



*EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY*

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

REGULAR MEETING

Wednesday, January 11, 2012
9:30 A.M.

City of Brentwood, Brentwood City Hall
Terrace View Conference Room 2nd Floor
150 City Park Way Brentwood, CA 94513

AGENDA

- 1) Introductions.**
- 2) Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 3) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meetings of September 29, 2011 and October 19, 2011.**
- 4) Consider the following Governing Board administrative matters:**
 - a) ACKNOWLEDGE and welcome new Conservancy Chair and Vice Chair for 2012.
 - b) DETERMINE Governing Board meeting time and locations in 2012.
 - c) DETERMINE procedure for accommodating requests by cities participating in the Conservancy and/or the County to pre-designate a replacement for the designated Board Member and Alternate.
- 5) Consider DETERMINING representation on Public Advisory Committee (PAC) for 2012 and process for filling vacancy.**
- 6) Consider AUTHORIZING staff to execute a Second Amendment to the Participating Special Entity Agreement with Equilon Enterprises dba Shell Oil Products for the Coalinga-Avon Pipeline Repair Project.**
- 7) Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with the San Francisco Bay Area Rapid Transit District for the eBART Phase II Project.**
- 8) Consider APPROVING the 2012 Conservancy Work Plan.**

9) Consider the following actions related to legislative matters:

- a) ADOPT the 2012 Legislative Platform;
- b) ADOPT Resolution 2012-01 to support working together with agencies from across California to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$47 million to \$80 million in the Fiscal Year 2013 Interior and Related Agencies Appropriations bill;
- c) AUTHORIZE the Chair or staff, as appropriate, to communicate items on the Platform to relevant members and staff of the U.S Congress and the California Legislature, relevant federal and state agencies, potential advocacy partners and others;
- d) AUTHORIZE payment of \$5,000 as membership dues for the California Habitat Conservation Planning Coalition in 2012.

10) Consider the following actions related to Conservancy finances:

- a) APPROVE the 2012 Conservancy Budget.
- b) AUTHORIZE staff to execute annual contracts for on-going consulting services with:
 - ICF Jones and Stokes: not to exceed \$280,000 for the term from January 1, 2012 through December 31, 2012;
 - H.T. Harvey and Associates: not to exceed \$65,000 for the term from January 1, 2012 through December 31, 2012;
 - Nomad Ecology: not to exceed \$63,000 for the term from January 1, 2012 through December 31, 2012;
 - Restoration Resources: not to exceed \$50,000 for the term from January 1, 2012 through December 31, 2012;
 - Monk and Associates: not to exceed \$50,000 for the term January 1, 2012 through December 31, 2012.
- c) AUTHORIZE staff to execute a contract for legal services with Resources Law Group not to exceed \$90,000 for a term from January 1, 2012 through December 31, 2012.

11) Consider ACCEPTING an update on the Upper Hess Creek Watershed Habitat Restoration Project.

12) Adjourn (next regular meeting and location TBA).

If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Department of Conservation and Development at 925-335-1227.

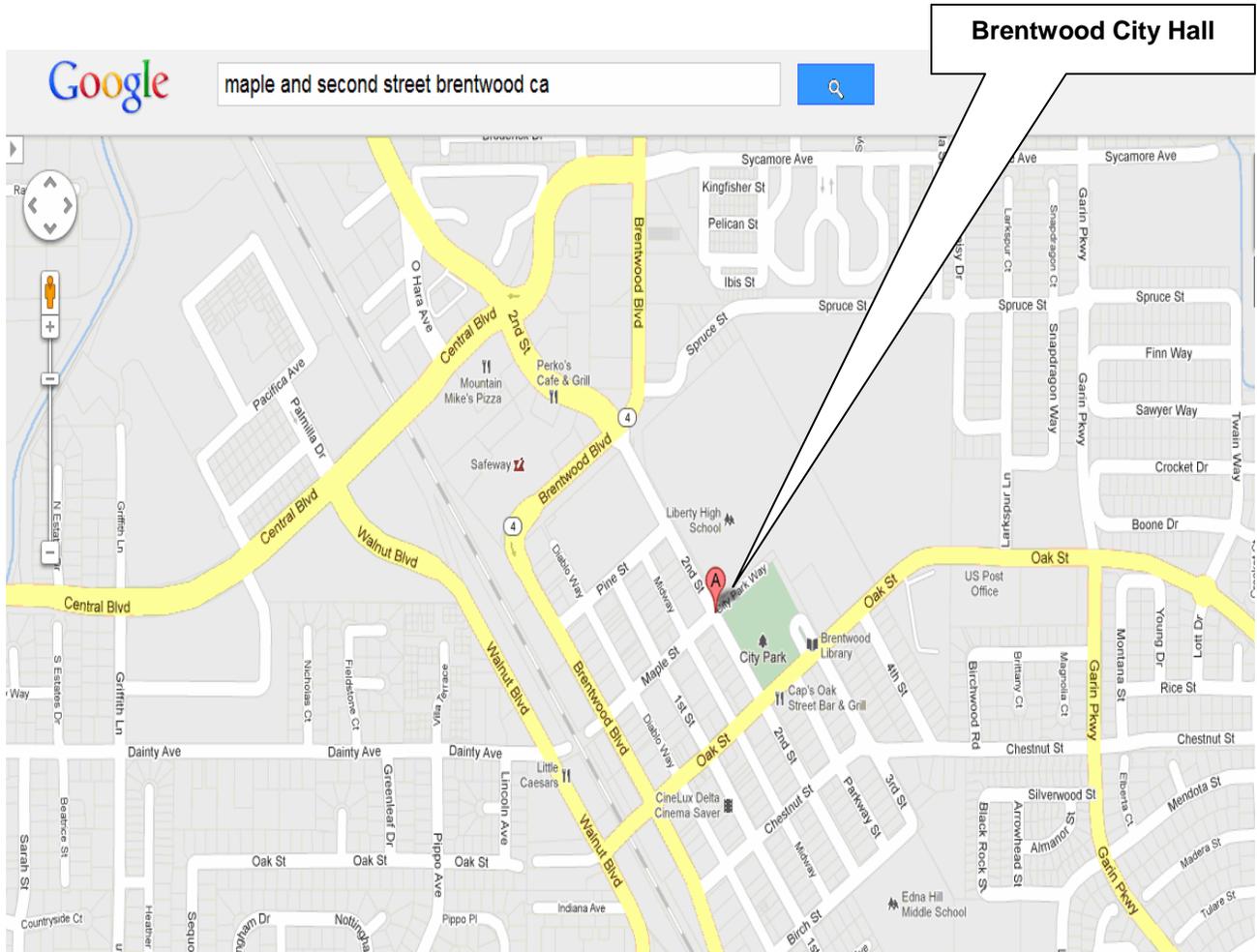
The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 24 hours before the meeting.

City of Brentwood, Brentwood City Hall
Terrace View Conference Room 2nd Floor
150 City Park Way, Brentwood Ca 94513

Note – Most internet mapping websites will not give you the correct location for this address.

Brentwood City Hall is the new white three story building located on the corner of 2nd and Maple Street. Guest parking is on the 1st floor of the parking garage. If you have a parking pass you can park on any floor.

From Martinez/Clayton/Pittsburg: Take I-680 S towards SAN JOSE. Take **CA-4 E** toward **E Pittsburg/E Antioch**. Follow signs for **Antioch Pittsburg/CA-4** and merge onto **CA-4 E**. Continue onto **CA-4 Bypass E**. Turn left onto **Sand Creek Rd**. Turn right onto **O Hara Ave**. Continue onto **2nd St**. Arrive at 2nd St & Maple St. City Hall is at 150 City Park Way.



**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Governing Board Meeting Record for September 29 and October 19, 2011**

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meetings of September 29 and October 19, 2011.

DISCUSSION

Please find the draft meeting records attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED _____
OTHER _____

VOTE OF BOARD MEMBERS

 UNANIMOUS

AYES:
NOES:
ABSENT:
ABSTAIN:

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Governing Board Meeting
September 29, 2011
City of Clayton

1) Introductions.

Governing Board members in attendance were:

Joel Bryant	City of Brentwood
Sal Evola	City of Pittsburg
Randy Pope	City of Oakley
Hank Stratford	City of Clayton

Other Attendees:

Joe Ciolek	Agriculture-Natural Resources Trust of Contra Costa
Jim Gwerder	Souza Realty and Development
Greg Lamberg	Radback Energy, Oakley Generating Station
Mike Vukelich	Contra Costa Farm Bureau

Conservancy Staff members in attendance were:

John Kopchik	Conservancy Staff
Abby Fateman	Conservancy Staff
Krystal Hinojosa	Conservancy Staff

2) Public Comment. None

3) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Special Meeting of July 22, 2011. Stratford corrected the meeting record indicating that he is no longer the Mayor of Clayton. The meeting record was approved. (3-0, Bryant, Pope, Stratford; Evola abstaining)

4) Consider AUTHORIZING staff to execute an Amendment to the Participating Special Entity Agreement with Contra Costa Generating Station, LLC for the Oakley Generating Station Project. Ms. Hinojosa provided an overview of the requested amendment. Governing Board members requested staff to explore whether the Conservancy could and should pursue a supportive role for the project in on-going legal proceedings. The item was approved (4-0 Bryant, Evola, Pope, Stratford).

5) Consider AUTHORIZING staff to execute an Amendment to the Participating Special Entity Agreement with Equilon Enterprises dba Shell Oil Products for the Coalinga-Avon Pipeline Repair Project. Ms. Hinojosa provided an overview of the Participating Special Entity Agreement. The item was approved (4-0 Bryant, Evola, Pope, Stratford).

6) Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with ConocoPhillips Pipeline Company for the ConocoPhillips Line 200 Pipeline Repair Project. Ms. Hinojosa provided an overview of the Participating Special Entity Agreement. The item was approved (4-0 Bryant, Evola, Pope, Stratford).

7) Consider AUTHORIZING staff to execute contract with East Bay Regional Park District to use grant funds awarded to Conservancy by the Moore Foundation to track golden eagles, analyze this and other location data on eagles and other birds, and develop collision hazard maps that may reduce impacts of wind energy projects on these species. Mr. Kopchik provided an overview of the contract and Golden eagle study. Board members requested a presentation or report back on the study's progress and results. The item was approved (4-0 Bryant, Evola, Pope, Stratford).

8) Consider ACCEPTING an update on the Upper Hess Creek Watershed Habitat Restoration Project. Ms. Fateman provided an update on the construction progress on the Upper Hess project. The item was approved (4-0 Bryant, Evola, Pope, Stratford).

Adjourn to Closed Session

9) Closed Session: Conference With Real Property Negotiators

Properties: APN 005-130-005 (Vasco Road area); APN 007-020-033 (Deer Valley Road area); APN 080-070-011 (Morgan Territory Road); APN 080-100-007 (Morgan Territory Road); APNs 075-080-028, 075-080-027, 075-080-026, 075-080-025, 075-080-024, 075-080-019 (Kirker Pass Road area)

Agency Negotiators: John Kopchik and Abigail Fateman

Negotiating Parties: Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

Reconvene Open Session

10) Report on any actions taken in Closed Session. No action to report.

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Governing Board Meeting
October 19, 2011
City of Pittsburg

1) Introductions.

Governing Board members in attendance were:

Joel Bryant	City of Brentwood
Pete Longmire	City of Pittsburg
Randy Pope	City of Oakley
Hank Stratford	City of Clayton

Other Attendees:

Randi Adair	California Department of Fish and Game
Seth Adams	Save Mount Diablo
Liam Davis	California Department of Fish and Game
Jim Gwerder	Souza Realty and Development
Stephanie Jentsch	United States Fish and Wildlife Service
Liz Musbach	East Bay Regional Park District
Nancy Wenninger	East Bay Regional Park District

Conservancy Staff members in attendance were:

John Kopchik	Conservancy Staff
Abby Fateman	Conservancy Staff

2) Public Comment. None

3) Consider AUTHORIZING staff to execute Funding Agreements with the East Bay Regional Park District (“EBRPD”), one or more grant and subgrant agreements with the California Wildlife Conservation Board (WCB) for state and federal funds, and a grant agreement with the Gordon and Betty Moore Foundation, for acquisition of the following five properties:

- **APN 005-130-005 referred to as Vaquero Farms Central;**
- **APNs 075-080-028, 075-080-027, 075-080-019, 075-080-026, 075-080-025, 075-080-024 referred to as Affinito.**
- **APN 080-100-007 referred to as Moss Rock;**
- **APN 080-070-011 referred to as Galvin; and**
- **APN 007-020-033 referred to as Fan.**

Mr. Kopchik summarized the staff report and provided slides with a visual overview of the subject properties. The recommended actions were approved (4-0 Bryant, Longmire, Pope, Stratford).

4) Consider APPROVING Resolutions No: 2011-04, 2011-05 and 2011-06 related to Conservancy grant applications which AUTHORIZE Conservancy staff to:

- i. Submit grant applications to the California Department of Fish and Game (CDFG) for the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (total request: \$165,000); and**
- ii. Enter into grant agreements to accept such grant funds as are approved by CDFG.**

Ms. Fateman provided an overview of the California Department of Fish and Game grant process and the required Board actions if the Conservancy were to apply for funding. The recommended actions were approved (4-0 Bryant, Longmire, Pope, Stratford)

5) Adjourn (next regular meeting on December 21, 2011 at the City of Brentwood).

The meeting adjourned.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Determine Governing Board meeting time and locations in 2012.

RECOMMENDATION

- a) **ACKNOWLEDGE and welcome new Conservancy Chair and Vice Chair for 2012.**
- b) **DETERMINE Governing Board meeting time and locations in 2012.**
- c) **DETERMINE procedure for accommodating requests by cities participating in the Conservancy and/or the County to pre-designate a replacement for the designated Board Member and Alternate.**

DISCUSSION

a) In January 2009, the Conservancy Governing Board established a protocol for rotating the Chair and Vice Chair positions. These positions rotate alphabetically by jurisdiction, starting in 2009 with County as Chair and Oakley as Vice Chair. For 2012, the Chair of the Governing Board will be the Brentwood City Council representative to the Board (Council Member Joel Bryant is Brentwood’s primary representative) and the Vice Chair will be the Clayton City Council representative to the Board (Council Member Hank Stratford is Clayton’s primary representative). In January 2013, these positions will rotate again with the City of Clayton representative as Chair and the County representative as Vice Chair.

b) The Joint Powers Agreement (JPA) forming the Conservancy requires the Governing Board to set a regular meeting schedule. The Board has previously determined that its regular meetings will be held on the third Wednesday of every third month at noon. The Governing Board also previously directed that the meeting location rotate

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS
AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
*Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

among the jurisdictions. According to these criteria, the regular Board meetings in 2012 would be:

Date:	Location:
March 21 st , 2012	City of Pittsburg
June 20 th , 2012	City of Oakley
September 19 th , 2012	City of Clayton
December 19 st , 2012	City of Brentwood

We anticipate that the schedule established previously may pose a problem for one or more 2012 Board Members. We recommend that Board Members discuss and determine regular meeting times and locations.

c) Conservancy staff has received a letter from the City of Pittsburg pre-designating a City Council Member to replace the City's designated Conservancy Board Member and Alternate Board Member in the event neither can attend a Board Meeting. The JPA requires each member agency to designate a Member and an Alternate from their respective governing body (e.g., City Council, Board of Supervisors). The JPA does not place limitations on when or how often a member agency may change its designated representatives. The letter from the City of Pittsburg may be interpreted as designating in advance a temporary change in the City's representation approved by the City Council.

