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# Title 43

## NATURAL RESOURCES

### Part XXXI. Coastal Protection and Restoration Authority

#### Chapter 1. Natural Resource Damage Restoration Banking

##### Subchapter A. General Provisions

###### §101. Purpose/Declaration and Intent

A. The release of oil into Louisiana’s coastal area presents a real and substantial threat to public health and welfare, the environment, wildlife and aquatic life, and the economy of the state. The Coastal Protection and Restoration Authority (CPRA) Board adopts these regulations pursuant to R.S. 49:214.5.2(H). The purpose of these regulations is to establish a Natural Resource Damage (NRD) Restoration Banking Program to fully or partially resolve a responsible party’s NRD liability under the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §2701 et seq., and the Oil Spill Prevention and Response Act (OSPR), R.S. 30:2451 et seq. This Chapter is intended to support and complement OPA and OSPRA. These regulations establish procedures for the certification and operation of NRD restoration banks.

B. This NRD Restoration Banking Program is designed to allow, encourage, and incentivize private investors to undertake restoration projects and generate restoration credits that responsible parties can purchase to fully or partially resolve NRD liabilities from oil spills under OPA and OSPRA. This program will provide up-front restoration in the Louisiana coastal area, allow for the implementation of large scale restoration projects, and provide greater ecosystem benefits in an efficient and cost-effective manner, as compared to spill-by-spill restoration actions. Notwithstanding any provision of this Chapter, the Natural Resource Damage Assessment (NRDA) trustees retain final authority whether to propose and select the purchase of credits from certified NRD restoration banks or another option as preferred alternatives to restore for injuries resulting from a particular oil spill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1354 (July 2017).

###### §103. Applicability

A. This Chapter applies to any unauthorized discharge of oil, as defined in OPA and OSPRA, occurring in the Louisiana coastal area for which the NRDA trustees determine, pursuant to R.S. 30:2480, to proceed under this Chapter. The NRDA trustees may authorize the purchase of credits from certified NRD restoration banks to restore for injuries from any unauthorized discharge of oil for which a

preferred restoration alternative has not already been selected. This includes, but is not limited to, using settlement funds to purchase credits from an NRD restoration bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1355 (July 2017).

###### §105. Severability

A. If any Section or provision of this Chapter or the application of that Section or provision to any party, situation, or circumstance is determined to be invalid by a court of competent jurisdiction for any reason, such adjudication shall not affect any other Section or provision of this Chapter, or the application of the adjudicated Section or provision to any other party, situation, or circumstance. To this end, the provisions of this Chapter are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1355 (July 2017).

###### §107. Definitions

A. Words not defined in these regulations shall have the same definition given to them in OPA and OSPRA and accompanying regulations. In the event of a conflict between the definitions in these regulations and definitions in OPA and/or OSPRA and the accompanying regulations, the definitions in these regulations shall prevail.

B. The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the word, term, or phrase is otherwise defined in the text.

*BRT*—the natural resource damage banking review team, whose purpose is to facilitate and oversee the NRD Restoration Banking Program.

*Coastal Master Plan*—the currently applicable version of the *Louisiana Comprehensive Master Plan for a Sustainable Coast*, developed by CPRA and approved by the Louisiana Legislature in accordance with R.S. 49:214.5.3.

*Day(s)*—refers to calendar days. If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

*Louisiana Coastal Area*—Louisiana coastal waters, defined in R.S. 49:214.2(4) as “the Louisiana Coastal Zone and contiguous areas subject to storm or tidal surge and the area comprising the Louisiana Coastal Ecosystem as defined in section 7001 of P.L. 110-114”.

*NRD Restoration Bank*—a site where land or resources are restored, rehabilitated, or replaced in accordance with these regulations for the purpose of restoring natural resources and services equivalent to those injured by oil spills in the Louisiana coastal area.

*NRD Restoration Banking Program*—a program developed by the state under this Chapter under which a responsible party purchases credits generated by a BRT-certified NRD restoration bank from a restoration bank sponsor to reduce or resolve its liability under OPA and OSPRA for damages to natural resources and services in connection with a settlement of NRD claims against the responsible party.

*Performance Criteria*—structural, functional, temporal, and/or other demonstrable factors that are used by the BRT to determine the success of the restoration bank or need for interim corrective action.

*Release of Credits*—the BRT’s written determination that certain performance standards set forth in a final restoration banking instrument have been met and authorizing a bank sponsor to make a specific quantum of restoration credits available for sale to responsible parties and NRDA trustees.

*Restoration Bank Sponsor or Sponsor*—the person or entity responsible for developing and operating an NRD restoration bank.

*Restoration Credit*—a unit of trade generated by a certified NRD restoration bank and representing a defined quantum of ecological benefit generated by the restoration bank, as measured by acreage or other metric.

*State*—the state of Louisiana.

*State Trustees*—shall be the Coastal Protection and Restoration Authority, the Oil Spill Coordinator’s Office, the Department of Environmental Quality, the Department of Natural Resources, and the Department of Wildlife and Fisheries. The definition of *state trustees* may also include other agencies of the state designated by the governor to act on behalf of the public as trustees for natural resources under OPA and OSPRA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1355 (July 2017).

## **Subchapter B. NRD Restoration Banking Framework**

### **§109. Natural Resource Damage Banking Review Team (BRT)**

A. CPRA shall convene the BRT to implement the NRD Restoration Banking Program. The state trustees, or their designees, shall be standing members of the BRT. CPRA shall serve as the BRT chair. The BRT may consult with or invite other state and federal agencies (including federal NRDA trustees) as appropriate for review and certification

of specific NRD restoration banks. The primary duties of the BRT are:

1. to review documents submitted by potential restoration bank sponsors, including the prospectus, restoration bank plan, restoration banking instrument, and other appropriate/requested documents to determine whether proposed NRD restoration banks qualify for the NRD Restoration Banking Program;

2. to work with potential restoration bank sponsors on the development of restoration credits (including establishing the number and types of credits an NRD restoration bank will generate and a credit release schedule), appropriate financial assurances, and required project monitoring and long-term management activities (if such long-term management activities are appropriate for the bank);

3. to seek public review and comment on the restoration bank plan;

4. to certify NRD restoration banks;

5. to review construction, monitoring, and other required reports to determine if corrective actions or adaptive management activities are necessary and to approve the release of credits for an NRD restoration bank; and

6. to ensure compliance with the terms and conditions of NRD restoration bank certification as set forth in the restoration banking instrument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1355 (July 2017).

### **§111. NRD Restoration Banking Program Requirements**

A. In determining the eligibility of a proposed NRD restoration bank, the BRT shall consider the following factors:

1. the potential restoration bank sponsor’s compliance history, including but not limited to compliance with federal, state, parish, and local laws, rules, regulations, policies, and programs;

2. the proposed financial assurances submitted pursuant to these regulations;

3. the sponsor’s proposed actions to restore, rehabilitate, or replace the equivalent of natural resources and services likely to be injured by oil spills in the Louisiana coastal area;

4. how the implementation of the NRD restoration bank will affect (positive or negative) natural resources, cultural resources, land ownership, and encumbrances;

5. whether the NRD restoration bank is consistent with the goals and objectives of the coastal master plan; and

6. any other information deemed appropriate by the BRT.

## B. Coastal Master Plan

1. To be eligible for the NRD restoration banking program, proposed banks must be consistent with the goals and objectives of the coastal master plan. To be considered consistent with the goals and objectives of the coastal master plan, the proposed NRD restoration bank must strive to achieve one or more of the coastal master plan's objectives and must not be detrimental to or conflict with any of the projects contained in the coastal master plan.

2. CPRA prefers proposed NRD restoration banks that are included as projects in the coastal master plan, or that are increments, add-ons, or enhancements of coastal master plan projects. NRD restoration banks implementing coastal master plan projects perform restoration in areas the state has designated as high priority, providing elevated ecological benefit and increased sustainability. To incentivize such banks, the BRT will examine and take advantage of efficiencies in project review for banks that propose to implement coastal master plan projects. For example, the BRT will consider information regarding and analyses of projects the State has already performed through the coastal master plan development process, as well as any engineering, design, and permitting already performed. The BRT may further elect to reduce information required in the prospectus scope of work or provide a more favorable schedule for credit release, contingent on sufficient financial assurance. The BRT shall make decisions regarding the application of these and other incentives on a case-by-case basis and only where consistent with the requirements of OPA and OSPRA.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:214.5.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1356 (July 2017).

