transferring (selling) the fee title, and will be transferring endowments, unsold credits etc.

RBV Mitigation Credits LLC. will be assuming all obligations. I will send you a copy of their letter. Do you know which attorney should also receive it. Nancy Templeton or Juliette who worked on the conservation easement?

Dee

Del Scott Dawson

RUTAN & TUCKER LLP

Attorneys at Law

611 Anton Boulevard, 14th Floor

Costa Mesa California 92626-1931

Mailing Address: Post Office Box 1950, Costa Mesa, California 92628-1950

Telephone: 714.641.5100

Facsimile 714.546.9035

FACSIMILE TRANSMISSION

DATE: NOVEMBER 10, 2003

TO: Hard Copy to Follow via Mail: NO

NAME	FAX NO.	PHONE NO.
Col. Richard C. Thompson District Engineer U.S. Army Corps of Engineers	(562) 590-5871	
Mark Durham U.S. Army Corps of Engineers		
Curt Taucher Regional Manager California Department of Fish & Game	(213) 452-4196	

FROM: Hans Van Ligten - 235

RE: Barry Jones Wetlands Mitigation Bank Memo of Agreement

CLIENT/MATTER NO.: 015657-0062

NUMBER OF PAGES, INCLUDING COVER: 3

MESSAGE:

See attached letter.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AGENT RESPONSIBLE TO DELIVER THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

If there are problems receiving this Fax Transmittal please call 714 641 5100, Ext. 1235

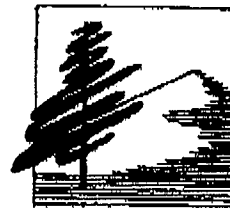
C O V E R

S H E E T

FAX

To: Hans Van Ligten
Rutan & Tucker LLP

Fax: (714)546-9035
From: Isabella Gelmi
Subject: Barry Jones Wetland Mitigation Bank
Pages: 2



Rise early, stay late and take care of the land.

Date: March 29, 2004

The original receipt was mailed on 3/25/04

Thank you!

From the desk of...

Isabella Gelmi
Office Manager

Center for Natural Lands Management
425 E. Alvarado Street, Ste H
Fallbrook CA 92028-2980
Email: igelmi@cnlm.org
Website: www.cnlm.org
Phone: (760) 731-7790
Fax: (760) 731-7791

RUTAN & TUCKER LLP

Attorneys at Law

611 Anton Boulevard, 14th Floor

Costa Mesa California 92626-1931

Mailing Address: Post Office Box 1950, Costa Mesa, California 92628-1950

Telephone: 714.641.5100

Facsimile 714.546.9035

FACSIMILE TRANSMISSION

DATE: APRIL 13, 2004

TO: Hard Copy to Follow via Mail: NO

NAME	FAX NO.	PHONE NO.
Scott Dawson	909-597-0067	909-606-2404

FROM: Hans Van Ligten - 235

RE:

CLIENT/MATTER NO.: 022370.0001	NUMBER OF PAGES, INCLUDING COVER: 3
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MESSAGE:

Here is the information you requested.

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If there are problems receiving this Fax Transmittal please call 714.641.5100, Ext 1235



A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

811 ANTON BOULEVARD, FOURTEENTH FLOOR, COSTA MESA, CALIFORNIA 92626-1998
DIRECT ALL MAIL TO PO BOX OFFICE BOX 1950, COSTA MESA, CALIFORNIA 92628-1950
TELEPHONE 714-441-5100 FACSIMILE 714-546-9035 INTERNET ADDRESS www.rutan.com

Direct Dial. (714) 662-4640
E-mail: hvanligten@rutan.com

November 10, 2003

**VIA FACSIMILE AND
FIRST CLASS MAIL**

Col. Richard C. Thompson
District Engineer
U.S. Army Corps of Engineers
911 Wilshire Blvd.
Los Angeles, CA 90017

Curt Taucher
Regional Manager
California Department of Fish & Game
330 Golden Shore, Suite 50
Long Beach, CA 90802

Re: Barry Jones Wetlands Mitigation Bank Memorandum of Agreement

Dear Col. Thompson and Mr. Taucher:

This letter is being sent on behalf of Pacific Bay Properties, the owner of the wetlands mitigation bank created pursuant to the "Memorandum of Agreement Regarding the Establishment, Operation and Use of the Barry Jones Wetlands Mitigation Bank (Formerly proposed as the Skunk Hollow Mitigation Bank)," dated December 1997 (the "MOA"). Pacific Bay hereby gives notice that it is transferring all mitigation credits currently unsold to RBV Mitigation Credits LLC. RBV Mitigation Credits LLC will market and sell the remaining credits. Pacific Bay will be transferring the fee title to the property, as well as any required Endowment amounts, to the Approved Holding Entity, as defined in the MOA.