Since this situation has not come up before, Conservancy staff recommends the Conservancy Governing Board acknowledge that a request to designate in advance a temporary change in a member agency's representation is consistent with the JPA. Conservancy staff also recommends the Board establish a protocol for such temporary changes. Staff recommends that agencies wishing to designate in advance a temporary change in their representation provide the Conservancy with a letter disclosing the designee and the duration of the designation as well as evidence of City Council/Board of Supervisors action approving the designation. Staff further recommends that the pre-designated alternate be required to complete and submit a Form 700 economic disclosure before representing a member agency at a Conservancy Board meeting.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2012 Public Advisory Committee.

RECOMMENDATION

DETERMINE representation on Public Advisory Committee (PAC) for 2012 and process for filling vacancy.

DISCUSSION

Pursuant to requirements in the HCP/NCCP, the Board initiated the PAC in February 2008 and established a quarterly meeting schedule. The PAC reports to the Board and provides input to the Board and staff on many aspects of Plan implementation. The PAC is responsible for reviewing and commenting on the general implementation processes of the HCP/NCCP including the expenditures of funds for conservation measures, the general process for issuing take coverage to covered activities, the operation of preserves and adaptive management and the adherence to plan commitments. The PAC is to operate by consensus, but when consensus cannot be reached, the various positions will be reported to the Board.

The Board action initiating the PAC requires the composition of the PAC to be reviewed annually. The annual review of PAC committee representation was discussed during the PAC meeting on November 10, 2011. At the time of the meeting, the PAC was officially short one member as Mary F. Dahlquist (resident of Pittsburg, serving in the “Rural and Suburban residents of the Plan Area” category) had communicated in writing to Conservancy staff her resignation from the Committee due to schedule conflicts. The PAC members agreed to recommend to the Governing Board the following proposed

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

UNANIMOUS
AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

process for filling the vacancy:

- Invite past applicants who were not originally selected to serve in to Rural and Suburban residents of the Plan Area” category to re-apply for the open position (applications were last solicited in 2008);
- Use the Conservancy’s suitable email distribution lists to outreach to the public to solicit additional applications.
- Establish a process for reviewing the applications. This process could involve initial screening and recommendation by the current PAC or the applications could be provided directly to the Governing Board, as is the Board’s preference.

With the exception of filling the vacancy, PAC members were in agreement that the current composition is satisfactory and recommended that the composition be unchanged in 2012.

Staff concurs with the above PAC recommendations. Consideration and determination by the Board is requested.

The current composition of the Public Advisory Committee includes one representative from each organization listed below, except where a specific individual is named:

Private permit seekers, (e.g., private developers or their representatives)

- Contra Costa Council
- Discovery Builders
- Home Builders Association of Northern California

Conservation advocates, (e.g., established organizations that represent members in the inventory area)

- California Native Plant Society
- Friends of Marsh Creek Watershed
- Save Mount Diablo

Private landowners and/or agriculturalists, or their representatives

- Agricultural/Natural Resources Trust of Contra Costa County
- Contra Costa County Citizens Land Alliance
- Contra Costa County Farm Bureau

People representing suburban and rural residents of the Plan area

- Dick Vrmeer (resident of Brentwood)
- Mary F. Dahlquist (Resident of Pittsburg) [RESIGNED]
- Sharon L. Osteen (Resident of Clayton)

Staff members from interested public agencies and members of the public are welcome to attend and participate in committee meetings. Despite formal membership, members of the public are welcome to participate in discussions and be part of committee recommendations.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2011
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement Amendment with Equilon Enterprises dba Shell Oil Products US

RECOMMENDATION

AUTHORIZE staff to execute an Amendment to the Participating Special Entity Agreement with Equilon Enterprises dba Shell Oil Products for the Coalinga-Avon Pipeline Repair Project.

DISCUSSION

At the June 16, 2010 meeting, the Board authorized staff to execute a Participating Special Entity (“PSE”) Agreement for take coverage of temporary impacts associated with the Coalinga-Avon Pipeline Repair Project. On June 30, 2010 the PSE Agreement was executed. In September 2011, the applicant informed the Conservancy that additional emergency repairs to the pipeline need to be completed, thereby increasing the number of repair sites to be covered by the take permit from 3 to 4 sites. The additional repair site was an extension of repair work at one of the previously covered repair sites. At the September 29, 2011 meeting, the Board authorized staff to execute an Amendment to the Participating Special Entity Agreement, in order to modify the project description to include the additional repair site. On October 14, 2011, the Conservancy and Shell executed a First Amendment to the Participating Special Entity Agreement.

In December 2011, the applicant informed the Conservancy that routine tests have confirmed a damaged area along the Coalinga-Avon pipeline (at station 7675) which needs to be repaired. The new repair site is in the vicinity of the 4 previously covered repair sites, and is located downstream of the outlet to the Los Vaqueros Reservoir. The repair site is located within an existing unpaved service road and extends approximately 100x20 feet which includes the repair site and the staging area, with a total temporary impact area of approximately 0.05 acres. The applicant is requesting an amendment to the Participating Special Entity Agreement for coverage of the new repair site, known as Dig Site 4 at Station 7675 along the Coalinga-Avon Pipeline.

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
 OTHER _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
*Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY
 HABITAT CONSERVANCY*

BY: _____, DEPUTY

The modifications in the project description require a Second Amendment to the terms of the Participating Special Entity Agreement between the Conservancy and Equilon Enterprises dba Shell Oil Products. The Second Amendment reflects the change in the project description, an increase in the development fees (from \$6767.54 to \$7833.76), an increase in the contribution to recovery (from \$6767.54 to \$7833.76), and an increase in the cap on administrative fees (from \$8,500 to \$12,000). A new Planning Survey Report Application was completed for Dig Site 4 and is attached. The Planning Survey Report for Dig Site 4 is Exhibit 3 and will be added to and incorporated within the PSE Agreement.

Attachments:

- **PSE Agreement Second Amendment, including:**
 - Main body of amendment
 - Exhibit 3 to the Second Amendment: Planning Survey Report
 - Main body of planning survey report
 - Project Vicinity Maps, Impact and Land Cover Maps, Species Habitat Maps
 - Fee Calculator (Exhibit 1 to the PSR)

SECOND AMENDMENT

TO THE PARTICIPATING SPECIAL ENTITY AGREEMENT OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN/ NATURAL COMMUNITY CONSERVATION PLAN AND GRANTING TAKE AUTHORIZATION

Between

the EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, the Implementing Entity, and EQUILON ENTERPRISES dba SHELL OIL PRODUCTS US, a Participating Species Entity

RECITALS

The Participating Special Entity Agreement between the East Contra Costa County Habitat Conservancy (“Conservancy”) and Equilon Enterprises dba Shell Oil Products US (“Participating Special Entity” or “PSE”) was entered into June 30, 2010 and amended on October 14, 2011 by the First Amendment to the Participating Special Entity Agreement. The Participating Special Entity Agreement, as amended by the First Amendment, is referred to herein as the “PSE Agreement”.

The PSE Agreement provides, in Section 10.4, that it may be amended with the written consent of both parties.

The Conservancy and PSE wish to amend the terms of the PSE Agreement by way of this Second Amendment (the “Second Amendment”).

AMENDMENT

A. The Conservancy and the PSE agree to amend the PSE Agreement as follows:

1. The attached Exhibit 3 is added to and incorporated within Exhibit 1 and 2.
2. Section 2.7 of the Agreement is amended as follows:

PSE is responsible for the Coalinga-Avon Pipeline Repair Project and seeks extension of the Conservancy’s permit coverage for targeted repairs ~~to (4)~~ to 5 sites along the

Coalinga-Avon Pipeline at the Los Vaqueros Reservoir as further described in Exhibit 1, ~~and Exhibit 2, and 3.~~

3. Section 2.8 of the PSE Agreement is amended as follows:

The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1, ~~and Exhibit 2, and 3~~ and is hereby incorporated into this Agreement by reference.

4. Section 3.2 of the PSE Agreement is amended as follows:

“**Application**” means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, and which is attached hereto as Exhibit 1, ~~and Exhibit 2, and 3.~~ The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.

5. Section 3.24 of the PSE Agreement is amended as follows:

“**Proposed Activities**” means the activities described in Exhibit 1, ~~and Exhibit 2, and 3~~ that will be covered by the extension of the Conservancy’s take authorization.

6. Section 5.4 of the PSE Agreement is amended as follows:

As set forth in the Application, PSE agrees to pay the Conservancy ~~\$13,535.08~~ \$15,667.52 which amount includes all HCP/NCCP mitigation fees necessary for the Proposed Activities as well as a contribution to recovery of endangered species. The overall payment amount is based on a summation of individual HCP/NCCP mitigation fees and a contribution to recovery as follows:

Development fees: ~~\$6767.54~~ \$7833.76

Contribution to recovery of endangered species: ~~\$6767.54~~ \$7833.76

All fees and the contribution to recovery must be paid in full before any ground-disturbance associated with the Proposed Activities occurs. If any fee or the contribution toward recovery is not paid in full during the current calendar year (2010), the amount of all fees and the contribution to recovery will be increased or decreased each following year, beginning in 2011, until such time as all fees and the contribution to recovery are paid in full. All fees and the contribution to recovery will be increased or decreased according to the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. The contribution to recovery will be adjusted according to the formula set forth in Chapter 9.3.1 for the wetland mitigation fee. Fee and contribution to recovery amounts will be adjusted annually on March 15, beginning in 2011. If PSE pays all fees and the

contribution to recovery during the period from January 1 to March 14, all fee and contribution to recovery amounts will be subject to the March 15 fee adjustments unless construction of the Proposed Activities has commenced by March 14. If payment is made during this period and construction does not commence before March 15, PSE will be required to submit an additional payment for any increases to fees or the contribution to recovery and will be entitled to a refund without interest for any decreases to fees or the contribution to recovery.

7. Section 7.6 of the PSE Agreement is amended as follows:

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy's "Administrative Costs"). Conservancy's Administrative Costs shall not exceed ~~\$8,500~~ \$12,000. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy's discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

- B. This Second Amendment may be executed in counterparts.
- C. All other terms and conditions of the PSE Agreement shall remain unchanged.
- D. The Conservancy shall issue a Certificate of Inclusion pursuant to Section 6.1 of the PSE Agreement that is revised to incorporate reference to this Second Amendment.
- E. This Second Amendment shall take effect on the date after both of the following have occurred:
 - 1. The Conservancy and PSE have executed the Second Amendment; and
 - 2. The Conservancy has delivered written notice to PSE that the Conservancy has received written concurrence from the Wildlife Agencies regarding the Second Amendment in accordance with Section 6.1 of the PSE Agreement.

IN WITNESS WHEREOF, the Conservancy and PSE hereto execute this Second Amendment.

**THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

Dated: _____

By: _____
John Kopchik, Executive Director

**EQUILON ENTERPRISES dba SHELL OIL
PRODUCTS US**

Dated: _____

By: _____
M.L. Elmore, Attorney-in-Fact



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

City of Brentwood
City of Clayton
City of Oakley
City of Pittsburg
Contra Costa County
ECCC Habitat Conservancy

Template prepared by the
ECCC Habitat Conservancy

651 Pine Street, North Wing, 4th Floor
Martinez, CA 94533-0095
Phone: 925/335-1290
Fax: 925/335-1299
www.cocohcp.org

City/County of Contra Costa
Application Form and Planning Survey Report
to Comply with and Receive Permit Coverage under
the East Contra Costa County
Habitat Conservation Plan and Natural Community
Conservation Plan

Project Applicant Information:

Project Name: Coalinga-Avon Pipeline Repair Extension – Second Amendment
Project Applicant's Company/Organization: Equilon Enterprises dba Shell Oil Products USA
Contact's Name: Michael Elmore, 20945 S. Wilmington Avenue, Carson, CA 90810
Contact's Phone: 310.816.2208 Fax: [enter fax number]
Contact's Email: Michael.Elmore@shell.com
Mailing Address: as above

Project Description:

Lead Planner: Krystal Hinojosa - Conservancy
Project Location: at Los Vaqueros Reservoir
Project APN(s) #: 005-100-002
Number of Parcels/Units: Located on a site owned and operated by Contra Costa Water District.
Size of Parcel(s): N/A
Project Description/Purpose (Brief): Repairs to an existing Shell Oil Products pipeline known as the Coalinga-Avon Pipeline, at Station 7675.

Biologist Information:

Biological/Environmental Firm: Harmsworth Associates
Lead Contact: Paul Galvin
Contact's Phone: 714-389-9527 Fax: 714-389-9534
Contact's Email: pgalvin9@cox.net
Mailing Address: 29 Vacaville
Irvine
CA 92602

East Contra Costa County HCP/NCCP Planning Survey Report for Coalinga-Avon Pipeline Repair Extension Second Amendment Application Participating Special Entity

I. Project Overview

Project proponent: Mike Elmore

Project Name: Coalinga-Avon Pipeline Repair Extension-Second Amendment

Application Submittal Date: December 8, 2011 with updates on January 6th, 2012

Date Project Taken to the Governing Board January 11, 2012

Jurisdiction: Contra Costa County Participating Special Entity
 City of Oakley
 City of Pittsburg
 City of Clayton
 City of Brentwood

Check appropriate Development Fee Zone(s): Zone I
 Zone II
 Zone III

See Figure 9-1 of the Final HCP/NCCP for a generalized development fee zone map. Detailed development fee zone maps by jurisdiction are available from the jurisdiction or at www.cocohcp.org.

Total Parcel Acreage: N/A

Acreage of land to be permanently disturbed²: ,All project impacts are temporary.

¹ *Participating Special Entities* are organizations not subject to the authority of a local jurisdiction. Such organizations may include school districts, water districts, irrigation districts, transportation agencies, local park districts, geologic hazard abatement districts, or other utilities or special districts that own land or provide public services.

² *Acreage of land permanently disturbed* is broadly defined in the HCP/NCCP to include all areas removed from an undeveloped or habitat-providing state and includes land in the same parcel or project that is not developed, graded, physically altered, or directly affected in any way but is isolated from natural areas by the covered activity. Unless such undeveloped land is dedicated to the Preserve System or is a deed-restricted creek setback, the development fee will apply. The development fees were calculated with the assumption that all undeveloped areas within a parcel (e.g., fragments of undisturbed open space within a residential development) would be charged a fee; the fee per acre would have been higher had this assumption not been made. See Chapter 9 of the HCP/NCCP for details.

Acreage of land to be temporarily disturbed³: 0.05 (Although impacts are temporary the applicant will be paying the permanent impact fee, See Section V)

Project Description

Concisely and completely describe the project and location. Reference and attach a project vicinity map (Figure 1) and the project site plans (Figure 2) for the proposed project. Include all activities proposed for site, including those disturbing ground (roads, bridges, outfalls, runoff treatment facilities, parks, trails, etc.) to ensure the entire project is covered by the HCP/NCCP permit. Also include proposed construction dates. Reference a City/County application number for the project where additional project details can be found.

City/County Application Number:

N/A

Anticipated Construction Date:

February 2011

Project Description:

On June 30th 2010 Shell Oil Products US (“Shell”), who owns and operates the existing Coalinga-Avon Pipeline, entered into a Participating Special Entity Agreement implementing the HCP/NCCP and Granting Take Authorization to Shell for repairs to three (3) damaged areas of the Coalinga-Avon Pipeline. On October 14, 2011 the Conservancy executed a First Amendment to the Participating Special Entity Application extending take coverage for one additional repair site. The history of project sites is outlined below.

The Coalinga-Avon Pipeline Repair Project has consisted of the following repair sites:

- Dig Site 1: located in the valley floor northeast of the reservoir outlet.
- Dig Site 2: located on a hillside northwest of the reservoir outlet.
- Dig Site 3: located further up the hillside on the northwest of the reservoir outlet.

The First Amendment:

- Dig Site 1a: is located immediately northwest of Dig Site 1, adjacent to an existing unpaved service road.