### §113. Landowners

A. Prior to proposing any NRD restoration bank, it is the responsibility of the sponsor to investigate any potential effect on the rights of nearby landowners. Any dealings with landowners carried out by the sponsor, including but not limited to the purchase or acquisition of property or right-of-way, must be detailed in the land rights section of the prospectus to be submitted by the sponsor.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:214.5.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1356 (July 2017).

### §115. Prospectus

A. To begin the process of establishing an NRD restoration bank, potential sponsors must submit a prospectus to the BRT chair that contains the following information:

1. potential sponsor information:
  - a. identification of submitting party;
  - b. domiciliary address;

- c. name of the agent or contact if applicant is an entity such as an LLC or corporation; and

- d. mailing address of the agent, if different from that of the identified applicant;

2. permit statement outlining all federal, state, and local permits necessary for the proposed NRD restoration bank, and timetable for acquisition (the sponsor is responsible for obtaining all required permits and approvals for the construction and establishment of the bank); and

3. a scope of work containing the information outlined in Subsection B or C of this Section.

B. For new NRD restoration banks proposed for construction, the scope of work shall provide information regarding the proposed NRD restoration bank at a sufficient level of detail to support informed BRT comment and evaluation. A complete scope of work must contain, at a minimum, the components listed below:

1. objectives of the proposed NRD restoration bank, including the habitat types(s) and species that are the focus of the proposed bank;

2. identification of the proposed coastal master plan project to be supported or carried out by the proposed NRD restoration bank, or a statement demonstrating how the proposed bank is consistent with the goals and objectives of the coastal master plan;

3. physical characteristics of the proposed NRD restoration bank, including:
  - a. a description of the existing (pre-construction) site location and conditions;
  - b. a description of the proposed construction activities, including the work to be performed and the total acreage or footprint of the proposed work; and
  - c. a summary table of the pre- and post-construction habitat types, associated acreages, and conditions at the bank site;

4. legal characteristics of the proposed NRD restoration bank, including but not limited to a description of the bank site's geographic boundaries and a statement regarding land rights involving the site;

5. technical feasibility of the proposed NRD restoration bank;

6. current ownership, proposed ownership arrangements and long-term management strategy, including proposed conservation restrictions (if applicable);

7. qualifications of the sponsor to successfully complete the project, including information describing any past such activities by the sponsor;

8. the form and amount of anticipated financial assurance and evidence of the sponsor's ability to procure financial assurance; and

9. any other information deemed necessary by the BRT.

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C. For existing, already-constructed restoration projects in use as a bank pursuant to other (non-NRD) regulatory frameworks, the scope of work shall provide the information identified in Subsection B of this Section, but incorporating actual rather than anticipated post-construction conditions. In addition, the scope of work shall include:

1. identification of the specific regulatory programs under which the bank is authorized to provide credits;
2. map(s) showing the specific areas, habitat types, and acreages for potential use to satisfy obligations pursuant to each authorized regulatory program;
3. identification of all credit sales that have occurred pursuant to any regulatory program;
4. identification of the numbers and types of credits and associated locations still available for sale to address the requirements of other regulatory programs;
5. description of a process and internal controls to prevent double counting; and
6. any other information deemed necessary by the BRT.

### D. Submittal, Review, and Determination by the BRT

#### 1. Submittal of Prospectus

a. The sponsor shall submit the prospectus to the BRT chair for BRT comment and initial evaluation as to the eligibility of the proposed NRD restoration bank, including whether the proposed NRD restoration bank is:

- i. included in or consistent with the goals and objectives of the coastal master plan; and
- ii. has the potential to generate NRD restoration credits.

b. The sponsor must provide the BRT chair with the number of copies of the prospectus specified by the BRT chair for distribution to the BRT members for review.

2. BRT Review of Prospectus. The BRT chair will provide copies of the prospectus to BRT members and will provide the BRT's response, including written comments (if any), back to the sponsor within 60 days.

3. BRT Prospectus Determination. The sponsor may revise the prospectus to address the BRT's comments and submit the revised prospectus to the BRT chair. A revised prospectus must be sent within 30 days of receipt of comments from the BRT, and the sponsor must provide the BRT chair with the number of copies of the revisions specified by the BRT chair for distribution to the BRT members for review. If additional time is needed for the revision, the sponsor shall submit a request to the BRT chair prior to the running of the 30-day period of the amount of additional time needed. Within 30 days of receipt of revisions from the sponsor, the BRT will issue a follow-up evaluation letter responding to the revisions and indicating a decision on the revised prospectus. If additional time is needed for BRT review, the BRT chair shall provide written

notification to the sponsor prior to the running of the 30-day period of the amount of additional time needed.

E. BRT/Sponsor Consultation. Once the BRT approves a prospectus, the BRT and the sponsor shall consult on the types and number of restoration credits to be assigned to the NRD restoration bank, the form and amount of financial assurances, the credit release schedule, monitoring activities, and long-term management activities (if long-term management activities are applicable). After consultation with the BRT, the sponsor may elect to proceed with preparation of a restoration bank plan and restoration banking instrument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1356 (July 2017).

### §117. Restoration Bank Plan

A. A complete restoration bank plan shall, at a minimum, contain the following components:

1. sponsor information;
2. site ownership;
3. detailed project description and work plan, including items in §115.B.2-6 above, as well as the following information:
  - a. soil/sediment information;
  - b. drainage patterns/hydrology;
  - c. presence, type, density, and condition of existing regulation;
  - d. description of any man-made structure;
  - e. current on-site habitat loss rates; and
  - f. planting plan;
4. restoration goals and objectives;
5. determination of credits (includes number and types of credits), including, for multi-use restoration banks, a description of a process and internal controls to prevent double counting;
6. financial assurance;
7. credit release schedule;
8. performance criteria;
9. monitoring requirements;
10. long-term management plan, including proposed conservation restrictions (if applicable); and
11. other information deemed necessary by the BRT to determine the appropriateness, feasibility, and practicability of the restoration bank.

B. Submittal and Review by the BRT. The sponsor shall submit a draft restoration bank plan to the BRT chair. The sponsor must provide the BRT chair with the number of

copies specified by the BRT chair for distribution to the BRT members for review. The BRT chair will provide the BRT's response, including any written comments from the BRT, to the sponsor within 60 days of the date on which the sponsor submitted the draft restoration bank plan. Specifically, the BRT chair must indicate to the sponsor if the draft restoration bank plan is acceptable and ready for public comment or identify what changes are needed to address the concerns of any BRT members prior to its release for public review and comment. If additional time is needed for BRT review, the BRT chair shall provide written notification to the sponsor prior to the running of the 60-day period of the amount of additional time needed. The sponsor must submit a revised restoration bank plan to the BRT addressing any comments provided by the BRT within 60 days of receipt of the BRT's comments. If additional time is needed for response, the sponsor shall submit a request to the BRT chair prior to the running of the 60-day period for the amount of additional time requested. After receipt of the revised restoration bank plan, the BRT chair will notify the sponsor in writing within 30 days whether the plan is ready for public comment.

C. **Public Review and Comment Period.** After the BRT determines that the draft restoration bank plan is ready for public comment, the BRT chair will provide public notice via the *Louisiana Register* of the restoration bank plan and invite public review and comment. The public notice will, at a minimum, include a summary of the restoration bank plan and indicate that the full restoration bank plan is available to the public for review. The public comment period will be 30 days, unless the BRT determines that a longer comment period is appropriate. The sponsor shall be notified in writing if the comment period is extended beyond 30 days, including an explanation of why the longer comment period is necessary and how much additional time is needed. Copies of all comments received during the public comment period must be distributed by the BRT chair to the BRT members and to the sponsor within 15 days of the close of the public comment period.