RBV Mitigation Credits LLC. will assume the obligations of Section 11.B of the MOA, including without limitation, the obligation to maintain accurate written records of all mitigation credit transactions of the Bank, to provide to the Corps, CDFG, and the Approved Holding Entity) the Account Statement required with each sale of a mitigation credit, and to provide a final accounting of sales upon the sale of the last mitigation credit.



Col. Richard C. Thompson
Curt Taucher
November 10, 2003
Page 2

Please note the following contact information for RBV Mitigation Credits LLC:

RBV Mitigation Credits LLC
4041 MacArthur Blvd.
Suite 500
Newport Beach, CA 92660
Facsimile: (949) 724-8934
Attn: Karin Krogius

Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely,

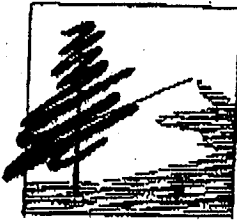
RUTAN & TUCKER, LLP

Hans Van Ligten

cc: Mark Durham, USACE
John Markley
Karin Krogius

HV

Facile
Rancho Vista



www.cnlm.org

Center for Natural Lands Management

A non-profit organization for the protection & management of natural resources

March 25, 2004

Sherry Teresa
Executive Director
25 E. Alvarado St., Ste. 14
Millbrook, CA 92028-2960
tel. 731.7790 Phone
60.731.7791 Fax
email: sherry@cnlm.org

Hans Van Ligten
Rutan & Tucker LLP
611 Anton Blvd., 14th Fl.
Costa Mesa, CA 92626-1931

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Trust & Wildlife Services

Gregory Taylor, Esq.
Trust & Wildlife Services

Ellie Vandormast
Trust & Wildlife Services

Lisa Walton
Trust & Wildlife Services

Executive Director

Suzanne S. White
Trust & Wildlife Services

Re: **Barry Jones Wetland Mitigation Bank**

Dear Hans:

On behalf of the Center for Natural Lands Management, the undersigned hereby acknowledges receipt of check no. 665048948 (please see attached copy) in the amount of \$493,681.00 from Chicago Title Company/Pacific Bay Properties. Said amount has been set aside as follows: \$41,641.00 as Initial & Capital contribution and \$452,040.00 as Endowment in connection with the creation of the above mitigation bank.

Thank you,

[Signature]
Sherry Teresa
Executive Director

Encl.

Rise early, stay late and take care of the land

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement"), dated _____ for reference purposes only, is by and between **PACIFIC BAY PROPERTIES**, a California corporation, and **RBV Mitigation Credits LLC**, a California limited liability company.

RECITALS

1. Pacific Bay Properties, as owner of certain mitigation property described in Exhibit A (the "Property"), has entered into that certain Barry Jones Wetland Mitigation Bank (formerly known as the Skunk Hollow Mitigation Bank) Memorandum of Agreement, dated December 1997, by and among the California Department of Fish and Game ("CDFG") and the United States Fish and Wildlife Service ("USFWS"), a copy of the Conservation Easement Deed is attached as Exhibit A.
2. In connection with the pending sale of the mitigation bank by Pacific Bay Properties to RBV, Pacific Bay Properties desires to assign all of its right, title and interest in and to the Barry Jones Wetland Mitigation Bank Memorandum of Agreement and any documents referred to therein or contemplated thereby (collectively, the "Conservation Documents") including that certain Conservation Easement Deed Grant in the form attached as Exhibit A, and RBV Mitigation Credits LLC desires to assume all of Pacific Bay Properties' obligations thereunder, pursuant to the terms and conditions of this Agreement.
3. The parties hereto acknowledge that such assignment and assumption pursuant to this Agreement requires the consent of the CDFG and the USFWS.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals, of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Conservation Documents. Effective as of the Effective Date (as defined below), Pacific Bay Properties hereby grants, conveys, assigns, transfers and sets over to RBV Mitigation Credits LLC all of Pacific Bay Properties' right, title and interest in and to all of the Conservation Documents, including the Mitigation Bank Memorandum of Agreement, the "conservation credits" as defined in the Mitigation Bank Memorandum of Agreement, and the Conservation Easement Deed. Notices provided to RBF Mitigation Credits LLC under the Agreement shall be sent to the following address: RBV Mitigation Credits LLC, 4041 MacArthur Blvd, Suite 500, Newport Beach, CA 92660, Fax (949) 724-8934.
2. Acceptance of Assignment. Effective as of the Effective Date, RBV Mitigation Credits LLC hereby accepts the assignment of the Conservation Documents set forth in Section 1, and hereby assumes, agrees, and undertakes to perform all of the obligations, liabilities, covenants and agreements of Pacific Bay Properties under the Conservation Documents arising from and after the Effective Date, including without limitation, all obligations, covenants and

agreements of Pacific Bay Properties set forth in Section ??? of the Mitigation Bank Memorandum of Agreement.