In December 2011, the applicant informed the Conservancy that routine tests have confirmed a damaged area along the Coalinga-Avon pipeline (at station 7675) which needs to be repaired. The new repair site is in the vicinity of the 4 previously covered repair sites, and is located downstream of the outlet to the Los Vaqueros Reservoir in Contra Costa County within the Byron Hot Springs USGS 7.5 minute quadrangle (Exhibit 1). The Coalinga-Avon pipeline runs in an east/west direction north of and

³ *Acreage of land temporarily disturbed* is broadly defined in the HCP/NCCP as any impact on vegetation or habitat that does not result in permanent habitat removal (i.e. vegetation can eventually recover).

downstream of the outlet to the Los Vaqueros Reservoir. The new repair work would occur at Station 7675, which is located on a hillside southeast of the reservoir outlet.

The new repair work (herein after referred to as Dig Site 4) (Figures 1 and 2a-2b). The dig site would be approximately 8x12 ft with a total impact area of approximately 100x20 feet (0.05 acre) to allow for work space. Site access would be via an existing dirt road. The work area is on the road with the use of minimal equipment to complete the repair, consisting of a backhoe and a pick-up truck. All work and all impacts would be temporary; once the pipeline repairs are complete the area would be re-contoured and restored to its original conditions.

The applicant is requesting a second amendment to the Participating Special Entity Agreement in order to cover the work to be conducted at Dig Site 4, pipeline Station 7675. This Planning Survey Report Application reflects only the required repairs at Dig Site 4, pipeline Station 7675.

Figure 1: Project vicinity map.



Figure 2a: Project vicinity map.



Figure 2b. Project Area Map



 Dig 4

 Approximate Equipment Staging Area

II. Existing Conditions and Impacts

Land Cover Types

In completing the checklist in Table 1, click in the appropriate fields and type the relevant information. Please calculate acres of terrestrial land cover types to nearest tenth of an acre. Calculate the areas of all jurisdictional wetlands and waters land cover types to the nearest hundredth of an acre. If the field is not applicable, please enter N/A. The sum of the acreages in the *Acreage of land to be “permanently disturbed”* and *“temporarily disturbed”* by project column should equal the total impact acreage listed above.

Land cover types and habitat elements identified with an ^(a) in Table 1 require identification and mapping of habitat elements for selected covered wildlife species. In Table 2a and 2b below, check the land cover types and habitat elements found in the project area and

describe the results. Insert a map of all land cover types present on-site and other relevant features overlaid on an aerial photo below as Figure 3.

Table 1. Land Cover Types on the Project Site as Determined in the Field and Shown in Figure 3.

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Grassland^a				
<input checked="" type="checkbox"/> Annual grassland		0.05		
<input type="checkbox"/> Alkali grassland				
<input type="checkbox"/> Ruderal				
<input type="checkbox"/> Chaparral and scrub				
<input type="checkbox"/> Oak savanna^a				
<input type="checkbox"/> Oak woodland				
Jurisdictional wetlands and waters				
<input type="checkbox"/> Riparian woodland/scrub				
<input type="checkbox"/> Permanent wetland ^a				
<input type="checkbox"/> Seasonal wetland ^a				
<input type="checkbox"/> Alkali wetland ^a				
<input type="checkbox"/> Aquatic (Reservoir/Open Water) ^a				
<input type="checkbox"/> Slough/Channel ^a				
<input type="checkbox"/> Pond ^a				
<input type="checkbox"/> Stream (acres) ^{a, d}				
<input type="checkbox"/> Total stream length (feet) ^{a, d}				
Stream length by width category				
<input type="checkbox"/> ≤ 25 feet wide				
<input type="checkbox"/> > 25 feet wide				
Stream length by type and order ^e				
<input type="checkbox"/> Perennial				
<input type="checkbox"/> Intermittent				
<input type="checkbox"/> Ephemeral, 3 rd or higher order				
<input type="checkbox"/> Ephemeral, 1 st or 2 nd order				
Irrigated agriculture^a				
<input type="checkbox"/> Cropland				
<input type="checkbox"/> Pasture				

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Orchard				
<input type="checkbox"/> Vineyard				
Other				
<input type="checkbox"/> Nonnative woodland				
<input type="checkbox"/> Wind turbines				
Developed				
<input type="checkbox"/> Urban				
<input type="checkbox"/> Aqueduct				
<input type="checkbox"/> Turf				
<input type="checkbox"/> Landfill				
Uncommon Vegetation Types (subtypes of above land cover types)				
<input type="checkbox"/> Purple needlegrass grassland				
<input type="checkbox"/> Wildrye grassland				
<input type="checkbox"/> Wildflower fields				
<input type="checkbox"/> Squirreltail grassland				
<input type="checkbox"/> One-sided bluegrass grassland				
<input type="checkbox"/> Serpentine grassland				
<input type="checkbox"/> Saltgrass grassland (= alkali grassland)				
<input type="checkbox"/> Alkali sacaton bunchgrass grassland				
<input type="checkbox"/> Other uncommon vegetation types (please describe)				
Uncommon Landscape Features or Habitat Elements				
<input type="checkbox"/> Rock outcrop				
<input type="checkbox"/> Cave ^a				
<input type="checkbox"/> Springs/seeps				
<input type="checkbox"/> Scalds				
<input type="checkbox"/> Sand deposits				
<input type="checkbox"/> Mines ^a	—	—		—
<input type="checkbox"/> Buildings (bat roosts) ^a	—	—		—
<input type="checkbox"/> Potential nest sites (trees or cliffs) ^a	—	—		—
Total (Impacted Acres)		0.05		

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^a	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication

^a Designates habitat elements that may trigger specific survey requirements and/or best management practices for key covered wildlife species. See Chapter 6 in the HCP/NCCP for details.

^b See Section 9.3.1 of the HCP/NCCP for a definition of "permanently disturbed" and "temporarily disturbed." In nearly all cases, all land in the subject parcel is considered permanently disturbed.

^c Dedication of land in lieu of fees must be approved by the local agency and the Implementing Entity before they can be credited toward HCP/NCCP fees. See Section 8.6.7 on page 8-32 of the Plan for details on this provision. Stream setback requirements are described in Conservation Measure 1.7 in Section 6.4.1 and in Table 6-2.

^d Specific requirements on streams are discussed in detail in the HCP/NCCP. Stream setback requirements pertaining to stream type and order can be found in Table 6-2. Impact fees and boundary determination methods pertaining to stream width can be found in Table 9-5. Restoration/creation requirements in lieu of fees depend on stream type and can be found in Tables 5-16 and 5-17.

^e See glossary (Appendix A) for definition of stream type and order.

Field-Verified Land Cover Map

Insert field-verified land cover map. The map should contain all land cover types present on-site. The map should be representative of an aerial photo. Identify all pages of the field-verified land cover map as **(Figure 3)**. **Please attach representative photos of the project site.**



Figure 3: Land Cover Map



Photograph 1: Dig Site 7675 on an existing dirt road, looking east.



Photograph 2: Dig Site 7675 on an existing dirt road, looking west.

Jurisdictional Wetlands and Waters

Jurisdictional wetlands and waters are defined on pages 1-18 and 1-19 of the Final HCP/NCCP as the following land cover types: permanent wetland, seasonal wetland, alkali wetland, aquatic, pond, slough/channel, and stream. (It should be noted that definitions of these features differ for state and federal jurisdictions.) If you have identified any of these land cover types to be present on the project site in Table 1, complete the section below.

Indicate agency that certified the wetland delineation:

USACE, RWQCB, or the ECCC Habitat Conservancy.

Wetland delineation is attached (Jurisdictional Determination)

Provide any additional information on Impacts to Jurisdictional Wetland and Waters below.

No wetlands or jurisdictional waters occur at or adjacent the site.

Species-Specific Planning Survey Requirements

Based on the land cover types found on-site and identified in Table 1, check the applicable boxes in Table 2a then provide the results of the planning surveys below. In Table 3 check corresponding preconstruction survey or notification requirements that are triggered by the presence of particular landcover types or species habitat elements as identified in Table 2a. The species-specific planning survey requirements are described in more detail in Section 6.4.3 of the HCP/NCCP.

Table 2a. Species-Specific Planning Survey Requirements Triggered by Land Cover Types and Habitat Elements in the project area based on Chapter 6 of the Final HCP/NCCP.

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
<input checked="" type="checkbox"/> Grasslands, oak savanna, agriculture, ruderal	San Joaquin kit fox	Assumed if within modeled range of species	Identify and map potential breeding and denning habitat and potential dens if within modeled range of species (see Appendix D of HCP/NCCP).
	Western burrowing owl	Assumed	Identify and map potential breeding habitat.
<input type="checkbox"/> Aquatic (ponds, wetlands, streams, slough, channels, & marshes)	Giant garter snake	<input type="checkbox"/> Aquatic habitat accessible from San Joaquin River	Identify and map potential habitat.

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
	California tiger salamander	<input type="checkbox"/> Ponds and wetlands in grassland, oak savanna, oak woodland <input type="checkbox"/> Vernal pools <input type="checkbox"/> Reservoirs <input type="checkbox"/> Small lakes	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.
	California red-legged frog	<input type="checkbox"/> Slow-moving streams, ponds, and wetlands	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.
<input type="checkbox"/> Seasonal wetlands	Covered shrimp	<input type="checkbox"/> Vernal pools <input type="checkbox"/> Sandstone rock outcrops <input type="checkbox"/> Sandstone depressions	Identify and map potential breeding habitat.
Any	Townsend's big-eared bat	<input type="checkbox"/> Rock formations with caves <input type="checkbox"/> Mines <input type="checkbox"/> Abandoned buildings outside urban areas	Map and document potential breeding or roosting habitat.
	Swainson's hawk	<input type="checkbox"/> Potential nest sites (trees within species' range usually below 200')	Inspect large trees for presence of nest sites.
	Golden eagle	<input type="checkbox"/> Potential nest sites (secluded cliffs with overhanging ledges; large trees)	Document and map potential nests.

^a Vernal pool fairy shrimp, vernal pool tadpole shrimp, longhorn fairy shrimp, and midvalley fairy shrimp.

Results of Species-Specific Planning Surveys Required in Table 2a

- Describe the results of the planning survey conducted as required in Table 2a.**
Planning surveys will assess the location, quantity, and quality of suitable habitat for specified covered wildlife species on the project site. Covered species are assumed to occupy suitable habitat in impact areas and mitigation is based on assumption of take.

Existing conditions

The general project area includes hillsides adjacent the Los Vaqueros Reservoir. The dig site is on an existing dirt road, located on a hillside southeast of the reservoir outlet (Photographs 1 and

2). The area surrounding the dig site consists of non-native grassland dominated by oats (*Avena fatua*). Foxtail barley (*Hordeum murinum* subsp. *leporinum*), red-stemmed filaree (*Erodium cicutarium*), California burclover (*Medicago polymorpha*), doveweed (*Eremocarpus setigerus*), a lomatium (*Lomatium* sp.) and soap plant (*Chlorogalum pomeridianum*) were also present at the time of the survey. The site and adjacent areas are annual grassland under the HCP/NCCP plan.

Special status wildlife species

During the December 2011 field surveys no wildlife occurred at the dig site but common species such as red-tailed hawk (*Buteo jamaicensis*), common raven (*Corvus corax*), western scrub jay (*Aphelocoma californica*), northern starling (*Sturnus vulgaris*), northern flicker (*Colaptes auratus*), house finch (*Carpodacus mexicanus*), coyote (*Canis latrans*) and deer (*Odocoileus hemionus*) occurred in the general vicinity.

No special status wildlife species were detected during the December 2011 field surveys. However, two special status wildlife species have potential to occur onsite and one within the vicinity.

San Joaquin kit fox (*Vulpes macrotis mutica*) has the potential to occur in the project area. Kit foxes occur in grassland, oak savannah and other open areas and suitable habitat occurs within the project vicinity for kit fox. No San Joaquin kit fox, no fox tracks, no fox scat, or other fox sign and no dens or burrows were detected during the focused survey. San Joaquin kit fox, their sign and dens/burrows were absent from the project site, all access roads, temporary work areas and all areas within 250 feet surrounding these areas. In addition, there are no records for kit fox from the project site (CNDDDB 2011).

Western burrowing owl (*Athene cunicularia*) occur in shortgrass prairies, grasslands, lowland scrub, agricultural lands (particularly rangelands), prairies, coastal dunes, desert floors, and some artificial, open areas as a yearlong resident. They require large open expanses of sparsely vegetated areas on gently rolling or level terrain with an abundance of active small mammal burrows. As a critical habitat feature, they require the use of rodent or other burrows for roosting and nesting cover. They can also use pipes, culverts, and nest boxes (USFWS 2003, Haug *et al.* 1993, Zeiner *et al.* 1990).

No western burrowing owl, owl scat, other owl sign or owl burrows were detected during the focused survey. Western burrowing owl, owl scat or other owl sign and owl burrows were absent from the project site, all access roads, temporary work areas and all areas within 500 feet surrounding these areas. In addition, there are no records for burrowing owl from the project site (CNDDDB 2011).

No nesting birds were detected onsite. However Golden Eagle's are know to occur in the general area. Only foraging habitat exists in the project area. With possible nesting habitat in a northwest stand of trees located approximately 550 feet from the project site. Although no Golden Eagles were observed during field surveys, pre-construction surveys will be conducted.

Reference and attach the Planning Survey Species Habitat Maps as required in Table 2a (Figure 4).



Figure 4 : Species Habitat Map

Covered and No-Take Plants

On suitable land cover types, surveys for covered and no-take plants must be conducted using approved CDFG/USFWS methods during the appropriate season to identify any covered or no-take plant species that may occur on the site (see page 6-9 of the Final HCP/NCCP). Based on the land cover types found in the project area and identified in Table 1, check the applicable boxes in Table 2b and provide a summary of survey results as required below. If any no-take plants are found in the project area, the provisions of Conservation Measure 1.11 must be followed (see *Avoidance and Minimization Measures* below).

Table 2b. Covered and No-Take Plant Species, Typical Habitat Conditions, and Typical Blooming Periods

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
<input type="checkbox"/> Oak savanna	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
<input type="checkbox"/> Oak woodland	Brewer's dwarf flax (<i>Hesperolinon breweri</i>)	C		May–Jul
	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
	Showy madia (<i>Madia radiata</i>)	C		Mar–May
<input type="checkbox"/> Chaparral and scrub	Brewer's dwarf flax (<i>Hesperolinon breweri</i>)	C		May–Jul
	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr–Sep; uncommonly Nov–Dec.
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
	Mount Diablo Manzanita (<i>Arctostaphylos auriculata</i>)	C	Elevation between 700 and 1,860 feet; restricted to the eastern and northern flanks of Mt. Diablo ^b	Jan–Mar
<input type="checkbox"/> Alkali grassland	Brittlescale (<i>Atriplex depressa</i>)	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area ^b	May–Oct
	Caper-fruited tropidocarpum (<i>Tropidocarpum capparideum</i>)	N		Mar–Apr
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun
	Recurved larkspur (<i>Delphinium recurvatum</i>)	C		Mar–Jun

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
	San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	C		Apr-Oct
<input type="checkbox"/> Alkali wetland	Alkali milkvetch (<i>Astragalus tener</i> ssp. <i>tener</i>)	N		Mar-Jun
	Brittlescale (<i>Atriplex depressa</i>)	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area ^b	May-Oct
	San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	C		Apr-Oct
<input checked="" type="checkbox"/> Annual grassland	Alkali milkvetch (<i>Astragalus tener</i> ssp. <i>tener</i>)	N		Mar-Jun
	Big tarplant (<i>Blepharizonia plumosa</i>)	C	Elevation below 1500 feet ^b	Jul-Oct
	Brewer's dwarf flax (<i>Hesperolinon breweri</i>)	C	Restricted to grassland areas within a 500+ buffer from oak woodland and chaparral/scrub ^b	May-Jul
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar-Jun
	Diamond-petaled poppy (<i>Eschscholzia rhombipetala</i>)	N		Mar-Apr
	Large-flowered fiddleneck (<i>Amsinckia grandiflora</i>)	N		Apr-May
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr-Sep; uncommonly Nov-Dec
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 ^b	Apr-Jun
	Round-leaved filaree (<i>California macrophylla</i>) ¹	C		Mar-May
	Showy madia (<i>Madia radiata</i>)	C		Mar-May

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
<input type="checkbox"/> Seasonal wetland	Adobe navarretia (<i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i>)	C	Generally found in vernal pools ^b	Apr–Jun
	Alkali milkvetch (<i>Astragalus tener</i> sp. <i>tener</i>)	N		Mar–Jun
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun

^a From California Native Plant Society. 2007. *Inventory of Rare and Endangered Plants* (online edition, v7-07d). Sacramento, CA. Species may be identifiable outside of the typical blooming period; a professional botanist shall determine if a covered or no take plant occurs on the project site.