D. **Final Restoration Bank Plan.** Within 60 days of receipt of public comments from the BRT chair, the sponsor must submit a final restoration bank plan to the BRT for approval, with supporting documentation that explains how the final restoration bank plan addresses the comments provided by the public. The BRT will have 30 days from receipt of the final restoration bank plan to indicate whether it is approved. If additional time for review is warranted, the BRT chair shall notify the sponsor in writing prior to the completion of the 30-day period of the amount of additional time needed for final approval. The BRT chair shall provide written notice to the sponsor of the BRT's decision to deny or approve the final restoration bank plan. Upon approval, the final restoration bank plan must be made available to the public.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:214.5.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1357 (July 2017).

## §119. Restoration Banking Instrument

A. **Components of Restoration Banking Instrument.** The restoration banking instrument shall, at a minimum, contain the following components:

1. restoration bank plan;
2. provision stating that the legal responsibility for providing restoration lies with the sponsor once credits are secured by the responsible party;
3. accounting and reporting requirements;
4. risk management, indemnity, and insurance requirements;
5. default and closure provisions;
6. force majeure clause (identification of sponsor responsibilities in the event of catastrophic events that are beyond the sponsor's control); and
7. any other information deemed necessary by the BRT.

B. **Review by the BRT.** The sponsor shall provide timely submission of the restoration banking instrument ("instrument") to the BRT chair, and must provide the BRT chair with the number of copies specified by the BRT chair to distribute to the BRT members for review. The BRT chair will provide the BRT's response, including any written comments, to the sponsor within 30 days of the date on which the BRT chair received the draft Instrument. Specifically, the BRT chair must indicate to the sponsor if the draft Instrument is acceptable or identify what changes are needed to address the concerns of any BRT members. If additional time is needed for review, the BRT chair shall provide written notification to the sponsor prior to the running of the 30-day period of the amount of additional time needed.

C. **Final Instrument.** Within 30 days of receipt of comments from the BRT, the sponsor must submit a final restoration banking instrument to the BRT chair for BRT approval. If additional time is needed, the sponsor shall submit a request to the BRT chair prior to the running of the 30-day period for the amount of additional time needed. The final restoration banking instrument must contain supporting documentation that explains how the sponsor addresses the BRT's comments. The sponsor must provide the BRT chair with the number of copies specified by the BRT chair for distribution to the BRT members for review. Within 30 days of receipt of the final Instrument, the BRT chair will notify the sponsor in writing whether the Instrument is approved and, if the restoration banking instrument is approved, arrange for it to be signed by the appropriate parties. The final restoration banking instrument must be made available to the public upon request.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:214.5.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1358 (July 2017).

**§121. NRD Restoration Credits**

A. Determining and Establishing Credits. The principal units for restoration credits are anticipated to be acres, reflecting the anticipated post-construction number of acres by habitat type and minimum performance criteria compared to pre-construction acres by habitat type and key measures of habitat condition. The BRT will consider other units of restoration credits on a case-by-case basis.

**B. Release of Restoration Credits Schedule**

1. The BRT shall determine the release of restoration credits schedule for each individual NRD restoration bank, in coordination with the sponsor. Release of restoration credits must be tied to achievement of performance-based milestones (e.g., construction, planting, or establishment of specified plant and animal communities). After a prospectus is approved, the BRT will work with the bank sponsor to develop a proposed release of restoration credit release schedule for inclusion in the restoration bank plan.

2. The terms of the release of restoration credits schedule will be finalized after review of public comments to the restoration bank plan and must be specified in the restoration banking instrument. When an NRD restoration bank is implemented and is achieving the performance-based milestones specified in the release of restoration credits schedule, restoration credits shall be released in accordance with the approved release of restoration credits schedule. If the NRD restoration bank fails to meet, or substantially exceeds, those performance-based milestones, the BRT may modify the release of restoration credits schedule, as well as reduce or increase the total number of restoration credits, as appropriate.

3. A limited number of restoration credits (no more than 20 percent) may be available for sale by NRD restoration banks prior to initiating construction provided the following requirements are met:

- a. resolution of any land rights issues;
- b. compliance with any and all pre-construction regulatory requirements, including obtaining permits;
- c. establishment and maintenance of adequate and current financial assurance;
- d. execution of the restoration banking instrument;
- e. achievement of 60 percent engineering and design, including feasibility studies and/or alternative(s) analyses; and
- f. any other pre-construction requirements set forth in the restoration banking instrument.

C. Release of Restoration Credits Determination. Release of restoration credits for NRD restoration banks must be approved by the BRT. In order for restoration credits to be released, the sponsor must submit documentation to the BRT chair demonstrating that the appropriate milestones for release of restoration credits have been achieved and requesting the release of restoration credits. The sponsor must provide the BRT chair with the number of copies of

this documentation specified by the BRT chair for distribution to the BRT members for review. BRT members must provide any comments to the BRT chair within 30 days of the BRT chair's receipt of this documentation. If the BRT determines that a site visit is necessary, the BRT members must provide any comments to the BRT chair within 30 days of the site visit. The BRT chair must schedule the site visit so that it occurs as soon as it is practicable, but the site visit may be delayed by seasonal considerations that affect the ability of the BRT members to assess whether the applicable credit release milestones have been achieved. If additional time is needed at any point in the release of restoration credits determination process, the BRT chair shall provide written notification to the sponsor prior to the running of the time-period with the amount of additional time needed. The BRT chair must provide written notice of final release of restoration credits determinations to the sponsor within 60 days of receipt by the BRT chair of the sponsor's request for release of credits or 60 days of the site visit, whichever is later. BRT determinations denying release of credits should include the rationale as to why the credit release was denied as well as guidance to the sponsor regarding corrective action(s), if appropriate, that may be taken to remedy any deficiencies identified.

D. Transfer or Sale to RP or Trustee. Once released, restoration credits may only be purchased to reduce or resolve NRD liability for a specific release of oil if the application of the credits to that spill has been approved by the appropriate NRDA trustees. The cost of restoration credits provided by an NRD restoration bank is to be negotiated by the responsible party and the sponsor of the NRD restoration bank from which the restoration credits are to be purchased. Within seven days of the sale or transfer of any NRD credits, the sponsor must provide a written report to the BRT detailing each sale/transfer of restoration credits. At a minimum, the notification must specify the number and type of restoration credits sold or transferred.

E. Multi-Use Restoration Banks. For NRD restoration banks also authorized to sell credits to satisfy the requirements of other regulatory programs, the sponsor must provide written notification to the BRT chair within seven days of any sale or transfer of credits pursuant to other regulatory programs. At a minimum, the notification must specify the number and type of credits sold or transferred.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:214.5.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1358 (July 2017).

**§123. Monitoring NRD Restoration Banks**

A. The restoration bank plan must address the monitoring requirements for the NRD restoration bank, including those objectives and factors set out in 15 CFR §990.55(b)(2) and (3), as well as the parameters to be monitored, the length of the monitoring period, the party responsible for conducting the monitoring and submitting reports, and the frequency for submitting monitoring reports to the BRT. Performance criteria for an NRD restoration



bank will be determined during the consultation between the BRT and the sponsor following the submittal of the prospectus and must be specified in the restoration bank plan. The performance criteria will be used to assess whether the NRD restoration bank is achieving its restoration objectives, including to determine release of restoration credits and release of financial assurances consistent with these regulations.

B. The submission of monitoring reports to assess the development and condition of the NRD restoration bank is required. Monitoring the NRD restoration bank is necessary to determine if the NRD restoration bank is accomplishing its restoration objectives, if performance criteria are being met, and, if not, what corrective action is necessary to ensure that those criteria are met. The content and level of detail for monitoring reports will be determined during the consultation period following the submittal of the prospectus and must be commensurate with the scale and scope of the NRD restoration bank. The monitoring reports may include plans (such as as-built plans), maps, and photographs to illustrate site conditions. Monitoring reports may also include the results of structural, functional, temporal, and other assessments used to provide quantitative or qualitative measures of the functions provided by the bank. The sponsor is responsible for submitting monitoring reports at a frequency determined by the BRT. Monitoring reports must be provided by the BRT chair to interested federal, tribal, state, and local resource agencies, and the public, upon request. The BRT may conduct site inspections upon providing notice to the bank sponsor to evaluate NRD restoration bank performance.