3. Authority. Each of the parties signing this Assignment hereby warrants and represents that it has full legal power, authority and right to execute, deliver and perform the obligations under this Assignment, that this Assignment has been duly authorized by all requisite actions on the part of such warranting party, and that no remaining action or third party action is required to make this Assignment binding upon such party.

4. Release. Except for the obligations created by Section 1 of this Agreement, Pacific Bay Properties, on behalf of itself, and its partners, officers, employees, agents, successors, assigns, personal representatives, heir and legatees, hereby releases and forever discharges Pacific Bay Properties, and all claims, liabilities and obligations imposed under, or relating to, any of the Conservation Documents to the extent such claims, liabilities and obligations arise out of events occurring from and after the Effective Date.

5. Indemnification.

(1) Pacific Bay Properties, on behalf of itself, and its trustees, officers, employees, agents, representatives, successors and assigns, hereby agrees to indemnify, defend and hold harmless Pacific Bay Properties and Pacific Bay Properties partners, officers, employees, agents, representatives, successors and assigns, from and against any and all claims, liabilities and obligations imposed under, or relating to, any of the Conservation Documents arising out of events occurring on or before the Effective Date.

(2) RBV Mitigation Credits LLC, on behalf of itself, and its partners, officers, employees, agents, representatives, successors, and assigns, hereby agrees to indemnify, defend and hold harmless Pacific Bay Properties and Pacific Bay Properties trustees, officers, employees, agents, representatives, successors and assigns, from and against any and all claims, liabilities and obligations imposed under, or relating to, any of the Conservation Documents arising out of events occurring on or before the Effective Date or relating to RBV Mitigation Credits LLC's obligations under Section 2 of this Agreement. .

6. Representations. Pacific Bay Properties hereby represents and warrants to RBV Mitigation Credits LLC as follows:

(1) Pacific Bay Properties has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under any of the Conservation Documents; and

(2) As of the Effective Date, all of the Conservation Documents are in full force and effect, no default exists under any of the Conservation Documents, and Pacific Bay Properties has no notice of any prior assignment, hypothecation or other transfer of any other interest under any of the Conservation Documents.

7. Effective Date. This Agreement shall be conditioned upon and effective upon the recordation of the grant deed conveying fee title to the real property described in the Conservation Agreement from Pacific Bay Properties to RBV Mitigation Credits LLC (the "Effective Date").

8. Amendments. This Agreement may be amended only by an amendment in writing, executed by each of the parties to evidence their consent thereto.

9. Construction. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party, this Agreement having been negotiated at arms-length, with both parties having had the opportunity to be represented by competent counsel, and representing the product of that negotiation process.

10. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the rights granted and the obligations assumed hereunder. All negotiations and agreements heretofore had by and between the parties, and their agents, with respect to the transactions hereunder are merged into this Agreement, which completely sets forth the obligations of the parties.

11. Attorneys' Fees. If any party to this Agreement shall take any action to enforce this Agreement or bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit an/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs incurred in enforcing such judgment. The amount of attorneys' and experts' fees and costs due hereunder shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees and costs incurred in the following: (a) postjudgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; and (e) bankruptcy litigation.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Further Assurances. The parties shall cooperate, take such actions and execute, acknowledge where required, and deliver, such additional documents or instruments as may be reasonably necessary under the circumstances to effectuate the intent of the parties, pursuant to this Agreement.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by telecopy or facsimile transmission) and which together shall constitute one and the same agreement.

15. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective successors, assignees, personal representatives, heirs and legatees of each of the parties hereto.

16 Survival. All of the provisions, terms and covenants contained or referred to in this Agreement shall survive the close of the assignment transaction contemplated herein.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as set forth below.

PACIFIC BAY PROPERTIES
a California Corporation

By: _____

By: _____

John Markley
Karin Krogius

RBV MITIGATION CREDITS LLC
a California Corporation

By: _____

By: _____

John Markley
Karin Krogius

EXHIBITS

- A. Conservation Easement Deed