^b See Species Profiles in Appendix D of the Final HCP/NCCP.

Results of Covered and No-Take Plant Species Planning Surveys Required in Table 2b

Describe the results of the planning survey conducted as required in Table 2b. Describe the methods used to survey the site for all covered and no-take plants, including the dates and times of all survey's conducted (see Tables 3-8 and 6-5 of the HCP/NCCP for covered and no-take plants). In order to complete all the necessary covered and no-take plant surveys, both spring and fall surveys are required, check species survey requirements below.

If any covered or no-take plants were found, include the following information in the results summary:

- Description and number of occurrences and their rough population size.
- Description of the “health” of each occurrence, as defined on pages 5-49 and 5-50 of the HCP/NCCP.
- A map of all the occurrences.
- Justification of surveying time window, if outside of the plant’s blooming period.
- The CNDDDB form(s) submitted to CDFG (if this is a new occurrence).
- A description of the anticipated impacts that the covered activity will have on the occurrence and/or how the project will avoid impacts to all covered and no-take plant species. All projects must demonstrate avoidance of all six no-take plants (see table 6-5 of the HCP/NCCP).

Special status plant species and Covered/No-Take Plants

No special status plant species were detected during the field surveys conducted in December 2011 and there are no records of any special status plant species in or immediately adjacent the project site (CNDDDB 2011). However, the rare plant survey was conducted outside of the blooming season for several special status plant species or Covered/No-Take Plants under the HCP/NCCP plan including Alkali milkvetch (*Astragalus tener* ssp. *tener*), big tarplant (*Blepharizonia plumose*), Brewer's dwarf flax (*Hesperolinon breweri*), Contra Costa goldfields (*Lasthenia conjugens*), diamond-petaled poppy (*Eschscholzia rhombipetala*), large-flowered fiddleneck (*Amsinckia grandiflora*), Mount Diablo buckwheat (*Eriogonum truncatum*), Mount Diablo fairy-lantern (*Eriogonum truncatum*), round-leaved filaree (*California macrophylla*) and showy madia (*Madia radiata*). Although these species have a low probability of occurring within the footprint of the repair site rare plant surveys need to be conducted.

As Shell is on an urgent timeline to complete the federally mandated repair, they are proposing to conduct rare plant surveys at the repair site, during March and May of 2012, during or after the required repair is completed. Special-status plant surveys shall follow all HCP/NCCP guidelines and shall be conducted when the special-status plants under consideration are known to be flowering and readily identifiable. Rare plant surveys shall be conducted within the project footprint and access area of the repair site, and within a 200 foot buffer around the repair site. Although rare plant surveys would be conducted after the project is completed, Conservancy staff believes that, in the unlikely event that a rare plant does occur within the project footprint, it would likely be part of a larger population that extends beyond the project footprint. This larger population would be detectable during the spring 2012 surveys. Conducting these rare plant surveys will provide an accurate assessment of impacts to special-status plant species.

To further minimize impacts to rare plants, Shell will salvage and stockpile the topsoil of the pipeline repair area, estimated to be approximately 8 feet by 12 feet. The topsoil would be replaced over the work area after ground-disturbing activities are completed. Please refer to the avoidance measures below for additional details on soil stockpiling.

A rare plant survey report shall be submitted to the East Contra Costa County Conservancy by July 30, 2012. If special-status plant species are identified on or within 200 feet of the repair site or access areas, the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 "Plant Salvage when Impacts are Unavoidable," Section 6.31. "Covered and No-Take Plants," and Table 5-20 "Protection Requirements for Covered Plants" in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that this species is protected.

Avoidance Measures for Special-Status Plant Species

Out of an abundance of caution, to ensure that no project-related impacts occur to special-status plants in the area of the repair site, the applicant will implement the following avoidance measures:

- All plants and their associated bulbs, seed and soil will be salvaged from the repair site footprint prior to construction. Any topsoil removed will be stored separately from the subsoil and placed on matting to ensure that it remains separated from adjacent topsoil. The salvaged topsoil will be replaced over the disturbed area after the ground-disturbing

activities are completed. Finally, the area will be re-seeded/vegetated with any salvaged seeds/blubs.

- Plywood measuring a minimum of ¾” in thickness will be placed along the level portions of the access areas. Plywood will prevent construction equipment from damaging the soil, and will help to distribute the weight of trucks and heavy machinery evenly across its surface, thus limiting disturbance to the seed bank.

III. Species-Specific Monitoring and Avoidance Requirements

This section discusses subsequent actions that are necessary to ensure project compliance with Plan requirements. Survey requirements and Best Management Practices pertaining to selected covered wildlife species are detailed in Section 6.4.3, *Species-Level Measures*, beginning on page 6-36 of the Final HCP/NCCP.

Preconstruction Surveys for Selected Covered Wildlife

If habitat for selected covered wildlife species identified in Table 2a was found to be present in the project area. In Table 3, identify the species for which preconstruction surveys or notifications are required based on the results of the planning surveys. Identify whether a condition of approval has been inserted into the development contract to address this requirement.

Table 3. Applicable Preconstruction Survey and Notification Requirements based on Land Cover Types and Habitat Elements Identified in Table 2a.

Species	Preconstruction Survey and Notification Requirements
<input type="checkbox"/> None	
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Map all dens (>5 in. diameter) and determine status. Determine if breeding or denning foxes are in the project area. Provide written preconstruction survey results to FWS within 5 working days after surveying.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Map all burrows and determine status. Document use of habitat (e.g. breeding, foraging) in/near disturbance area (within 500 ft.)
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate aquatic habitat up to 200 ft. from water’s edge. Document any sightings of garter snake.
<input type="checkbox"/> California tiger salamander (p. 6-46) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> California red-legged frog (p. 6-47) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> Covered shrimp species	Document and evaluate use of all habitat features (e.g.,

(p. 6-47)	vernal pools, rock outcrops). Document occurrences of covered shrimp.
<input type="checkbox"/> Townsend's big-eared bat (p. 6-37)	Determine if site is occupied or shows signs of recent occupation (guano).
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Determine whether nests are occupied.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Determine whether nests are occupied.
Note: Page numbers refer to the HCP/NCCP.	

Preconstruction Surveys as Required for Selected Covered Wildlife in Table 3

Describe the preconstruction survey's or notification conditions applicable to any species checked in Table 3. All preconstruction surveys shall be conducted in accordance with the requirements set forth in Section 6.4.3, *Species-Level Measures*, and Table 6-1 of the HCP/NCCP.

San Joaquin Kit Fox

Prior to any ground disturbance, a USFWS/CDFG – approved biologist will conduct a preconstruction survey at the dig site. The surveys will establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service 1999). Preconstruction surveys will be conducted within 30 days of ground disturbance. The biologist will survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. The status of all dens will be determined and mapped. Written results of preconstruction surveys will be submitted to USFWS and the Conservancy within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to initiation of covered activities.

Burrowing owl

Prior to any ground disturbance, a USFWS/CDFG - approved biologist will conduct a preconstruction survey at the dig site. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFG survey guidelines (California Department of Fish and Game 1993). On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFG guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the non-breeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any

disturbance area. Survey results will be valid only for the season (breeding or non-breeding) during which the survey is conducted.

Golden Eagle

Prior to implementation of covered activities, a qualified biologist will conduct a preconstruction survey to establish whether nests of golden eagles are occupied (see Section 6.3.1, Planning Surveys). If nests are occupied, minimization requirements and construction monitoring will be required.

Construction Monitoring & Avoidance and Minimization Measures for Selected Covered Species

If preconstruction surveys for key covered wildlife species establish the presence of any such species, construction monitoring will be necessary. In Table 4, check the boxes for the species that will be assessed during the preconstruction surveys (see Table 3). A summary of the construction monitoring requirements for each species is provided in Table 4 and these measures must be implemented in the event that preconstruction surveys described in Table 3 detect the covered species. A summary of avoidance measures is also provided in Table 4 and these measures must be implemented if construction monitoring detects the species or its sign. These construction monitoring and avoidance requirements are described in detail in Section 6.4.3, Species-Level Measures, of the Final HCP/NCCP.

Construction Monitoring Plan Requirements in Section 6.3.3, Construction Monitoring, of the Final HCP/NCCP:

- Before implementing a covered activity, the applicant will develop and submit a construction-monitoring plan to the Implementing Entity⁴ for approval.**

Table 4. Applicable Construction Monitoring Requirements

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> None	N/A
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Establish exclusion zones (>50 ft) for potential dens. Establish exclusion zones (>100 ft) for known dens. Notify USFWS of occupied natal dens.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Establish buffer zones (250 ft) around nests. Establish buffer zones (160 ft) around burrows.
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate 200-ft buffer around potential habitat. Provide field report on monitoring efforts. Stop construction activities if snake is encountered; allow snake to passively relocate. Remove temporary fill or debris from construction site. Mandatory training for construction personnel.

⁴ The East Contra Costa County Habitat Conservancy and the local land use Jurisdiction must review and approve the plan **prior** to the commencement of all covered activities (i.e. construction).

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Establish buffer around outer edge of all hydric vegetation associated with habitat (50 feet of limit of immediate watershed supporting the wetland, whichever is larger). Mandatory training for construction personnel.
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Establish 1,000-ft buffer around active nest and monitor compliance.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Establish 0.5-mile buffer around active nest and monitor compliance.

Construction Monitoring & Avoidance and Minimization Measures as Required for Selected Covered Wildlife in Table 4

Describe the construction monitoring and avoidance and minimization measures applicable to any species checked in Table 4. A summary of avoidance measures is provided in Table 4, these measures must be implemented if construction monitoring detects the presence of the species. The construction monitoring & avoidance and minimization measures requirements are described in detail in Section 6.4.3, Species-Level Measures, of the HCP/NCCP.

San Joaquin Kit Fox

Avoidance and minimization measures -

If a San Joaquin kit fox den is discovered in the proposed development footprint, the den will be monitored for 3 days by a USFWS/CDFG– approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.

Unoccupied dens should be destroyed immediately to prevent subsequent use.

If a natal or pupping den is found, USFWS and CDFG will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFG.

If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

Construction Monitoring -

If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones. Exclusion zone radii for potential dens

will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

Western Burrowing Owl

Avoidance and Minimization and Construction Monitoring –

If burrowing owls are found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the non-breeding season (September 1– January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance will include the establishment of a buffer zone (described below).

If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Golden Eagle

Avoidance and Minimization Measures

Covered activities will be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the Implementing Entity will coordinate with CDFG/USFWS to determine the appropriate buffer size.

Construction Monitoring

Construction monitoring will focus on ensuring that no covered activities occur within the buffer zone established around an active nest. Although no known golden eagle nest sites occur within or near the ULL, covered activities inside and outside of the Preserve System have the potential to disturb golden eagle nest sites. Construction monitoring will ensure that direct effects to golden eagles are minimized.

IV. Landscape and Natural Community-Level Avoidance and Minimization Measures

Describe relevant avoidance and minimization measures required to address the conservation measures listed below. If a conservation measure is not relevant to the project, explain why.

For All Projects

HCP/NCCP Conservation Measure 1.10. Maintain Hydrologic Conditions and Minimize Erosion

Briefly describe how the project complies with this measure. See page 6-21 of the Final HCP/NCCP for details.

No waters of the U.S. and/or State (i.e., wetlands or other waters) will be impacted by the proposed project. Although the repair work is anticipated to last no more than 2-3 days, given that work may be conducted in the wet season, Best Management Practices (BMP's) will be implemented as part of the project to minimize erosion and run off from the project site. BMP's will include hay wattles and silt fencing around the project site. In addition, any refueling areas will be contained with fuel blankets to prevent any fuel spills during fueling. Finally, a California native seed hydroseed mix will be applied to all disturbed areas upon completion of the project. Pictures of the site showing the installation of the BMP's will be submitted to the Conservancy in the Construction Monitoring Plan to demonstrate compliance with conditions set forth in the HCP/NCCP for maintaining hydrologic conditions and minimizing erosion.

HCP/NCCP Conservation Measure 1.11. Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds

Briefly describe how the project complies with this measure. See page 6-23 of the Final HCP/NCCP for details.

Complete details of the potential for rare plants and mitigation for potential impacts are provided on pages 20-21 of the PSR. Please refer to the "Results of Covered and No-Take Plant Species Planning Surveys Required in Table 2b." No suitable rare plant habitat is located on the anode site. Rare plant surveys will be conducted on the repair site in accordance with HCP/NCCP guidelines in March and May of 2012, and the results will be submitted to the Conservancy by July 30, 2012.

No suitable nesting habitat for fully protected birds (as defined under Sections 3511 and 4700 of the California Fish and Game Code) occurs in the proximity of the repair site. No suitable habitat for other fully protected wildlife species occurs on the anode site or repair site.

In order to avoid impacts to nesting birds and raptors and be in compliance with the federal Migratory Bird Treaty Act of 1918 (MBTA), the project will adhere to the following measures:

- If possible, all vegetation removal activities shall be scheduled from September 15 to February 15, which is outside the nesting season. This would ensure that no active nests would be disturbed and that removal could proceed rapidly,

- If vegetation is to be cleared during the nesting season (February 15 – September 15), all suitable habitat will be thoroughly surveyed for the presence of nesting birds by a qualified biologist 72 hours prior to clearing. If any active nests are detected, the area shall be flagged and mapped on the construction plans along with a minimum 50-foot buffer and up to 300 feet for raptors, with the final buffer distance to be determined by the qualified biologist in consultation with the Conservancy. The buffer area shall be avoided until the nesting cycle is complete or it is determined that the nest has failed. In addition, the biologist will be present on the site to monitor the vegetation removal to ensure that any nests, which were not detected during the initial survey, are not disturbed.

For Projects on or adjacent to Streams or Wetlands

HCP/NCCP Conservation Measure 1.7. Establish Stream Setbacks

Briefly describe how the project complies with this measure. See page 6-15 and Table 6-2 of the Final HCP/NCCP for details. For questions on the stream setback requirements, please contact the Conservancy.

No streams or wetlands are located on or adjacent to the site.

HCP/NCCP Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization

Briefly describe how the project complies with this measure. See page 6-33 of the Final HCP/NCCP for details.

No wetland, pond, or stream is located on or adjacent to the site.

For Projects adjacent to Protected Natural Lands (existing and projected)

Covered activities adjacent to permanently protected natural lands will require a variety of special considerations to address issues associated with characteristics of the urban-wildland interface. These considerations are intended to minimize the impacts of development on the integrity of habitat preserved and protected under the terms of the Plan. Permanently protected natural lands are defined as any of the following (see the latest Preserve System map on the Conservancy web site, www.cocohcp.org).