C. The restoration bank plan must provide for a monitoring period that is sufficient to demonstrate that the NRD restoration bank has met its restoration objectives and performance criteria. Upon a determination that the NRD restoration bank has achieved its objectives and performance criteria, the BRT may reduce or waive the remaining monitoring requirements. Conversely, the BRT may extend the original monitoring period upon a determination that performance criteria have not been met or the bank is not on track to meet them. The BRT may also revise monitoring requirements when corrective action is required.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:214.5.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1359 (July 2017).

## **§125. Financial Assurance Requirements**

### **A. General Provisions**

1. Financial assurance in accordance with this Section is required for NRD restoration banks under the NRD restoration banking program, except that financial assurance is not required for an NRD restoration bank proposed by a government agency that is exempt from the requirement to provide financial assurance under federal law.

2. The sponsor shall establish and maintain financial assurance in accordance with this Section.

3. The sponsor shall establish and maintain financial assurance in the form and amount approved by the BRT, until the BRT determines that the NRD restoration bank has satisfied all applicable performance criteria and other requirements of the restoration banking instrument.

4. Financial assurance that meets the requirements of this Section shall be provided at least 30 days prior to undertaking restoration activities approved under a restoration banking instrument.

5. The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and shall include the following:

a. construction costs, equal to 100 percent of the estimated cost of completing the creation, restoration, or enhancement;

b. maintenance costs, equal to 100 percent of the estimated cost of monitoring and maintaining the site, to meet the performance criteria and other requirements of the restoration banking instrument;

c. corrective action or adaptive management costs, equal to 10 percent of the estimated cost of construction, unless otherwise determined by the BRT to meet the requirements of this Section;

d. an independent contractor is defined here as a licensed contractor with no existing business relationship with the sponsor. The contractor must be approved by the BRT.

6. The sponsor shall update the face value of its financial assurance on the anniversary date of the instrument to reflect adjustments for inflation. On the fifth anniversary of the financial assurance instrument, the sponsor shall update the amount of financial assurance based on updated itemized estimates pursuant to Paragraph 5 of this Subsection.

7. The BRT shall require additional financial assurance if additional construction or monitoring is required to ensure success of the NRD restoration bank.

8. The portion of the financial assurance required under Subparagraph 5.a of this Subsection above shall be released upon the BRT determination that construction (including grading and planting) of the NRD restoration bank has been successfully completed in accordance with the restoration banking instrument.

9. The portion of the financial assurance required under Subparagraphs 5.b and c of this Subsection above shall be released when the BRT determines that the NRD restoration bank has met its restoration objectives and performance criteria, as applicable, or the BRT approves in writing the sponsor's request to permanently cease banking activities.

10. The sponsor may request, and the BRT may approve, the substitution of a financial assurance instrument. The form and content of any financial assurance instrument must be approved in advance by the BRT before a

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substitution can be used to satisfy the financial assurance obligations of this Section.

11. Acceptable forms of financial assurance shall comprise one or more of the following financial instruments:

- a. a fully funded trust fund in accordance with §125.B below;
- b. a letter of credit in accordance with Subsection C of this Section below;
- c. a surety bond in accordance with Subsection D of this Section below; and/or
- d. other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the BRT to meet the requirements of this Section.

### B. Financial Assurance Instrument—Fully Funded Trust Fund

1. A sponsor who chooses to establish a fully funded trust fund as financial assurance shall submit to the BRT chair the trust fund agreement evidencing that the trust fund is fully funded. The trust fund agreement shall:

- a. be executed by an entity that has the authority to act as trustee, is an FDIC-regulated financial institution, and whose trust operations are regulated and examined by the state;
- b. include any applicable file number and the name, street address, lot, block, municipality, and parish of the NRD restoration bank;
- c. specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the executive director of CPRA, or his/her designee;
- d. specify that the trustee may only disburse funds with the written approval of the executive director of CPRA, or his/her designee;
- e. specify that the funds shall be used solely for the purposes of conducting the NRD restoration bank as approved by the BRT;
- f. specify that CPRA may access the fully funded trust fund to pay for the cost of the NRD restoration bank, pursuant to LAC 43:XXXI.127.B.2 below; and
- g. identify CPRA as the sole beneficiary of the fully funded trust fund.

2. Any sponsor responsible for operating an NRD restoration bank that uses a fully funded trust fund to satisfy the requirements of this Chapter shall annually, at least 30 days prior to the anniversary date of when that sponsor was obligated to establish the financial assurance instrument, submit to the executive director of CPRA (or his/her designee) a written statement from the trustee confirming the value of the trust in the amount that the BRT has approved, and confirming that the trust shall continue for the next consecutive 12-month period.

C. Financial Assurance Instrument—Letter of Credit. A sponsor who chooses to provide a letter of credit as financial assurance to guarantee the availability of funds shall submit to the BRT chair the originally signed and certified letter of credit. The letter of credit shall:

1. be issued by an entity that is FDIC-regulated and licensed to transact business in the state;
2. include an applicable file number and the name, street address, lot, block, municipality, and parish of the NRD restoration bank;
3. specify that the letter of credit is irrevocable and issued for a period of at least one year, and that it will be automatically extended thereafter for a period of at least one year;
4. specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the sponsor providing the letter of credit and the executive director of CPRA (or his/her designee) by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by executive director of CPRA (or his/her designee) as shown on the signed return receipt;
5. specify that CPRA may access the letter of credit to pay for the cost of the restoration bank pursuant to LAC 43:XXXI.127.B.2; and
6. identify CPRA as the sole beneficiary of the letter of credit.

D. Financial Assurance Instrument—Surety Bond. A sponsor who chooses to provide a surety bond as financial assurance to guarantee the availability of funds pursuant to this Section shall submit to the BRT chair the originally signed and certified surety bond. The surety bond shall:

1. be issued by an entity that is licensed to transact business in the state, is listed as an approved surety on Department Circular 570 of the U.S. Department of the Treasury, and maintains a financial strength rating of at least BBB+ or equivalent assigned by a nationally recognized statistical rating organization;
2. include any applicable file number and the name, street address, lot, block, municipality, and parish of the NRD restoration bank;
3. specify that, if the issuer of the surety bond decides not to extend the surety bond beyond the then current expiration date, the issuer shall notify the sponsor providing the surety bond, and shall separately notify the executive director of CPRA (or his/her designee), by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by the executive director of CPRA (or his/her designee) as shown on the signed return receipt; and
4. specify that CPRA may access the surety bond to pay for the cost of the NRD restoration bank pursuant to LAC 43:XXXI.127.B.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1360 (July 2017).

## **§127. Compliance**

### **A. General**

1. It is the sponsor's obligation to comply with the terms of NRD restoration bank certification as set forth in the restoration banking instrument. If the BRT believes that a sponsor is out of compliance with a restoration banking instrument, it must notify the sponsor in writing and set forth the corrective actions that the sponsor must undertake to bring a bank in compliance and the time within which the sponsor must perform such actions.

2. If the sponsor fails to come into compliance in the period specified in the BRT's written notice, the BRT may suspend the sale of restoration credits to bring an NRD restoration bank in compliance with the terms and conditions of the restoration banking instrument. If the BRT suspends the sale of restoration credits, restoration credits may not be debited until the BRT lifts the suspension and notifies the sponsor in writing that the sale of credits may be resumed.

3. If the BRT is made aware of any action to suspend or bar the sponsor from participation in any other regulatory program, the BRT may in its discretion suspend the sponsor from the sale of credits for the duration of the non-conformity with the other program, or such shorter time as it deems appropriate.

4. Suspension of the sale of restoration credits under Subparagraphs 2 or 3 of this Subsection above does not preclude CPRA from exercising its rights secured by financial assurances issued under §126 above.

### **B. Financial Assurance**

1. If the BRT determines that the sponsor responsible for restoration and providing financial assurance has failed to complete an NRD restoration bank, including satisfying restoration objectives and performance criteria, as required by the restoration banking instrument, the BRT chair shall:

- a. provide written notice of this determination to the sponsor; and
- b. require that the NRD restoration bank be brought into conformance with the restoration banking instrument within 30 days of receipt of the notice, unless the timeframe is otherwise extended by the BRT.

2. No sooner than 30 days from the date the sponsor receives notice under Subparagraph 1.a of this Subsection above, CPRA may, at its discretion, complete the NRD restoration bank by drawing on the funds available in the financial assurance instrument(s).