- Publicly owned open space with substantial natural land cover types including but not limited to state and regional parks and preserves and public watershed lands (local and urban neighborhood parks are excluded).
- Deed-restricted private conservation easements.
- HCP/NCCP Preserve System lands.
- Potential HCP/NCCP Preserve System lands (see Figure 5-3 in the HCP/NCCP).

HCP/NCCP Conservation Measure 1.6. Minimize Development Footprint Adjacent to Open Space

Briefly describe how the project complies with this measure. See page 6-14 of the Final HCP/NCCP for details.

Project is O&M activity for existing facility. Project works minimized to the extent possible, access via existing access roads to the extent possible. All impacts temporary.

HCP/NCCP Conservation Measure 1.8. Establish Fuel Management Buffer to Protect Preserves and Property

Briefly describe how the project complies with this measure. See page 6-18 of the Final HCP/NCCP for details.

Project is O&M activity for existing facility.

HCP/NCCP Conservation Measure 1.9. Incorporate Urban-Wildland Interface Design Elements

Briefly describe how the project complies with this measure. See page 6-20 of the Final HCP/NCCP for details.

The project is a repair of existing facility and not new development. All impacts will be temporary.

For Rural Infrastructure Projects

Rural infrastructure projects provide infrastructure that supports urban development within the urban development area. Such projects are divided into three categories: transportation projects, flood protection projects, and utility projects. Most rural road projects covered by the Plan will be led by Contra Costa County. All flood protection projects covered by the Plan will be led by the County Flood Control District. Utility projects will likely be led by the private companies that own the utility lines. A complete discussion of rural infrastructure projects is presented in Section 2.3.2 of the Final HCP/NCCP beginning on page 2-18.

HCP/NCCP Conservation Measure 1.12. Implement Best Management Practices for Rural Road Maintenance

Briefly describe how the project complies with this measure. See page 6-25 of the Final HCP/NCCP for details.

N/A

HCP/NCCP Conservation Measure 1.13. Implement Best Management Practices for Flood Control Facility Maintenance

Briefly describe how the project complies with this measure. See page 6-26 of the Final HCP/NCCP for details.

N/A

HCP/NCCP Conservation Measure 1.14. Design Requirements for Covered Roads outside the Urban Development Area

Briefly describe how the project complies with this measure. See page 6-27 of the Final HCP/NCCP for details.

N/A

V. Mitigation Measures

Complete and Attach Exhibit 1 Fee Calculator for Permanent and Temporary Impacts.

- Briefly describe the amount of fees to be paid and when.
- See Section 9.3.1 of the HCP/NCCP for details. If land is to be dedicated in lieu of fees or if restoration or creation of jurisdictional wetlands or waters is to be performed in lieu of fees, summarize these actions here and attach written evidence that the Conservancy has approved these actions in lieu of fees.

Although impacts associated with the pipeline repairs at Dig Site 4, Station 7675, are temporary, the applicant will be mitigating for the 0.05 acres of temporary impact by paying the full development fee, which is provided as an option in the HCP/NCCP in lieu of calculating the area of indirect effects in order to determine a project impact area subject to the temporary fee. The mitigation fees for the project are \$1,066.22. All fees shall be paid within 30 days of receiving a total fee amount and appropriate invoice from the East Contra Costa County Habitat Conservancy.

Please refer to Exhibit 1: HCP/NCCP Fee Calculator Worksheet, attached.

Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

PROJECT APPLICANT INFO:

Project Applicant: Equilon Enterprises LLC dba Shell Oil Products

Project Name: Coalinga-Avon Pipeline Repair Project - Second Amendment

APN (s): 005-100-002

Date: January 6, 2012

Jurisdiction: Participating Special Entity

DEVELOPMENT FEE (see appropriate ordinance or HCP/NCCP Figure 9-1 to determine Fee Zone)

**Acreage of land to be
permanently disturbed (from
Table 1)¹**

	Full Development Fee	x	Fee per Acre (subject to change on 3/15/12 ²)	=	
Fee Zone 1		x	\$10,662.15	=	\$0.00
Fee Zone 2	0.05	x	\$21,324.30	=	\$1,066.22
Fee Zone 3		x	\$5,331.52	=	\$0.00
Fee Zone 4 ³		x	\$15,993.23	=	\$0.00
Development Fee Total					\$1,066.22

**WETLAND MITIGATION FEE

	Acreage of wetland	x	Fee per Acre (subject to change on 3/15/12 ²)	=	
Riparian woodland / scrub		x	\$64,570.30	=	\$0.00
Perennial Wetland		x	\$88,359.36	=	\$0.00
Seasonal Wetland		x	\$191,445.28	=	\$0.00
Alkali Wetland		x	\$181,249.97	=	\$0.00
Ponds		x	\$96,289.05	=	\$0.00
Aquatic (open water)		x	\$48,710.93	=	\$0.00
Slough / Channel		x	\$109,882.80	=	\$0.00

Linear Feet

	x	=		=	
Streams					
Streams 25 Feet wide or less (Fee is per Linear Foot)	x	\$526.42	=		\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)	x	\$792.97	=		\$0.00

Wetland Mitigation Fee Total **\$0.00**

FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee		x		=	
Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments		x		=	
Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant		x		=	
Reduction Total					\$0.00

CALCULATE FINAL FEE

Development Fee Total		x		=	
		x	\$1,066.22	=	
Wetland Mitigation Fee Total	+		\$0.00	=	
Fee Subtotal					\$1,066.22
Contribution to Recovery					\$1,066.22
TOTAL AMOUNT TO BE PAID					\$2,132.44

Notes:

1 City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.

2 The Conservancy is currently conducting the periodic fee audit required by the HCP/NCCP which could result in further adjustment to some or all fees in 2011.

3 "Fee Zone 4" is not shown on Figure 9.1 of the HCP/NCCP but refers to the fee applicable to those few covered activities located in northeastern Antioch (see page 9-21 of the HC

Template date: March 15, 2011

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with San Francisco Bay Area Rapid Transit District to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to San Francisco Bay Area Rapid Transit District for the East Contra Costa BART Extension Project (“eBART Phase II Project”):

- a. **AUTHORIZE** staff to file a Notice of Determination for this Board action with the County Clerk.
- b. **AUTHORIZE** Executive Director to execute a Participating Special Entity Agreement with San Francisco Bay Area Rapid Transit District for take coverage for the ground-disturbing activities associated with construction and operation of the Hillcrest Avenue Station and Diesel Multiple Unit (“DMU”) Maintenance Facility including the associated parking facilities and new and re-aligned roads, as further described in Exhibit 1 (the Planning Survey Report), provided the Wildlife Agencies concur with the Agreement.

DISCUSSION

ITEM (a). California Environmental Quality Act (CEQA): The Board’s decision to authorize the Executive Director to execute a Participating Special Entity Agreement and to extend take authorization under the Agreement to San Francisco Bay Area Rapid Transit District (“BART”), for the East Contra Costa BART Extension Project (“eBART Phase II Project” or “Project”) is a discretionary action subject to CEQA. For the Project, BART is the CEQA lead agency. BART prepared the Environmental Impact Report for the East Contra Costa BART Extension Project (“EIR”) (*state clearinghouse number 2005072100*), dated April 23, 2009 with an Addendum on April 28, 2011. The Conservancy is a CEQA responsible agency for purposes of the Project and, as such, will rely on the EIR prepared by BART for purposes of fulfilling its responsibilities

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
 OTHER _____

VOTE OF BOARD MEMBERS
 ___ UNANIMOUS
 ___ AYES:
 ___ NOES:
 ___ ABSENT:
 ___ ABSTAIN:

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
 ATTESTED _____
Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 BY: _____, DEPUTY

under CEQA. The Conservancy concurs with the Findings adopted by BART on April 23, 2009 and finds that the impacts of the eBART Phase II Project are fully disclosed and analyzed in the EIR and Addendum, and that for each significant impact identified in the EIR, the eBART Phase II Project has been changed or mitigated to reduce the impacts to a less than significant level or, for those impacts that cannot be reduced to a less than significant level, a Statement of Overriding Considerations justifies that certain significant and unavoidable environmental effects are acceptable because the benefits of the Project outweigh the unavoidable adverse environmental effects.

ITEM (b). As part of the eBART Phase II Project, BART is seeking take coverage for the ground-disturbing activities associated with construction and operation of the Hillcrest Avenue Station and Diesel Multiple Unit (“DMU”) Maintenance Facility including the associated parking facilities and new and re-aligned roads, as further described in Exhibit 1 (the Planning Survey Report).

The 40.13 acre Project site is located north of the State Route 4 right-of-way, south of the Union Pacific Railroad tracks and east of Hillcrest Avenue and the terminus of Willow Avenue in the City of Antioch, Contra Costa County. The Project site will be carved out of seven parcels encompassing the project site totaling 64.15 acres; however, BART intends to only acquire 40.13 acres for the Project. Acres not acquired by BART (24.02 acres) will remain with the existing property owners.

The San Francisco Bay Area Rapid Transit District (“BART”) is proposing to extend transit services into east Contra Costa County from its existing Pittsburg/Bay Point BART Station in the unincorporated community of Bay Point near the City of Pittsburg. The project is generally known as “eBART” in reference to the extension of service to the “East” portion of Contra Costa County. The proposed project consists of an approximately 10-mile extension of transit service from the current BART terminus in Contra Costa County at the Pittsburg/Bay Point BART Station to a point just east of Hillcrest Avenue in the City of Antioch. The application for take coverage is limited to the construction and operation of the Hillcrest Avenue Station and Diesel Multiple Unit (“DMU”) maintenance facility including the associated parking facilities and new and re-aligned roads (including Slatten Ranch Road) and does not include the 10-mile extension of transit services through the median of State Route 4. The Project consists of 39.71 acres of permanent impacts with 2.22 acres of temporary impacts to a slope/knoll which will be affected only during construction and may be returned to the property owner after the slope has been stabilized and reseeded.

(Reference Figures 1 and 2 for the Project Location and Parcel Maps, Figures 3A-3C for the Site Plans, and 4A, 4B, and 5 for the Land Cover and Habitat Survey Maps, and the Project Description in the Planning Survey Report Application for more information on the Project).

The San Francisco Bay Area Rapid Transit District is requesting take coverage for the eBART Phase II Project through the Conservancy as a Participating Special Entity (or “PSE”). Chapter 8.4 of the HCP/NCCP provides that organizations, including public agencies and private organizations, with projects or ongoing activities within the inventory area that are not subject to

the land use authority of one of the land use agencies participating in the HCP/NCCP (known as the “Permittees”), may submit an application to the Conservancy requesting coverage under the HCP/NCCP as a Participating Special Entity. The San Francisco Bay Area Rapid Transit District does not require any city or county land use permits for the proposed project and are therefore eligible to apply for take coverage as a PSE. As a PSE San Francisco Bay Area Rapid Transit District will obtain authorization for take of HCP/NCCP covered species in accordance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits.

In order to apply for take coverage as a Participating Special Entity, the PSE’s project must be an eligible covered activity or specifically named project under the HCP/NCCP. As set forth in Section 2.3.2 of the HCP/NCCP, eBART is a specific transportation-related project covered by the HCP/NCCP (pg. 2-22 of the HCP/NCCP).

In order to receive permit coverage under the HCP/NCCP, the Conservancy and San Francisco Bay Area Rapid Transit District must enter into an agreement obligating compliance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits. The agreement must describe and bind San Francisco Bay Area Rapid Transit District to perform all avoidance, minimization, and mitigation measures applicable to the Project. Conservancy staff and San Francisco Bay Area Rapid Transit District have jointly prepared a proposed Participating Special Entity Agreement (“Agreement”) for the eBART Phase II Project (attached).

Attached as Exhibit 1 to the Agreement is the completed Planning Survey Report (“PSR”) for the eBART Phase II Project, prepared by BART in consultation with Conservancy staff. The PSR documents the results of the planning-level surveys conducted at the eBART Phase II Project site where ground disturbing impacts will occur and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the eBART Phase II Project to be covered through the HCP/NCCP. The PSR contains project vicinity and location maps, the project site plans and detailed maps showing the project impacts and parcel ownership, land cover types, and species habitat, and the Fee Calculator Worksheets. Several additional figures and appendices are included in the PSR.

Key provisions of the Agreement:

- Project impacts by land cover type are reflected in the table below:

Land Cover Type	Impact Type (acres)	
	Permanent	Temporary
Annual Grassland	29.75	2.22
Ruderal	8.16	
Total	37.91	2.22

- The Agreement provides that San Francisco Bay Area Rapid Transit District will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$35,000.

- In addition, as set forth in the Agreement (page 6), San Francisco Bay Area Rapid Transit District will pay the Conservancy \$934,310.25 which amount includes all HCP/NCCP development and mitigation fees necessary for the Project, less the credit from the eBART Phase I Project (\$7,511.77) (the credit reflects the amount of HCP development fees for temporary impacts associated with a construction staging area that was contemplated but never used in Phase 1). The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”).
- There is one non-riparian nest identified within the project site that may be used by a Swainson’s hawk which will be impacted by the Project. The HCP/NCCP requires that the loss of non-riparian Swainson’s hawk nest trees be mitigated at a 30:1 ratio. BART intends to mitigate for the loss of the one nest tree on the project site by paying the Conservancy a fee of \$30,000 to purchase, plant, maintain, and monitor the required 30 saplings at an off-site location. The Conservancy intends to work with the City of Oakley to perform the required plantings as a part of the proposed Creekside Park Restoration Project, a Project which is intended to be added to the HCP/NCCP Preserve System. The Creekside Park Project, proposed for construction in the summer of 2012, involves setting back the banks of Marsh Creek and planting native vegetation on the banks and restored flood terrace, including more than 150 native trees. Trees to be planted include a number of species suitable for nesting by Swainson’s hawk, including cottonwood, sycamore and valley oak. Conservancy and BART staff have discussed this proposal with staff from the City of Oakley and Oakley staff is amenable to the proposal and the price.
- Staff proposes a Contribution to Recovery in the amount of \$303,151.67 As set forth in the HCP/NCCP, the Conservancy may charge a Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs born by the Conservancy of exceeding mitigation requirements and contributing to the recovery of covered species (as is required because the plan is an NCCP and by state law NCCP’s must contribute to recovery, etc.). Given the overall scale of the eBART Phase II Project, the proposed ground disturbing impacts associated with the development, construction, and operation of the Hillcrest Avenue Station and associated maintenance facilities, and the development fee applicable to the project which is slightly under \$16,000 per acre, staff proposed a \$303,151.67 Contribution to Recovery. This amount is half of the amount of the mitigation fees required for the development impacts and staff believes this is consistent with the amount charged in previous Participating Special Entity projects.
- The table below summarizes the required development fees, contribution to recovery, Swainson’s hawk nest tree mitigation, and administrative costs:

FEE SUMMARY for the eBART Phase II Project	
Development fees:	\$606,303.25
Temporary Impact Fee:	\$2,367.00

Contribution to Recovery for Endangered Species:	\$303,151.67
Swainson's Hawk Mitigation Fee	\$30,000.00
Less the credit from the eBART Phase I Project	(\$7,511.77)
TOTAL FEES AND CONTRIBUTIONS	\$934,310.25
Maximum Administrative Costs	\$35,000.00
MAXIMUM AMOUNT TO BE PAID	\$969,310.25

- The Agreement provides that the Fees and Administrative Costs must be paid before work commences. San Francisco Bay Area Rapid Transit District anticipates starting work in March of 2012 and completing the Project by early 2015.
- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys and applicable avoidance and minimization measures for San Joaquin kit fox, western burrowing owl, and Swainson's hawk. BART is also requesting a variance from the 1,000-foot setback requirement in the HCP/NCCP for a known Swainson's hawk nest tree located outside of the project footprint to a reduced setback of approximately 800 feet (the nest is well screened from the Project and construction monitoring has been incorporated to be sure Swainson's hawk nesting is not affected).