3. In the event CPRA draws on the funds available in the financial assurance instrument(s) and accomplishes the objectives and performance criteria of the NRD restoration bank, the BRT may award restoration credits for sale, use, or

transfer by the sponsor in a quantity that reflects the objectives and performance criteria achieved as a result of BRT intervention, net of administrative expenses incurred by the BRT to complete the NRD restoration bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1361 (July 2017).

## **§129. Reconsideration of Final Decisions**

A. An NRD bank sponsor may file an application for reconsideration with the executive director of CPRA. An application for reconsideration must be received by the executive director within 15 days of the mailing of the final decision. Applications of reconsideration shall be limited to final decisions regarding a restoration bank plan or credit release determination.

B. An application for reconsideration shall be in writing, set forth the grounds that justify reversal of the original decision, and include all evidence or argument the applicant wants considered.

C. The executive director shall consider the application for reconsideration and render a decision, in writing, within 30 days of its receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1362 (July 2017).

## **Chapter 2. Coastal Mineral Agreements**

### **§201. Purpose and Authority**

#### **A. Purpose**

1. The purpose of this Chapter is to enable the executive director to protect the state of Louisiana and its citizens from coastal and wetland degradation, hurricanes, and flooding by entering into voluntary coastal mineral agreements with certain landowners to obtain real property and rights in real property, in order to facilitate the development, design, or implementation of plans or projects for coastal conservation, restoration, protection, or management, including hurricane protection or flood control.

2. This Chapter sets forth the procedures pursuant to which the executive director may enter into such coastal mineral agreements.

#### **B. Authorized Agreements**

1. The executive director may enter into a coastal mineral agreement under this Chapter:

- a. with any person who owns land contiguous to and abutting navigable water bottoms, the territorial sea, and the seashore belonging to the state and who has the right to

reclaim eroded land, in order to facilitate an integrated coastal protection project; or

b. in relation to the acquisition of land by an acquiring authority from any person, for the principal purpose of facilitating an integrated coastal protection project.

2. Pursuant to a coastal mineral agreement under this Chapter:

a. the state may acquire ownership of, servitudes over, and other interests in existing land, other consideration or performance of certain actions, and reclamation rights in relation to eroded land;

b. an acquiring authority may acquire ownership of, servitudes over, and other interests in existing land or emergent land;

c. the executive director may establish in certain landowners limited or perpetual, transferrable or non-transferrable ownership of subsurface mineral rights in existing land, and may convey to certain landowners limited or perpetual, transferrable or non-transferrable ownership of subsurface mineral rights in emergent land.

3. It is the intention of these regulations, and any agreement entered into pursuant to this Chapter, that any mineral interests established or conveyed pursuant to such agreements and any exercise thereof are and must be subordinate to integrated coastal protection, as defined in R.S. 49:214.2, including but not limited to coastal conservation, restoration, protection, and management, hurricane protection, and flood control plans or projects.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 41:1702.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1580 (November 2019).

**§203. Definitions**

A. The following definitions shall apply for purposes of this Chapter, unless specifically defined otherwise.

*Acquiring Authority*—as defined by R.S. 31:149.

*Acquired Land*—ownership of, or other rights in, existing or emergent land acquired or proposed to be acquired by an acquiring authority pursuant to an agreement under this Chapter.

*Agreement*—an agreement entered into pursuant to this Chapter, as authorized by R.S. 41:1702. Such an agreement may be referred to as a coastal mineral agreement.

*Integrated Coastal Protection Project*—as defined by R.S. 49:214.2.

*CPRA*—Louisiana Coastal Protection and Restoration Authority.

*Emergent Land*—as defined by R.S. 41:1702(D)(2)(e).

*Eroded Land*—land lost through erosion, compaction, subsidence, or sea level rise occurring on and after July 1,

1921; or any land lost by erosion, compaction, subsidence, or sea level rise on the landward side of the coast of the Gulf of America, as that coast is defined in the decree of the United States Supreme Court dated June 16, 1975, in United States v. State of Louisiana, No. 9 Original (Tidelands Case), regardless of whether the erosion occurred before July 1, 1921.

*Executive Director*—executive director of the Louisiana Coastal Protection and Restoration Authority or his designee.

*Existing Land*—land, including non-navigable water bottoms, owned by an owner as of the effective date of the agreement.

*Facilitate*—enable, assist in, further, or remove an impediment to the development, design, implementation, or maintenance of an integrated coastal protection project.

*Owner*—a person who owns land or non-navigable water bottoms affected or proposed to be affected by an agreement. In the case of undivided interests, the owners of all such undivided interests shall be considered as the owner for purposes of this Chapter, unless otherwise approved by the executive director.

*Reclamation Right*—the potential right to seek reclamation or recovery of eroded land and any such appurtenant rights, including oil, gas, and mineral rights, as provided and limited by R.S. 41:1702(B).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 41:1702.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1581 (November 2019).

**§205. Provisions Applicable to all Agreements**

A. Discretion of the Executive Director

1. Subject to approval of any agreement by the House and Senate Committees on Natural Resources, the executive director shall have complete and final discretion regarding whether to enter into any agreement, and if so, regarding the terms of the agreement, including but not limited to the location and configuration of lands, water bottoms, or subsurface mineral rights affected or conveyed by the agreement and the nature and extent of any interests affected, established, or conveyed by the agreement.

2. An agreement may contain any term that is within any authority of the executive director, when the executive director determines that inclusion of the term is in the best interests of the state.

B. Determination of Boundaries

1. The owner shall consult with the administrator of the Office of State Lands to determine whether a boundary for existing or emergent land is disputed as between the state, the owner, and any other owners that may be affected by the agreement.

2. In the event of a disputed boundary between the state and other owners, the executive director may require a

boundary determination pursuant to R.S. 41:1131-1136, whether as a prerequisite to negotiating or entering into an agreement, as a means of finalizing or updating a boundary for emergent land, or for any other situation when a boundary is disputed.

C. Required Terms. Any agreement shall include the following:

1. identification of the ownership and boundaries of lands or water bottoms affected by the agreement;

2. legal descriptions of the boundaries of existing land and eroded land affected by the agreement, acquired land acquired pursuant to the agreement, lands as to which the owner compromises its reclamation rights pursuant to the agreement, and subsurface mineral rights established, compromised, or conveyed pursuant to the agreement;

3. plat depicting lands, water bottoms, and boundaries of existing land or eroded land affected by the agreement. Unless otherwise agreed by the executive director, the plat shall be prepared by a surveyor currently registered by and in good standing with the Louisiana Professional Engineering and Land Surveying Board and shall depict and label the following:

a. location and boundaries of existing land, eroded land, and water bottoms affected by the agreement, as of the most current data available, showing Louisiana grid coordinates of all corners and angle points and identifying the source of data used;

b. location and boundaries of any acquired land acquired pursuant to the agreement, showing Louisiana grid coordinates of all corners and angle points and identifying the source of data used;

c. location and boundaries of any lands as to which the owner compromises its reclamation rights pursuant to the agreement, showing Louisiana grid coordinates of all corners and angle points and identifying the source of data used;

d. location and boundaries of any subsurface mineral rights established or conveyed pursuant to the agreement, showing Louisiana grid coordinates of all corners and angle points and identifying the source of data used;

e. ownership of existing land, water bottoms, acquired land, and subsurface mineral rights affected by the agreement, both prior to and as affected by the agreement. The last owners of eroded land affected by the agreement, immediately prior to its erosion, shall also be identified.

f. existing shorelines, as of the most current data available, and identifying the source of the data used;

g. shorelines or coastline as of July 1, 1921 or as of the earliest time for which data is available, identifying the date and source of the data used;

h. coast of the Gulf of America, as that coast is defined in the decree of the United States Supreme Court

dated June 16, 1975, in *United States v. State of Louisiana*, No. 9 Original (Tidelands Case);

i. all parish, town, city, and similar boundary lines within or in the vicinity of the lands or water bottoms affected by the agreement;

j. all roads within or in the vicinity of the lands or water bottoms affected by the agreement;

k. graphic scale, north arrow, and township, section, and range; and

l. any other matter required by the executive director;

4. stipulation that the acquired land shall remain available for the principal purposes of the acquisition and that the state may enforce the stipulation by specific performance and by mandatory and/or prohibitory injunction. For a type 2 agreement, the acquiring authority will pay all of the state's reasonable attorney fees, expenses, and costs involved in enforcing this stipulation if the acquiring authority fails to enforce the stipulations as determined by CPRA.