Next steps: If the Conservancy Governing Board authorizes staff to sign the Agreement, key next steps in granting take coverage would be as follows:

- San Francisco Bay Area Rapid Transit District signs the Agreement.
- Staff will ask the Wildlife agencies to review the Agreement and to concur that the Agreement includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on San Francisco Bay Area Rapid Transit District, to implement them. If, and only if, the Wildlife Agencies concur, the Executive Director of the Conservancy will sign the Agreement. Note: Participating Special Entity Agreements, unlike the granting of take authorization by a participating City or County, require Wildlife Agency concurrence.
- San Francisco Bay Area Rapid Transit District pays all required mitigation, contribution to recovery, and administrative costs (to-date, as set forth in an invoice to be provided to BART by Conservancy staff), as outlined in the Agreement.
- The Conservancy issues San Francisco Bay Area Rapid Transit District a Certificate of Inclusion. Take authorization would then be in effect, subject to the terms of the Agreement.
- San Francisco Bay Area Rapid Transit District conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.

- San Francisco Bay Area Rapid Transit District develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- San Francisco Bay Area Rapid Transit District implements the Project subject to the terms of the Agreement.

Attachments:

- **PSE Agreement, including:**
 - Main body of agreement
 - Exhibit 1: Planning Survey Report
 - Main body of planning survey report
 - Project Vicinity Maps and the Impact and Land Cover Map of the eBART Phase II Project site
 - Fee Calculator (Exhibit 1 and Exhibit 2)
 - Additional figures and appendices

PARTICIPATING SPECIAL ENTITY AGREEMENT-

Between

**THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
and the
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

1.0 PARTIES

This Agreement is made and entered into by the East Contra Costa County Habitat Conservancy (“Conservancy”) and **San Francisco Bay Area Rapid Transit District** (“Participating Special Entity” or “PSE”) as of the Effective Date.

2.0 RECITALS

The Parties have entered into this Agreement in consideration of the following facts:

- 2.1** The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP,” or “Plan”) is intended to provide a comprehensive framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the Plan is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to recovery of endangered and threatened species within East Contra Costa County while balancing open space, habitat, agriculture, and urban development. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on Covered Species and their habitats while allowing for certain development and other activities in selected regions of the County and the Cities of Pittsburg, Clayton, Oakley, and Brentwood.
- 2.2** The Conservancy is a joint powers authority formed by its members, the County of Contra Costa (“County”), the City of Pittsburg (“Pittsburg”), the City of Clayton (“Clayton”), the City of Oakley (“Oakley”) and the City of Brentwood (“Brentwood”), to implement the HCP/NCCP.
- 2.3** The HCP/NCCP covers approximately one-third of the County, or 174,082 acres, all in East Contra Costa County, in which impacts from certain development and other activities are evaluated, and in which conservation will occur.
- 2.4** The area covered by the HCP/NCCP has been determined to provide, or potentially provide, habitat for twenty-eight (28) species that are listed as endangered or threatened, that could in the future be listed as endangered or threatened, or that have some other special status under federal or state laws.

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, for the Take of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with participating special entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE proposes to implement the East Contra Costa BART Extension Project (“eBART Phase II Project”) and seeks extension of the Conservancy’s permit coverage for the eBART Phase II Project, which consists of ground-disturbing activities associated with construction and operation of the Hillcrest Avenue Station and Diesel Multiple Unit (“DMU”) Maintenance Facility including the associated parking facilities and new and re-aligned roads, as further described in Exhibit 1.
- 2.8 The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference.

3.0 **DEFINITIONS**

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS and CDFG under those statutes shall have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1 **“Application”** means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.
- 3.2 **“Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Conservancy pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued to the Conservancy pursuant to California Fish and Game Code section 2835.

- 3.3** “**CDFG**” means the California Department of Fish and Game, a department of the California Resources Agency.
- 3.4** “**CESA**” means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.5** “**Changed Circumstances**” means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of the IA and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.6** “**Covered Activities**” means those land uses and conservation and other activities described in Chapter 2.3 of the HCP/NCCP to be carried out by the Conservancy or its agents that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.7** “**Covered Species**” means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. The Take of Fully Protected Species is not allowed. The Take of extremely rare plants that are Covered Species is allowed only as described in Section 6.0 and the IA.
- 3.8** “**Effective Date**” means the date when this Agreement is fully executed.
- 3.9** “**Federal Listed Species**” means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.10** “**Federal Permit**” means the federal incidental Take permit issued by USFWS to the Conservancy and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 160958-0), as it may be amended from time to time.
- 3.11** “**FESA**” means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.12** “**Fully Protected Species**” means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.13** “**HCP/NCCP**” or “**Plan**” means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.

- 3.14 “Implementing Agreement” or “IA”** means the “Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan,” dated January 22, 2007.
- 3.15 “Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- 3.16 “Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.17 “NCCPA”** means the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.18 “Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.19 “Party” or “Parties”** means any or all of the signatories to this Agreement.
- 3.20 “Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.21 “Permits”** means the Federal Permit and the State Permit.
- 3.22 “Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.23 “Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.24 “Project”** means the eBART Phase II Project as described in Section 2.7.
- 3.25 “State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.

- 3.26** “**Take**” has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.27** “**Unforeseen Circumstances**” under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. “Unforeseen Circumstances” under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.28** “**USFWS**” means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.29** “**Wildlife Agencies**” means USFWS and CDFG.

4.0 **PURPOSES**

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Project, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are to ensure implementation of each of the terms and conditions of this Agreement, and the relevant terms of the IA, the HCP/NCCP, and the Permits, and to describe remedies and recourse should either Party fail to perform its obligations as set forth in this Agreement.

5.0 **AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS**

5.1 **General Framework**

As required by FESA and NCCPA, the HCP/NCCP includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Chapter 6 of the HCP/NCCP provides further instructions to determine which avoidance and minimization measures are applicable to particular Covered Activities. PSE shall implement all applicable avoidance and minimization measures as required by the HCP/NCCP, including but not limited to those identified in Chapter 6, as described in the Application and this Agreement.

5.2 **Surveys and Avoidance Measures**

Planning surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted a planning survey

report for approval by the Conservancy in accordance with Chapter 6.2.1 of the HCP/NCCP. This planning survey report is contained within the Application, which describes the results of the planning survey and describes in detail the pre-construction surveys, construction monitoring, avoidance measures and mitigation measures that apply to the Project and shall be performed by PSE. Based on the Application, the Conservancy has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

5.3 No Take of Extremely Rare Plants or Fully Protected Species

Nothing in this Agreement, the HCP/NCCP or the Permits shall be construed to allow the Take of extremely rare plant species listed in Table 6-5 of the HCP/NCCP (“No-Take Plant Population”) or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. PSE shall avoid Take of these species.

5.3.1 Golden Eagle

The Permits do not authorize Take of the golden eagle and PSE shall avoid Take of any golden eagle. The avoidance measures set forth in the HCP/PCCP, including but not limited to Conservation Measure 1.11, should be adequate to prevent Take of golden eagles, but the Conservancy shall notify PSE in writing of any additional or different conservation measures that are designed to avoid Take of these species and that apply to PSE. PSE shall implement all such avoidance measures to avoid Take of golden eagles.

5.4 Fees and Dedications

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of \$934,310.25, which amount includes all HCP/NCCP mitigation fees necessary for the Project, less the credit from the eBART Phase I Project (\$7,511.77). The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). PSE has agreed to pay the Conservancy to implement the HCP/NCCP mitigation measure for loss of a Swainson’s Hawk nest tree. The overall payment amount is the sum of the following:

Permanent Impact Fee: \$606,303.25

Temporary Impact Fee: \$2,367.00

Swainson’s Hawk Mitigation Fee: \$30,000.00

Contribution to Recovery of Endangered Species: \$303,151.67

The payment must be paid in full before any ground-disturbance associated with the Project occurs. Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, 2012 and construction of the Project commences before March 15, 2012, the amount due will be as stated above. If PSE pays on or after March 15, 2012 or construction of the Project does not commence before March 15, 2012, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland

mitigation fee. Based on these adjustments, if PSE pays before March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

6.0 TAKE AUTHORIZATION

6.1 Extension of Take Authorization to PSE

As provided in Chapter 8.4 of the HCP/NCCP, after receipt of the Wildlife Agencies' written concurrence that the Proposed Activity complies with the HCP/NCCP, the Permits and the IA, and after execution of this Agreement, payment of fees, compliance with the California Environmental Quality Act (Public Resources Code section 21000, et seq.) ("CEQA"), the Conservancy shall issue a Certificate of Inclusion to PSE that specifically describes the Authorized Take and required conservation measures and extends Take authorization under the Permits to PSE. PSE is ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the IA, the HCP/NCCP and the Permits.

6.1.1 Compliance with the California Environmental Quality Act

The Conservancy's issuance of a Certificate of Inclusion to the PSE is a public agency action that must comply with CEQA. For purposes of the Project, San Francisco Bay Area Rapid Transit District ("BART") is the CEQA lead agency. BART prepared a Environmental Impact Report for the Project, the East Contra Costa BART Extension Project (*state clearinghouse number 2005072100*), dated April 23, 2009 with an Addendum on April 28, 2011. The Conservancy is a CEQA responsible agency for purposes of the Project and, as such, will rely on the Environmental Impact Report prepared by BART for purposes of fulfilling its responsibilities under CEQA.

6.2 Duration of Take Authorization

Once the Take authorization has been extended to the Project, it shall remain in effect for a period of fifteen (15) years, unless and until the Permits are revoked by USFWS or CDFG, in which case the Take authorization may also be suspended or terminated.

6.3 Section 7 Consultations with USFWS

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult with USFWS pursuant to Section 7 of FESA (16 U.S.C. §1536(a)). The PSE acknowledges that, if the Proposed Activities are authorized, funded, or carried out by a federal agency, the federal agency and the Proposed Activities must also comply with Section 7. As provided in Section 16.1 of the IA, USFWS has made a commitment that, unless otherwise required by law or regulation, it will not require any measures under Section 7 that are inconsistent with or exceed the requirements of the HCP/NCCP and the Permits for activities covered by the HCP/NCCP and the Permits.

7.0 RIGHTS AND OBLIGATIONS OF PSE

7.1 Rights

Upon the Conservancy's issuance of a Certificate of Inclusion to PSE, PSE may Take the Covered Species while carrying out the Project in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the IA, the HCP/NCCP, and the Permits. The authority issued to PSE applies to all of its elected officials, officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their officers, directors, employees and agents to the extent that they participate in the implementation of the Project. PSE shall periodically conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Permits, and PSE shall be responsible for supervising their compliance with those terms and conditions. All contracts between PSE and such persons and entities shall require their compliance with the Permits.

7.2 General Obligations

The PSE will fully and faithfully perform all obligations assigned to it under this Agreement, the IA, the HCP/NCCP, the Permits, including but not limited to the obligations assigned in the following chapters of the HCP/NCCP: Chapter 6.0 (Conditions on Covered Activities), Chapter 8.4 (Participating Special Entities), and Chapter 9.0 (Funding). PSE shall implement all measures and adhere to all standards included in the Application, and PSE shall reserve funding sufficient to fulfill its obligations under this Agreement, the IA, the HCP/NCCP and the Permits throughout the term of this Agreement. PSE will promptly notify the Conservancy of any material change in its financial ability to fulfill its obligations under this Agreement.

7.3 Obligations In The Event of Suspension or Revocation

In the event that USFWS and/or CDFG suspend or revoke the Permits pursuant to Sections 19.0 and 21.0 of the IA, PSE will remain obligated to fulfill its mitigation, enforcement, management, and monitoring obligations, and its other HCP/NCCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all impacts resulting from implementation of the Project prior to the suspension or revocation.

7.4 Interim Obligations upon a Finding of Unforeseen Circumstances

If the Wildlife Agencies make a finding of Unforeseen Circumstances with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, PSE will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described in Section 15.2.2 and Section 15.3.2 of the IA, the Wildlife Agencies shall be responsible for implementing such additional measures or modifications, unless PSE consents to do so.

7.5 Obligations In The Event Of Changed Circumstances

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Chapter 7 and Chapter 10 of the HCP/NCCP, and PSE shall implement any measures for such circumstances as called for in the HCP/NCCP, as described in Section 12.2 of the IA.

7.6 Obligation to Compensate Conservancy for Administrative Costs

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy's "Administrative Costs"). Conservancy's Administrative Costs shall not exceed \$35,000 in the aggregate. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy's discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

This provision is not intended to, and shall not be construed to, limit PSE's duty to indemnify the Conservancy as provided in Section 7.7 of this Agreement.

7.7 Obligation Pursuant to State Government Code Section 8546.7

Pursuant to State Government Code Section 8546.7, the parties to the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the PSE or as part of any audit of the PSE by the State Auditor, for a period of three years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of the Agreement, including, but not limited to, the cost of administering the Agreement.

7.8 Indemnification

PSE agrees to defend, indemnify, and hold harmless the Conservancy and its board members, officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "Proceedings") brought against Conservancy or its board members, officers, contractors, consultants, attorneys, employees, or agents arising out of or resulting from any of the following.

- Decisions or actions of the Conservancy related to the Project, this PSE Agreement, or compliance with the California Environmental Quality Act of 1970, as amended ("CEQA") with regard to the Project; and
- The negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE.

Notwithstanding the above, (i) PSE shall have no duty to defend, indemnify, or hold harmless the Conservancy to the extent damages are sought in a tort claim arising out of or resulting from the individual negligence, recklessness, or intentional misconduct of any representative, employee, or agent of the Conservancy and (ii) the indemnification obligations set forth above shall in no way limit the rights and remedies of PSE with

respect to any breach of the terms and conditions of this PSE Agreement by the Conservancy.

PSE's duty to indemnify the Conservancy includes, but is not limited to, damages, fees and/or costs awarded against or incurred by Conservancy, if any, and costs of suit, claim or litigation, including without limitation attorneys' fees and other costs, liabilities and expenses incurred in connection with any Proceedings.

7.8.1 Enforcement of Indemnification Provision

PSE agrees to indemnify Conservancy for all of Conservancy's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.

7.8.2 Compliance Costs

PSE agrees to defend, indemnify and hold harmless Conservancy, its officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as this Agreement or any document required for purposes of compliance with CEQA) if made necessary by any Proceedings.

7.8.3 Obligations in the Event of Litigation

In the event that PSE is required to defend Conservancy in connection with any Proceedings, Conservancy shall have and retain the right to approve, which approval shall not be withheld unreasonably:

- the counsel to so defend Conservancy;
- all significant decisions concerning the manner in which the defense is conducted; and
- any and all settlements.

Conservancy shall also have and retain the right to decline to participate in the defense, except that Conservancy agrees to reasonably cooperate with PSE in the defense of the Proceedings. If Conservancy participates in the defense, all Conservancy fees and costs shall be paid by PSE.

PSE's defense and indemnification of Conservancy set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the Proceedings.

8.0 REMEDIES AND ENFORCEMENT

If PSE fails to comply with the terms of this Agreement, the IA, the HCP/NCCP, or the Permits, the Conservancy may withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Conservancy shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable

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and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

9.0 FORCE MAJEURE

In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Party (“Force Majeure”), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize either Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within seven (7) days after the occurrence of the Force Majeure, the Party invoking this section shall give the Conservancy written notice describing the particulars of the occurrence;
- The Party shall use best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Party is contrary to its interest); and
- When the Party is able to resume performance of their obligations, it shall give the other Party written notice to that effect.