D. Negotiation of Agreements. The executive director may negotiate an agreement by any means and in any manner permissible under law that he deems appropriate and in the best interests of the state.

1. The executive director may designate a person, section, or division within the CPRA to receive requests for agreements.

2. The executive director may designate a person, section, or division within the CPRA to negotiate each agreement.

3. The executive director may notify an owner that he seeks an agreement, and he may request a meeting to negotiate the proposed agreement. Such notification may, but need not be, in writing.

4. If any person possesses or reasonably appears to the executive director to possess an interest in existing land or eroded land that may be affected by the agreement, the executive director may include such person in the negotiations and any agreement.

E. Suspensive Conditions. An agreement or term thereof may be subject to a suspensive condition, and in such cases the agreement or term shall be of no force or effect until the condition occurs. Where a suspensive condition is imposed by operation of law, it need not be stated in the agreement. For example, the establishment or conveyance of ownership of subsurface mineral rights in emergent land pursuant to an agreement must be contingent upon the emergence of such land. The parties should explicitly agree as to whether the terms and/or other consideration provided in the agreement constitute sufficient cause for the parties' mutual undertakings.

F. Resolutive Conditions. An agreement or term thereof may be subject to a resolutive condition, and in such cases the agreement or term shall be of no force or effect upon

occurrence of the resolutive condition. Where a resolutive condition is imposed by operation of law, it need not be stated in the agreement. For example, ownership of subsurface mineral rights in emergent land established or conveyed pursuant to an agreement terminate upon the re-erosion of such land; except the effects of R.S. 9:1151 et seq. shall not be affected thereby. The parties should explicitly agree as to whether the terms and/or other consideration provided in the agreement constitute sufficient cause for the parties' mutual undertakings.

G. Use of Surface. Unless otherwise agreed, any person granted a perpetual, transferrable ownership of subsurface mineral rights pursuant to an agreement shall have a perpetual, transferrable servitude to use the surface of any such land for the purposes of locating, accessing, extracting, and transporting those subsurface minerals with the same freedom, and subject to the same restrictions, as an owner of the surface. However, the parties may agree to compromise this right; and no such right may be exercised so as to impair, contravene, and/or interfere with the integrity, features, and/or purposes of any integrated coastal protection project.

H. Provision of Information. Any owner or acquiring authority sought to be included in an agreement shall provide all information deemed necessary by the executive director to consider and reach final decisions regarding any matter addressed in this Chapter.

I. Notice of Final Decision. If the executive director makes a final decision not to enter into a proposed agreement, he shall mail written notice of his final decision, designated as such, to any person requesting the agreement at such person's address as provided to the executive director. Such notice shall be sent by certified mail, return receipt requested.

J. Payments in Lieu of Taxes. The executive director may require a provision in any agreement that the owner or acquiring authority shall pay to the political subdivision or parish governing authority a certain amount in lieu of taxes to be paid to that governmental entity as to existing land conveyed to the state or an acquiring authority or to eroded land rights acquired by the state. The payments in lieu of taxes shall not exceed the amount that would have been paid in accordance with the local property tax assessments prior to entering into an agreement. The amount and duration of the payments shall be negotiated by the parties, and the executive director may consult with the political subdivision or parish governing authority in relation thereto.

K. Limitation to Coastal Area. Agreements under this Chapter shall pertain only to lands and water bottoms within the coastal area as defined at R.S. 49:214.2. However, the executive director may waive this limitation in extraordinary circumstances, if he determines that adequate measures are included in the agreement or otherwise available to the CPRA to protect the public interest in the lands and water bottoms affected by the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1581 (November 2019).

**§207. Agreements to Facilitate Integrated Coastal Protection Projects (Type 1 Agreements)**

A. Required Determinations. The executive director may enter into an agreement under this Section (also referred to as a type 1 agreement) with an owner when the executive director determines:

1. that an integrated coastal protection project would likely be facilitated by acquiring ownership of, servitudes over, and/or other interests in existing land owned by the owner holding reclamation rights; and/or that an integrated coastal protection project would likely be facilitated by acquiring any rights in eroded land claimed by an owner holding reclamation rights; and

2. that the person contracting with the state is an owner who holds marketable title to the property or property rights to be conveyed by him, and/or to property providing him with reclamation rights. This requirement may be satisfied by a title opinion;

B. Rights Authorized to be Obtained. Pursuant to an agreement under this Section, the state may obtain or receive ownership of, servitudes over, and/or other interests in existing land that may affect or may be affected by an integrated coastal protection project, any other consideration or performance of any action that may affect or may be affected by an integrated coastal protection project, and/or compromise of ownership and reclamation rights within such area and for such time as the executive director deems appropriate in relation to an integrated coastal protection project.

1. In the case of an agreement providing for a limited or perpetual alienation or transfer, in whole or in part, to an owner of subsurface mineral rights owned by the state relating to emergent land that emerges from water bottoms that are subject to the owner's reclamation rights, the agreement shall require the owner to compromise his claim of ownership and reclamation rights at a minimum for the time the land meets the definition of emergent land pursuant to R.S. 41:1702, and in further exchange for the owner's agreement to allow his existing land, in whole or in part, to be utilized in connection with an integrated coastal protection project, to the extent deemed necessary by the executive director.

2. In the case of an integrated coastal protection project involving a barrier island, the executive director may require the owner to transfer title to all or a portion of the island in exchange for any subsurface mineral rights acquired by the owner.

C. Rights authorized to be established or conveyed. pursuant to an agreement under this Section, the executive director may do one or more of the following:

1. establish in an owner holding reclamation rights the limited or perpetual, transferrable or non-transferrable

ownership of subsurface mineral rights in the owner's existing land to the then-existing coast or shore line;

2. convey to an owner holding reclamation rights the limited or perpetual, transferrable or non-transferrable ownership of subsurface mineral rights owned by the state in emergent land that emerges from eroded land subject to the owner's reclamation rights;

3. convey or provide any other consideration for the agreement that is within any authority of the executive director.

D. Discretion of the Executive Director. An agreement under this Section may contain any term that is within any authority of the executive director, when the executive director determines that inclusion of the term is in the best interests of the state. In particular, the executive director may define any subsurface mineral right established or conveyed pursuant to an agreement under this Section in any manner that he deems appropriate and in the best interests of the state, including but not limited to the following respects:

1. whether to convey ownership of such mineral rights in any portion of the emergent land that emerges from water bottoms subject to the owner's reclamation rights, and to define any such portion;

2. whether to make ownership of such mineral rights in any portion of the emergent land perpetual or limited, and to define the duration of a limited conveyance;

3. whether to make ownership of such mineral rights in any portion of the emergent land transferrable or non-transferrable;

4. whether to establish in any portion of the owner's existing land such perpetual or limited, transferrable or non-transferrable mineral rights, the ownership of which is not affected by any future erosion, compaction, subsidence, or sea level rise;

5. whether to convey full ownership or an undivided interest in such mineral rights, and to define the extent of any such undivided interest.

E. Emergent Land. Any conveyance of subsurface mineral rights in emergent land shall be suspended until actual emergence of the land and fulfillment of the following requirements. Unless for purposes of reclamation by the owner to recover land lost through erosion, the state shall not alienate the surface rights to emergent land.

1. Upon the emergence of emergent land, the owner shall submit verification of the emergence to the executive director and the administrator of the office of state lands, including a legal description of the emergent land claimed by the owner, and a plat and aerial photography thereof. The plat shall be prepared by a surveyor currently registered by the Louisiana Professional Engineering and Land Surveying Board.

2. With the approval of the attorney general, the owner and the governor shall enter into an emergent land boundary addendum to the agreement, agreeing to the

boundary between the emergent land and the remaining water bottoms.

a. The administrator of the Office of State Lands shall consult with the executive director to determine the extent to which the emergent land is reasonably permanent.

b. In the event of disputed boundaries between the state and other owners, the executive director may require a boundary determination pursuant to R.S. 41:1131-1136.

c. No definitive boundary shall be fixed nor shall mineral rights be vested unless and until proof reasonably satisfactory to the executive director is made that the land is emergent land as defined in this Chapter.

d. Any emergent land boundary addendum shall include a final plat showing the emergent land as agreed by the owner and the administrator of the office of state lands or as determined by the boundary determination. The plat shall be prepared by a surveyor currently registered by the Louisiana Professional Engineering and Land Surveying Board.

e. Any emergent land boundary addendum shall include a legal description of the boundaries of the emergent land.

f. The commissioner of the Division of Administration shall also be a party to any such emergent land boundary addendum.