10.0 MISCELLANEOUS PROVISIONS

10.1 Calendar Days

Throughout this Agreement and the HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

10.2 Notices

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as follows:

John Kopchik
East Contra Costa County Habitat Conservancy
c/o Contra Costa County Department of Conservation and Development

651 Pine Street, North Wing, 4th Floor
Martinez, CA 94553
Email: john.kopchik@dcd.cccounty.us
Phone: 925-335-1227

Ric Rattray
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 21st Floor, P.O Box 12688
Oakland, Ca 94604-2688
Email: mratta@bart.com
Phone: 510-874-7319

Notices shall be transmitted so that they are received within the specified deadlines. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

10.3 Entire Agreement

This Agreement, together with the IA, the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

10.4 Amendment

This Agreement may only be amended with the written consent of both Parties.

10.5 Attorneys' Fees

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Conservancy shall be able to recover its attorneys' fees and costs if it prevails.

10.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

10.7 Duplicate Originals

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

10.8 Relationship to the FESA, CESA, NCCPA and Other Authorities

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal law.

10.9 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, NCCPA or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

10.10 References to Regulations

Any reference in this Agreement, the IA, the HCP/NCCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

10.11 Applicable Laws

All activities undertaken pursuant to this Agreement, the IA, the HCP/NCCP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

10.12 Severability

In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

10.13 Due Authorization

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

10.14 No Assignment

The Parties shall not assign their rights or obligations under this Agreement, the Permits, or the HCP/NCCP to any other individual or entity.

10.15 Headings

Headings are using in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____ DATE: _____
JOHN KOPCHIK, Executive Director

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: _____ DATE: _____
CHARLES W. STARK, Assistant General Manager,
Transit System Development

Approved as to Form:

By: _____ DATE: _____
Jose R. Salazar, Legal Counsel

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Conservancy Work Plan – 2011 Summary & 2012 Work Plan

RECOMMENDATION

APPROVE the 2012 Conservancy Work Plan.

DISCUSSION

The Conservancy Work Plan: 2011 Summary and 2012 Work Plan provides both a summary of tasks initiated and completed in 2011 and tasks planned for 2012 (attached).

Section 8.11.1 of the HCP/NCCP provides a schedule for implementation, forecasting tasks for the first year, five-year periods during the 30 year term of the Plan, and beyond year 30 of HCP/NCCP implementation. The HCP/NCCP also provides a list of the duties of the implementing entity (the Conservancy) in Section 8.3. Based on this information and general knowledge of the HCP/NCCP, staff has developed the 2012 Conservancy Work Plan.

As mentioned, the Work Plan also includes a summary of tasks that have been completed and progress achieved on the on-going tasks in 2011. In cases where a task appeared in the HCP/NCCP implementation schedule, the recommended timeline from the HCP/NCCP is juxtaposed with staff’s recommended timeline in the Work Plan for comparison purposes. The “Actions Taken in 2011” column describes the type of work that has been completed and the end result for actions taken in 2011. The “Actions Proposed for 2012” column provides the goals and type of work planned in 2012.

CONTINUED ON ATTACHMENT: <u>YES</u>	
ACTION OF BOARD ON: <u>January 11, 2012</u> APPROVED AS RECOMMENDED: _____	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
AYES: _____	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
ATTESTED _____	<i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
BY: _____	DEPUTY

During the initial years of implementation (2008-2009), tasks focused heavily on Plan administration. This was partly because there were a lot of start-up administrative tasks to accomplish. The many administrative tasks included creating documents, maps, and informational pamphlets, establishing a database tracking impacts and projects, training local agency staff on how to process planning survey report (PSR) applications, establishing the Conservancy as a brand new agency and taking whatever steps necessary to ensure the Plan had as smooth a start as possible. To date, most of the administrative tasks have been accomplished and therefore a brief update on on-going efforts is given for 2012. Because administrative tasks tend to be more discrete they are easier to itemize than the more complex programmatic tasks like land acquisition or restoration or creation. For the more complex tasks, the Work Plan attempts to provide a sense of the general approach recommended.

Some noteworthy features of the 2012 Work Plan include the following:

Restoration: Two small restoration/creation projects are on the agenda for the summer of 2012. Evaluation of potential sites and initial restoration planning and design will get underway for in 2012 for a possible larger project to be constructed as early as 2013.

Preserve Management and Management Planning: With acquisition, restoration and permitting drawing much of the Conservancy's oxygen in prior years, a much greater emphasis will be placed on this topic in 2012. The Byron Hills Preserve Management Plan is proposed to be completed in 2012 and it will contain the template for system-wide planning needs such as monitoring, recreation and exotic plant control.

Wetland Permitting: Completing and implementing regional wetlands permit programs in 2012 is a critical priority.

Questions, comments and guidance from the Board on the Draft Work Plan are welcomed.

Attachment:

- Conservancy Work Plan: 2011 Summary and 2012 Work Plan

Conservancy Work Plan: 2011 Summary and 2012 Work Plan

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
<i>Program Administration (general)</i>					
1	Increase public awareness of the Plan and provide opportunities for involvement in the implementation of the Plan by the public, interested agencies, and others.	N/A	On-going	PAC meetings were held quarterly. The Conservancy continued to publicize activities via its website and other means. The film documentarian producing a film on Habitat Conservation Plan's interviewed Conservancy staff and filmed field trips and field work. The Conservancy was featured in several news articles on land acquisitions in East Contra Costa County as well as in a feature article in the Fall/Winter 2011 issue of Bay Nature Magazine.	PAC meetings will continue to be held quarterly and the current vacancy will be filled. Conservancy will continue using the website to communicate with the public. Staff will pursue greater media coverage of Plan activities to improve awareness by the public at-large, including continued work with the documentarian featuring the Conservancy. Public events may be planned/held to commemorate accomplishments. A short-term intern will assist with the public outreach and involvement program.
2	Develop a Conservancy Volunteer Program and Implement Volunteer Activities	N/A	On-going	Ongoing work to involve volunteers including investigating opportunities and objectives with the PAC. Worked with Save Mount Diablo volunteers to implement and monitor the Irish Canyon Restoration Project.	Ongoing development of the volunteer programs with a goal to expand volunteer hours, range of volunteers' tasks and overall public involvement in the HCP/NCCP. Continue to collaborate with Save Mount Diablo and other volunteer groups and organizations to implement planting and plant maintenance as well as plant surveys.
3	Develop and maintain annual budgets and work plans. Prepare and submit an annual report to CDFG and USFWS.	Annual Report required by March 15	On-going	Conservancy Staff prepared the 2012 annual budget and the 2012 work plan for Board discussion in December 2011. Conservancy prepared and published the 2010 Annual Report in March 2011.	Conservancy Staff will prepare the 2013 annual budget and the 2013 work plan for Board discussion in December 2012. Conservancy will prepare and publish the 2011 Annual Report.
4	Calculate the amounts of automatic annual fee adjustments and distribute these calculations to Permittees by March 15 of each year, in accordance with Chapter 9 of the HCP/NCCP.	N/A	On-going	In-lieu of the Automatic Adjustment of Mitigation Fees the Conservancy conducted its first Periodic Audit and Adjustment in 2011 as required by the Plan. The Board approved the Audit in July 2011. Participating cities and the County are in the process of amending their fee resolutions to reflect the fee audit.	The calculations for the 2012 automatic annual fee adjustments will be performed and the results distributed in March 2012 once the federal government publishes the necessary statistics.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
5	Pursue State and Federal Grants to assist in funding preserve acquisition and other implementation tasks.	N/A	On-going	Conservancy Staff continued to research and apply for available grant money which made up a significant portion of the funding for implementation of the HCP/NCCP during 2011. Staff successfully secured more than \$9 million in new grants in 2011 for work to be completed in 2011 - 2015.	Conservancy Staff continue to research and apply for available grant money which will make up a significant portion of the funding for implementation of the HCP/NCCP during 2012. Staff will apply for Section 6 funds and for non-federal grant funds that can match the Section 6 funds.
6	Administer grants already awarded.	N/A	On-going	More than \$8 million in grant funds were actually spent in 2011, requiring a substantial numbers of agreements, invoices, forms and other grant management duties. Procedures for accessing Section 6 funds continue to be greatly accelerated by WCB.	Staff will continue with these duties from 2011 and pursue additional streamlining of the Section 6 granting process.
7	Coordinate with other Regional HCPs and pursue a legislative program that will aid the Conservancy's implementation of the Plan.	N/A	On-going	As part of ongoing participation in the coalition of northern California HCPs (NCCPP), Staff assisted in hosting its annual conference in Vacaville in November, including providing a presentation on economics and economic challenges of HCPs. Continued partnership with the California Habitat Conservation Plan Coalition (CHCPC) working to unite northern and southern efforts to promote HCPs at the state and federal levels. Supported annual CHCPC legislative trip to Washington in March, intensively collaborated with CHCPC on campaigns to increase/prevent cuts to Section 6 funding. Invited to present in September to the Strategic Vision management team for the department of Fish and Game and stressed the need to support NCCP's. Proposed 2012 Platform.	Continue to participate in the CHCPC to pursue common policy objectives and to learn from the experiences of other HCP's. Attend CHCPC and NCCPP Conferences in 2012. Implement 2012 Legislative Platform, including an emphasis on Section 6 funding levels in Congress and accessing Proposition 84 funds through WCB. Work with other HCP's to explore challenges associated with creating effective endowments to fund long term management, including potential obstacles to reasonable rates of investment return.
8	Provide accounting services for the Conservancy.	N/A	On-going	Staff continued to manage the Conservancy finances by processing more than 230 payments and receipts in 2011. The Conservancy conducted an audit of the 2010 Financial Statements. The auditors written statements were presented to the Board and filed with appropriate agencies.	As well as preparing the 2012 Budget and managing finances consistent with the approved budget, day to management of debits and deposits will continue. The Conservancy will conduct an audit of the 2011 Financial Statements. The auditors written statements will be presented to the Board.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
9	Pursue regional permits and permitting programs for jurisdictional wetlands and waters with the appropriate state and federal agencies to help ensure coordination between implementation of the HCP/NCCP and the implementation of state and federal wetlands regulations.	N/A	On-going	Conservancy worked with the Sacramento District of the Army Corps of Engineers to support their development of a draft Regional General Permit (RGP) linked to the HCP/NCCP which was released for public comment in 2011. The draft In-Lieu Fee Program Prospectus prepared by the Conservancy was also released for public review by the Corps. The Conservancy convened a public workshop in June with the Corps, USFWS and CDFG to explain and solicit feedback on the proposed RGP, In-Lieu Fee Program, and strategy for coordinating the HCP/NCCP with state and federal wetlands regulations. The Conservancy developed an initial rough draft In-Lieu Fee Agreement. The Conservancy worked with the Corps and EPA to reach out to the Water Boards (State, San Francisco bay and Central Valley) seeking to conclude years of interagency work to coordinate the RGP and HCP/NCCP with the state's responsibilities for Section 401 of the Clean Water Act and the Porter Cologne Act.	Continue coordination and analysis efforts between implementation and state/federal wetland regulations in 2012. Pursue as a top Conservancy priority the goal of completing regional permitting instruments in 2012 including a Regional General Permit, 401 Water Quality Certification of the RGP from the Water Boards, Section 7 Biological Opinion on the RGP from U.S. Fish and Wildlife Service, 1602 assurances from the Department of Fish and Game and execution of an In-Lieu Fee Instrument (agreement) to link the Conservancy's fee collection and conservation activities to implementation of the various new permits.
Program Administration (HCP/NCCP permit issuance)					
10	Develop and update the template Planning Survey Report (PSR) Application	0-6 Months	On-going	Additional review and revision is on-going based on experiences with projects that have used the form as well as modifications based on new policies and requirements.	Continue to use and update the template as necessary. Continue to seek feedback from users.
11	Provide training to local jurisdictional staff on HCP/NCCP applications. Assist local jurisdictions to ensure that project proponents comply with the provisions of the Plan, including performance of required avoidance, minimization and mitigation measures.	0-6 Months	On-going	Staff continued to coordinate with local jurisdiction staff to discuss updates and HCP/NCCP application processing and continued to provide assistance and technical support in 2011. Staff held regular meetings with the Contra Costa County Public Works Department, Environmental Unit Staff, in order to assist with facilitation of HCP/NCCP applicability to the County's many road and flood control projects.	Coordination, training and outreach efforts will continue and expand in 2012.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
12	Implement Permitting Program: Process applications for coverage under the HCP/NCCP, tracking performance of required avoidance, minimization and mitigation measures.	0-6 Months	On-going	The Conservancy reviewed and approved a number of applications by Participating Special Entities for take coverage under the HCP/NCCP. The Conservancy assisted other local jurisdictions with their take coverage activities by reviewing and commenting on numerous Planning Survey Applications. The Conservancy reviewed and approved all Construction Monitoring Reports submitted by all covered activities and worked with numerous project proponents on the details of their avoidance and minimization procedures in cases where species were present.	Efforts are on-going and will continue through 2012.
13	Prepare report documenting the expected benefits of the HCP/NCCP to non-covered special-status species to provide streamlining for future CEQA documents.	6 Months - 1 Year	In-process (complete by 2011)	An administrative draft has been prepared.	A public draft of this document will be complete and circulated in Summer 2012.
14	Establish GIS database to track land acquisitions and Permitting Program database to track projects, impacts, and take coverage.	6 Months - 1 Year	On-going	Both databases were comprehensively updated in 2011 and new programming was instituted to query both databases simultaneously and generate the reports and tables needed for the 2011 and future Annual Reports.	Staff will continue to maintain and improve the GIS and covered project tracking databases. The possibility of developing a more interactive financial database will also be pursued to simplify the preparation of materials for audits and other reports requiring financial information.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
<i>Preserve Acquisition and Management</i>					
15	Continue to acquire land to assemble Preserve System and Meet Stay Ahead requirements as described in Section 8.6.1	1-5 Years	On-going	<p>Conservancy staff will continue to meet with acquisition partners. The East Bay Regional Park District has been the primary partner and detailed coordination and cost-sharing will continue. The Conservancy will also continue to coordinate with other potential partners such as Save Mount Diablo, State Parks, Contra Costa Water District, Agricultural-Natural Resource Land Trust of Contra Costa County, Brentwood Agricultural Land Trust, the Natural Heritage Institute, cities such as the Cities of Oakley and Brentwood with potential preserves in their boundaries and private mitigation banks to learn of their current acquisition efforts and explore opportunities for partnering.</p> <p>Conservancy will continue the following general approach to land acquisition in early years: (a) seek partners such as EBRPD willing to be responsible for assisting with the fund-raising and willing to be the land owner and land manager or easement holder (or to find another entity to serve that role) so that the Conservancy can avoid actually owning and managing land or easements in perpetuity, (b) maintain an "Open Door Policy" and be willing to consider proposals from a range of partners, (c) once a prospective partner has found a willing landowner and established a price, the Conservancy should evaluate the cost effectiveness of the acquisition in achieving HCP goals, develop a proposed acquisition cost-share and strategy for ensuring management and monitoring, evaluate the pros and cons of the overall package and consider approving or disapproving Conservancy participation in the acquisition.</p>	
16	Develop a mutually agreeable programmatic strategy with East Bay Regional Park District (EBRPD) to collaborate on land acquisition and management in the HCP area.	N/A	On-going	<p>EBRPD is implementing its Master Plan and is buying land in the inventory area for park and open space purposes. Voters approved EBRPD's Measure WW in 2008, providing significant new capital to support this work. Continuing to partner with EBRPD will help to ensure that the land acquisition and management goals of EBRPD's land program and the similar goals of the HCP/NCCP are implemented in a coordinated manner (this goal is set forth in Section 13.6 of the Implementing Agreement). Conservancy staff and EBRPD staff have been discussing partnership opportunities and believe, for the time-being, that partnership opportunities should be addressed case by case because the details are numerous and specific to the parcel in question. Coordination has been excellent so far and numerous agreements have been completed to address specific acquisition and restoration projects.</p>	
17	Conducting pre-acquisition assessments and post-acquisition detailed biological assessments of potential acquisitions to determine their biological value for the HCP.	N/A	On-going	<p>Conservancy Staff and consultants developed protocols and practices for a phased and more streamlined approach to this task that defers the most expensive field work until after an agreement has been reached to purchase a property. In 2011, initiated a new phase of assessments of preserve system lands by performing detailed and thorough surveys for wetlands and covered plants on acquisition properties.</p>	<p>In 2012, both the pre-acquisition assessments and the grant-funded surveys for wetlands and covered plants will continue. The detailed surveys should be finished in 2012 on all lands acquired before the start of the year. These surveys are essential to ensure HCP/NCCP wetland and plant preservation requirements are being met.</p>