3. Upon execution of an emergent land boundary addendum by all parties thereto, the administrator of the Office of State Lands shall provide a fully-executed copy to each person that is a party thereto and to the commissioner of the Division of Administration.

a. The owner shall record the emergent land boundary addendum in the conveyance records of all parishes in which the emergent land is located.

b. Recording of an emergent land boundary addendum in the conveyance records of all parishes in which the emergent land is located shall constitute public notice thereof for all purposes.

c. The owner recording the emergent land boundary addendum shall immediately provide certified copies thereof to the executive director and the administrator of the Office of State Lands.

4. Any conveyance of subsurface mineral rights in emergent land by an agreement shall be effective as of the effective date of the emergent land boundary addendum.

5. Any conveyance of subsurface mineral rights in emergent land shall be subject to and such rights shall be encumbered with any right-of-way or servitude grant, or any mineral, geothermal, geopressure, or any other lease granted by the state for a lawful purpose while the emergent land was an eroded or subsided area, the rights of the state or lessee thereunder to be in no manner abrogated or affected by the agreement and to remain free and clear of any claim by the owner for compensation out of the proceeds of the grant or lease or otherwise.

6. In the event a portion of emergent land subject to an agreement no longer meets the definition of emergent land, the conveyance of subsurface mineral rights for that portion of emergent land, whether for a term or in perpetuity, to the owner shall terminate and revert back to the state; except the provisions of R.S. 9:1151 et seq. shall not be affected thereby. The agreement shall remain in effect for those portions of emergent land that continue to meet the definition of emergent land.

F. Initiation by Owner. An owner may request an agreement under this Section from the executive director. Unless otherwise agreed, any such request shall be in writing and shall state and fully explain the following:

1. the land, water bottoms, and subsurface mineral interests that the owner seeks to include in the Agreement. A plat (which may but need not be a survey) depicting all such land, water bottoms, and subsurface mineral interests shall be attached;

2. the reasons that the owner asserts that an agreement is appropriate;

3. The basis upon which the owner asserts that he qualifies for an agreement under this Section. Copies of documentation evidencing the owner's title to the land or water bottoms sought to be included in the agreement and to land providing the owner with reclamation rights, shall be attached. A title opinion may satisfy this requirement.

4. Draft proposed memorandum of understanding stating the general terms sought for the agreement, including but not limited to all consideration, undertakings, performances, or concessions sought from the executive director or any interest owner or claimant in relation to the acquisition; and any consideration, undertaking, performance, or concession intended to be provided or made by the owner.

5. CD-ROM containing the proposed memorandum of understanding in Microsoft Word format or other form of documentation or format approved by the executive director.

6. The identity of all persons owning or believed by the owner to own any interest affecting the land or water bottoms sought to be included in the agreement, the nature and extent of the interest, and contact information for such person, regardless of whether the owner believes the interest to be relevant or existing. The owner shall make a thorough search of the public records and any other relevant source of knowledge for such interests. Copies of all documents indicating the existence or extent of such an interest shall be attached.

7. The identity of all persons holding or believed by the owner to hold a claim adverse to the owner in relation to the land or water bottoms sought to be included in the agreement, the nature and extent of the claim, and contact information such holder, regardless of whether the owner believes the claim to be relevant or meritorious. The owner shall make a thorough search of the public records and any other relevant source of knowledge for such claims. Copies

of all documents indicating the existence or extent of such a claim shall be attached.

8. Contact information for the person seeking the agreement, and designation of a single point of contact regarding the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1583 (November 2019).

**§209. Agreements to Facilitate Integrated Coastal Protection Projects through Acquisitions (Type 2 Agreements)**

A. Required Determinations. The executive director may enter into an agreement under this section (also referred to as a type 2 agreement) with an owner as an acquiring authority, or with an acquiring authority and an owner, when the executive director determines:

1. that an integrated coastal protection project would likely be facilitated by the proposed acquisition of land from the owner;

2. that the principal purpose of entering into the agreement would be to facilitate an integrated coastal protection project by the state, its political subdivisions, or by the state and federal government;

3. that the purported owner is an owner who holds marketable title to the property or property rights to be conveyed by him, and/or to property providing him with reclamation rights. This requirement may be satisfied by a title opinion; and

4. that the purported acquiring authority is an acquiring authority. It is specifically contemplated that the state or any of its subdivisions, departments, or agencies may be an acquiring authority and enter into agreements under this Section to acquire land for the principal purpose of facilitating an integrated coastal protection project.

B. Rights Authorized to be Obtained. Pursuant to an agreement under this Section, the state may obtain or receive any interest, consideration, or benefit that the state may obtain or receive pursuant to an agreement under Section 207(B) of this Chapter.

C. Rights Authorized to be Established or Conveyed. Pursuant to an agreement under this Section, the executive director may establish, convey, or provide any interest, consideration, or benefit that the executive director may establish, convey, or provide pursuant to an agreement under §207.C of this Chapter.

D. Discretion of the Executive Director. Pursuant to an agreement under this Section, the executive director may define any subsurface mineral right established or conveyed pursuant to the agreement in any manner that the executive director may define a subsurface mineral right established or conveyed pursuant to an agreement under §207.D of this Chapter.



E. Emergent Land. Any conveyance of subsurface mineral rights in emergent land pursuant to an Agreement under this Section shall be effective only upon actual emergence of the land and fulfillment of the requirements for conveyance of such rights, as required pursuant to an agreement under §207.E of this Chapter.

F. Acquisition by Acquiring Authority. Pursuant to an agreement under this Section, an acquiring authority may obtain ownership of any of the owner's existing land, an undivided interest therein, or any other interest therein, subject to the limitations imposed by this Chapter and R.S. 41:1702, any limitations imposed by the agreement, and/or any subsurface mineral rights established or conveyed by the agreement. If an agreement under this Section is in the form of, or constitutes part of, an act of gratuitous donation of immovable property to the state, acceptance by the state of such property shall be subject to the requirements of R.S. 41:151 or its successor, if applicable, regarding determination by the commissioner of the Division of Administration whether accepting the donation is in the best interests of the state and negotiation of the terms and conditions of the donation, and approval by the House Committee on Natural Resources and the Senate Committee on Natural Resources.

G. Required Considerations. Before entering into an agreement under this Section, the executive director may consider the nature, extent, and conditions of public access to and use of the surface lands and waters that will be permitted by the acquiring authority on the land and water bottom acquired, including for navigation, boating, commercial and recreational fishing, hunting, trapping, nature observation and study, and other traditional activities that are consistent with the principal purposes of the acquisition.

H. Additional Required Terms. In addition to any other terms required by this Chapter, an agreement under this Section shall contain the following terms:

1. identification of the principal purposes of entering into the agreement;
2. identification of all mineral rights in the acquired land or affected by the agreement and the holders thereof upon execution of the agreement, and the manner in which any such mineral rights may be exercised;
3. stipulation that mineral rights shall not be exercised so as to impair, contravene, or interfere with any integrated coastal protection project or the principal purpose of the acquisition, that the state may use specific performance and executive procedure to enforce this stipulation, and that the acquiring authority will pay all of the state's reasonable attorney fees, expenses, and costs involved in enforcing this stipulation;
4. identification of all permanent easements, servitudes, rights-of-way, and rights of use necessary to facilitate the principal purposes of the acquisition, and the holders thereof, upon execution of the agreement. These shall include but are not limited to those necessary for

construction, operation, maintenance, repair, replacement, and rehabilitation of any projects or cooperative agreements undertaken by the state or a political subdivision for coastal protection, conservation, restoration, or management or by the state and federal governments pursuant to state or federal law, including but not limited to, the Coastal Wetlands Planning, Protection and Restoration Act, the Coastal Zone Management Act, the Water Resources Development Act, the Coastal Impact Assistance Program, and the North American Wetlands Conservation Act;

5. identification of any other easement, servitude, right-of-way, or right of use as may be determined by the executive director to be necessary regarding public access and use, and the holders thereof upon execution of the agreement;

6. indemnity and hold harmless provision in favor of the state and any other public entity affected by the agreement, by the acquiring authority and the holder of any mineral interest upon execution of the agreement, except for the negligence or actions of the public entity, its employees, agents, contractors, and assigns;

7. stipulation regarding the nature, extent and conditions of public access to and use of the surface lands and waters that will be permitted by the acquiring authority on the land and water bottom acquired, including for navigation, boating, commercial and recreational fishing, hunting, trapping, nature observation and study, and other traditional activities that are consistent with the principal purposes of the acquisition. The agreement shall also include a stipulation that the state may use specific performance to enforce this stipulation, and that the acquiring authority will pay all of the state's reasonable attorney fees, expenses, and costs involved in enforcing this stipulation;

8. agreements involving an acquiring authority that is not CPRA shall include:

a. a requirement that the acquiring authority determine the immediate and long-term financial and management implications of the agreement and that it secure and maintain the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement, and other costs and prevent any use of the property that will impair, contravene, and/or interfere with the integrity and sustainability of the property;

b. a requirement that the acquiring authority inventory the natural and cultural features of the land acquired pursuant to an agreement prior to developing a management plan that identifies its conservation goals for the land and how it plans to achieve them, create and establish a management plan for the land, and permit on the land only activities that are compatible with the conservation goals, stewardship principles, and public benefit mission of the acquiring authority and the management plan;

c. a requirement that the acquiring authority mark the boundaries and regularly monitor the land acquired pursuant to an agreement for potential management

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problems (such as trespass, misuse or overuse, vandalism, or safety hazards) and take appropriate action to rectify such problems;

d. a requirement that the acquiring authority perform administrative duties in a timely and responsible manner, including establishing policies and procedures, keeping essential records, filing forms, paying insurance, paying any taxes and/or securing appropriate tax exemptions, budgeting and maintaining files;

e. a requirement that the acquiring authority keep affected and interested parties – including neighbors immediately adjacent to the acquired land, individuals who are directly or indirectly affected, as well as those who have expressed an interest in the agreement or the acquired land, informed about its ownership and management of the acquired land pursuant to an agreement;

f. a requirement that the acquiring authority maintain its certification as a certified land conservation organization under the applicable CPRA rules and regulations and a provision that upon revocation of the certification, the land conservation organization shall be obligated to transfer or convey all of its right, title and interest in and to the coastal land, the reclaimable land and the emergent land to another certified land conservation organization designated by the owner, his heirs, successors or assigns, or if none is designated within a reasonable time set by the executive director, by the executive director. If no other reasonably qualified certified land conservation organization will agree to accept such interests, then the certified land conservation organization shall be obligated to transfer or convey such rights to the state;

g. a restriction of the acquiring authority from transferring or otherwise conveying the land acquired pursuant to an agreement to anyone other than the state or another acquiring authority;

9. agreements involving the state as an acquiring authority shall include a restriction prohibiting the state from transferring or otherwise conveying the land acquired pursuant to an agreement to anyone other than an acquiring authority.

I. Initiation by Acquiring Authority or Owner. An acquiring authority or owner may request an agreement under this Section from the executive director. Unless otherwise agreed, any such request shall be in writing and shall state and fully explain the following:

1. the land proposed to be acquired by the acquiring authority and/or the land, water bottoms, and subsurface mineral interests sought to be included in the agreement. A plat depicting all such land, water bottoms, and subsurface mineral interests shall be attached;

2. the reasons that the acquiring authority or owner asserts that an agreement is appropriate;

3. the basis upon which the acquiring authority or owner asserts that the owner qualifies for an agreement under this Section. Copies of documentation evidencing the

owner's title to the land or water bottoms sought to be included in the agreement, and to land providing the owner with reclamation rights, shall be attached. A title opinion may satisfy this requirement;

4. draft proposed memorandum of understanding stating the general terms sought for the agreement, including but not limited to all consideration, undertakings, performances, or concessions sought from the executive director or any interest owner or claimant in relation to the acquisition; any consideration, undertaking, performance, or concession intended to be provided or made by the acquiring authority or owner; and the nature, extent, and conditions of public access to and use of the surface lands and waters that will be permitted by the acquiring authority on the land and water bottom acquired, including for navigation, boating, commercial and recreational fishing, hunting, trapping, nature observation and study, and other traditional activities that are consistent with the principal purposes of the acquisition;

5. CD-ROM containing the proposed memorandum of understanding in Microsoft Word format or any other form of documentation or format approved by the executive director;

6. the identity of all persons owning or believed by the acquiring authority or owner to own any interest affecting the land or water bottoms sought to be included in the agreement, the nature and extent of the interest, and contact information for such person, regardless of whether the acquiring authority or owner believes the interest to be relevant or existing. The acquiring authority or owner shall make a thorough search of the public records and any other relevant source of knowledge for such interests. Copies of all documents indicating the existence or extent of such an interest shall be attached;

7. the identity of all persons holding or believed by the acquiring authority or owner to hold a claim adverse to the owner in relation to the land or water bottoms sought to be included in the agreement, the nature and extent of the claim, and contact information such holder, regardless of whether the acquiring authority or owner believes the claim to be relevant or meritorious. The acquiring authority or owner shall make a thorough search of the public records and any other relevant source of knowledge for such claims. Copies of all documents indicating the existence or extent of such a claim shall be attached;

8. any other contract executed or proposed by the acquiring authority or the owner in relation to the agreement sought from the executive director. A copy or draft of any such contract shall be attached;

9. documentation of the certification of the acquiring authority as a certified land conservation organization shall be attached, with respect to an entity asserting that it is an acquiring authority by virtue of such certification;

10. contact information for the person seeking the agreement, and designation of a single point of contact regarding the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1584 (November 2019).

**§211. Publication, Approval, Execution, and Recordation of Agreement**

A. Publication. When the executive director proposes to execute any agreement under this chapter, the executive director shall publish the proposed agreement as provided in the Administrative Procedures Act, R.S. 49:953. The agreement shall be published in the *Louisiana Register* at least once, the first publication of which shall be at least 100 days before the legislative bodies may act on it.

B. Review by Legislative Committees. At least 100 days after the first publication of the proposed agreement, the executive director shall submit it for review and approval to the House and the Senate Committees on Natural Resources.

C. Execution or Renegotiation by the Executive Director. Upon approval by the House and Senate Committees on Natural Resources, the executive director may execute the agreement.

1. If the House or Senate Committee on Natural Resources disapproves the agreement or request amendments, the executive director may renegotiate the agreement so as to meet the objections or amendments identified by such committee. The executive director may elect to discontinue negotiations and decline to enter into the agreement.

2. Upon successful renegotiation, the executive director shall republish and resubmit the renegotiated Agreement to the House and Senate Natural Resources Committees as set forth above.

D. Execution by the Commissioner. The commissioner of the Division of Administration shall also be a party to any agreement under this Chapter.

E. Recordation. Upon execution of an agreement by all parties thereto, the executive director shall provide a fully-executed copy of the agreement to each person that is a party thereto and the commissioner of the Division of Administration.

1. The owner or acquiring authority shall record the agreement in the conveyance records of all parishes in which property affected by the agreement is located.

2. Recording of an agreement in the conveyance records of all parishes in which the property affected by the agreement is located shall constitute public notice thereof for all purposes.

3. The owner or acquiring authority recording the agreement shall immediately provide certified copies thereof to the executive director and the administrator of the Office of State Lands.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1587 (November 2019).

**§213. Judicial Review**

A. Any person aggrieved either by a substantive agency decision made pursuant to the provisions of this Chapter, including interlocutory decisions relating to boundaries and determinations of areas reclaimed, or by a failure of the agency to render such decisions timely, may seek immediate judicial review of the agency action. Proceedings for review of decisions by the CPRA may be instituted by filing a petition in the Nineteenth Judicial District Court within 30 days after mailing of notice of the final decision by the executive director. Any party may be granted a trial de novo if requested in the petition instituting the judicial review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 45:1587 (November 2019).