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
18	Create template Conservation Easement Deeds and Deed Restrictions and other protective covenants to speed-up addition of land to the Preserve System and to protect the interests of the Conservancy in land it acquires.	N/A	On-going (with goal to complete in 2011)	In 2011, staff worked with the wildlife agencies and EBRPD to reconcile their respective comments on the draft deed restriction and develop a draft that we hope can be approved (now under review). Staff also developed a Conservation Easement template in 2011 which could be used on properties not owned by EBRPD.	In 2012, the deed restriction will be finalized and used to develop documents to be recorded on already-acquired properties.
19	Develop and begin to implement a strategy for funding the long term management of the Preserve system before 50% of the authorized take under the maximum urban development area is used or before the end of year 15 of implementation, whichever comes first. Provide progress reports on this matter in the Annual Report.	Year 15 or when half of the impacts have occurred, whichever comes first.	Planned	This a critically important long term task that must be confronted as early as possible during implementation. To date, some significant steps have been made toward addressing this issue. The Conservancy and District acquired properties with cumulative annual lease revenue of approximately \$400,000 and agreed that a portion of this lease revenue would set aside in a non-wasting endowment for long term management. Contributions to recovery collected from Participating Special Entities can also be applied in part to long term management.	Work on this effort will continue in 2012 including development of management plans which help us begin to improve the estimates in the HCP/NCCP of long term management costs. The Conservancy will also work with other agencies and possibly seek a grant to examine opportunities for maximizing rate of return on endowments.
20	Develop management plans for the Preserve System and individual preserves.	1-5 Years	On-going	In 2011, an administrative draft of the Byron Hills Preserve Management Plan was prepared. Staff held a series of meetings with divisions of EBRPD that are less familiar with the HCP/NCCP to involve them in the Management Plan process.	In 2012, a working group initiated with EBRPD and involving the wildlife agencies for issues critical to them, will develop a public draft of the Byron Hills Preserve Management Plan that reflects the needs of both agencies. The Byron Hills Plan will incorporate recreation, exotic plant and monitoring elements that subsequently also be addressed at the system-wide level.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
21	Implement management plans for the Preserve System and individual preserves.	N/A	On-going	With preserve management plans in development and numerous recently-acquired properties to assess, preserve management activities were minimal and cautious and generally continued past practices. EBRPD instituted new grazing leases with rent based on stocking rates rather than fixed. EBRPD and the Conservancy coordinated on as-needed basis with efforts such as milk thistle eradication, rare plant propagation and fuel management.	Interim management procedures will continue and slowly expand as management plans are completed. With significant blocks of preserve lands now assembled, the Conservancy and EBRPD will begin to identify tasks, suitable locations to stage ranger stewardship and increase supervision of preserves and natural resources.
22	Prepare an Exotic Plant Control Plan to address exotic and invasive plants on Preserve System lands	1-5 Years	On-going	Several exotic plant control activities have been planned and implemented on a project-by-project basis until preserve management plans and the system-wide Exotic Plant Control Program are developed.	The initial Exotic Plant Control Program will be developed as an element within the Byron Hills Preserve Management Plan and subsequently expanded,. This plan will likely be based on and coordinated with existing policies and programs such as with the East Bay Regional Park District's Integrated Pest Management Plan.
23	Prepare a Recreation Plan to address recreational uses on Preserve System lands	1-5 Years	On-going	Recreation needs, opportunities and constraints were identified as land has been acquired. The Byron Hills Preserve Management Plan is including comprehensive evaluation of and planning for recreation.	Incorporate a detailed recreation element in the Byron Hills Preserve management Plan. Experience thus far with that Plan suggests that it may not be advisable to have a separate and detailed system-wide recreation plan as the details of recreation may be better evaluated and planned for in the context of the more localized preserve management plans. A proposed organizational structure to link and coordinate the various required management plans will be developed and presented in 2012.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
<i>Habitat Restoration/Creation</i>					
24	Begin habitat restoration and creation design and additional environmental compliance for habitat restoration if needed.	1-5 Years	Ongoing	Like land acquisition, habitat restoration and creation will be a key program area for the Conservancy. If restoration and creation of jurisdictional wetlands and waters does not keep pace with impacts, the ability to mitigate such impacts by paying a fee will be suspended (the HCP provides that the Conservancy has until the second year to "get ahead"). Likewise progress on this task is an essential foundation to completion of efforts to coordinate wetlands permitting with the HCP.	Staff will work with consultants and other partners to assess new acquisitions for restoration opportunities. Where opportunities are identified restoration concepts will be developed and reviewed for potential to be successful restoration projects for 2013.
25	Implement habitat restoration and habitat creation projects.	1-5 Years	On-going	In 2011, the Conservancy completed a significant project on the Land Waste Management property, the Upper Hess Creek Watershed Habitat Restoration Project. The project involved restoration and creation of seasonal and alkali wetlands, streams and ponds.	In 2012, the Conservancy plans two smaller habitat restoration/creation on two Preserve properties as follows: 1)Ang property: restoration of riparian woodland and scrub habitat and streams. 2)Vaquero Farms South property: restoration and creation of vernal pool habitat. Feasibility of sites for larger wetland restoration projects for possible construction in 2013 will be explored.
<i>Monitoring and Adaptive Management Program</i>					
26	Design Monitoring and Adaptive Management Program	1-5 Years	Ongoing	The Conservancy developed a monitoring and reporting plan for the Upper Hess Project based on its experience implementing monitoring on the four previous projects. Preserve monitoring measures were initiated as part of development of the Byron Hills Preserve Management Plan.	Work on this effort will continue through 2012. The first draft of a comprehensive monitoring strategy will be developed in 2012 as part of the Byron Hills Preserve Management Plan.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2011	ACTIONS PROPOSED FOR 2012
27	Monitoring and adaptive of restoration projects and new preserves.	1-5 Years	Ongoing	The four previously constructed restorations were monitored throughout 2011 and several adaptive measures were taken. A \$250,000 portion of the \$2.25 million grant received from the Gordon and Betty Moore Foundation is to study the impacts of turbines on avian species and methods for reducing these impacts. The Board approved a collaborative project with EBRPD to attach GPS units to golden eagles as a first project to be carried out under the grant.	Work on this effort will continue and be expanded in 2012 to include 2011 restoration/creation sites. The golden eagle study will commence.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Legislative Issues

RECOMMENDATION

- a) ADOPT the 2012 Legislative Platform;
- b) ADOPT Resolution 2012-01 to support working together with agencies from across California to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$47 million to \$80 million in the Fiscal Year 2013 Interior and Related Agencies Appropriations bill;
- c) AUTHORIZE the Chair or staff, as appropriate, to communicate items on the Platform to relevant members and staff of the U.S Congress and the California Legislature, relevant federal and state agencies, potential advocacy partners and others;
- d) AUTHORIZE payment of \$5,000 as membership dues for the California Habitat Conservation Planning Coalition in 2012.

DISCUSSION

Item (a): The Legislative Platform contains specific policy statements pertaining to seven issues affecting the ongoing progress of East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan and the utility of the ECCC HCP/NCCP for local agency planning needs. Conservancy staff has participated in several statewide meetings of representatives of and advocates for HCPs and NCCPs in northern and southern California, and as a result it is expected that nearly all items on the Platform will be jointly pursued by the newly formed statewide HCP coalition the California Habitat Conservation Planning Coalition (CHCP or Coalition). The Governing Board has previously approved supporting positions on all items proposed in the Platform. However, the language has been cleaned up and updated throughout the Platform and Item 1 has been revised to reflect a lower request given the dramatic cuts in federal funding the last two years. Conservancy staff recommends approval of the Platform to reaffirm those policy positions and provide clear documentation of them.

CONTINUED ON ATTACHMENT: YES
 ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
 OTHER: _____

VOTE OF BOARD MEMBERS

 UNANIMOUS
 AYES: _____
 NOES: _____
 ABSENT: _____
 ABSTAIN: _____

I HERABY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
 CATHERINE KUTSUIRS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

Item (b): Conservancy staff is also recommending approval of Resolution 2012-01 which is a more formal expression of Item 1 on the 2012 Legislative Platform suitable for submission Members of Congress and the federal administration. Resolution 2012-01 is virtually identical to resolutions approved in the last two years (though the requested funding amount has decreased to reflect budget realities).

Item (c): If the Governing Board approves the 2012 Platform and Resolution 2012-01, staff is also recommending that the Board authorize these positions to be communicated to appropriate parties through written communication and attendance of meetings. A Conservancy representative has been invited to attend a short trip to Washington D.C. in March of 2012 as part of continued California Habitat Conservation Planning Coalition (CHCPC) efforts to advocate for Platform issues, Items 1-3 and 5 and 7 and Conservancy staff would propose to attend as occurred in previous years. The costs of such a trip would be covered within the proposed 2012 Conservancy Budget.

Item (d): Staff is recommending payment of CHCPC's \$5,000 membership dues again in 2012. Our continued participation with the California Habitat Conservation Planning Coalition is an effective and cost-effective means for pursuing the Conservancy's Legislative Platform as the work of the Coalition is very consistent with the Conservancy's Legislative Platform.

During 2011, the California Habitat Conservation Planning Coalition's third year, the Coalition pursued support for an increase in HCP land acquisition grant funding, engaged the U.S. Fish and Wildlife Service and the U.S. Department of the Interior on problems regarding local matches for these grants, and began work on resolving delays in spending land acquisition grants. This work included orchestrating a Washington D.C. advocacy trip, Coalition workshops in May and October, hosting numerous conference calls, and preparation of a wide variety of documents to pursue the Coalition's and Conservancy's legislative agendas. The Coalition's FY2012 briefing book on the request to increase funding for Federal Section 6 grants is attached (please note, the briefing book will be updated in the next few months to reflect the FY2013 request). These activities were carried out through by the participation of many individuals in Work Groups and through considerable pro-bono staff time provided by The Nature Conservancy and the Institute for Ecological Health as well as by dues paid by members. A document explaining the 2012 CHCPC membership contributions is attached.

Each year, a CHCPC member agency takes a turn hosting the meeting and provides presentations and field visits that help other members understand how the host's plan works, what its challenges have been, and any innovative solutions. These meetings have provided very helpful lessons learned about a fairly unique field work—implementation of local government HCP/NCCPs. Conservancy staff has attended prior year workshops in the Riverside and San Diego Counties. The Executive Director is proposes to try to send all three dedicated staff members to all or part of the 2012 workshop. The location for 2012 has not yet been determined (and it is possible the Conservancy may host this year), but the cost of such participation will be small compared to the benefit and will be covered within the proposed 2012 Budget.

Attachments:

- Proposed 2012 Conservancy Legislative Platform
- Resolution 2012-01
- Document explaining CHCPC Voluntary 2012 Membership Contributions
- CHCPC's Briefing Book for the FY2012 Section 6 campaign



EAST CONTRA COSTA
COUNTY HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

2012

Federal & State Legislative Platform

The 2012 Legislative Platform of the East Contra Costa County Habitat Conservancy describes the policy position of the Conservancy on state and federal legislative matters pertaining to the successful and effective implementation of the East Contra Costa County Habitat Conservation Plan (HCP) / Natural Community Conservation Plan (NCCP).

SUMMARY

In 2012, the East Contra Costa Habitat Conservancy will support and advocate for the following legislative or policy actions in the state and federal governments:

- Item 1:** *Advocate* restoring funding for the Cooperative Endangered Species Conservation Fund to \$80 million in FY2013, an increase relative to the \$47 million appropriated in FY2012 but a decrease from the \$85 million appropriated in FY2010 that is commensurate with, and not more severe than, the overall reduction in federal spending.
- Item 2:** *Request* recognition of Habitat Conversation Plans as a reliable way of streamlining critical infrastructure and economic stimulus projects in a manner that is consistent with federal environmental regulations and in the process creating many “green” jobs.
- Item 3:** *Advocate* implementation of the revised grant guidelines for the U.S. Fish and Wildlife Service (USFWS) Section 6 Grant Program so that a significant portion of the Conservancy’s fee funds can be used as match.
- Item 4:** *Request* the California Wildlife Conservation Board to continue to its financial support for Conservancy projects with the goal of growing the \$4 million contributed in 2011 to an overall contribution of \$20 million over the next several years. Such funding would help the State and the Conservancy meet the required non-federal match for the State and Conservancy’s six approved Section 6 grants. \$90 million in State funding has already been earmarked in the voter-approved Proposition 84 for Natural Community Conservation Plans.
- Item 5:** *Advocate* for consideration of HCP/NCCP’s as a suitable device toward fulfilling the requirements of SB375.

Item 6: *Advocate* for HCP/NCCP's to be viewed as a suitable place to spend fees collected pursuant to future state and federal climate change legislation as HCP/NCCP's effectively mitigate impacts of climate change by providing for ecological adaptation.

Item 7: *Advocate* for HCP/NCCP's to be viewed as critical partnerships and flagship programs that should receive increased support and elevated stature at the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

2012 LEGISLATIVE PLATFORM DETAILS

Item 1: Regional Habitat Planning and Conservation - U.S. Fish and Wildlife Service's Cooperative Endangered Species Conservation Fund.

LEGISLATIVE POSITION:

In recognition of the tremendous need for a continued federal investment in cooperative partnerships providing funds for threatened and endangered species work by nonfederal partners and assisting growth of local economies and jobs, and in partnership with approximately a dozen counties in northern and southern California, we request that the United States Congress place special emphasis on the Cooperative Endangered Species Conservation Fund (CESCF) program in Fiscal Year 2013 by providing \$80 million in the Fiscal Year 2013 Senate Interior, Environment and Related Agencies Appropriations Bill. This funding level would restore much of the cut from the last two years, but still be less than the fiscal year 2010 appropriations of \$85 million, a percentage reduction equivalent to the overall decrease in federal appropriations over that period.

BACKGROUND:

With over 80 percent of threatened and endangered species habitat found on non federal lands, the Cooperative Endangered Species Conservation Fund (CESCF) has been one of the U.S. Fish and Wildlife Service's most successful grant programs. Authorized under Section 6 of the Endangered Species Act, the CESCF represents a vital tool for ensuring cooperative partnerships between the federal government, states and nonfederal partners for the protection and conservation of threatened and endangered species.

The CESCF program includes grant funding to states through three sub accounts - HCP Planning Assistance Grants, HCP Land Acquisition Grants, and Recovery Land Acquisition Grants. The land acquisition programs focus on those lands that have greatest potential to benefit species at risk. The HCP planning and land acquisition grants have been very important for the preparation and implementation of large-scale HCPs in California.

The Conservancy has been the beneficiary of six CESCF land acquisition grants providing a total of \$32,494,990 toward critical land acquisition under the East Contra Costa County HCP/NCCP. CESCF funds spent to date have contributed toward the acquisition and permanent protection of approximately 9,000 acres of habitat and future park land.

In 2011, Congress cut CESCO very substantially, making a 30 percent cut in the fiscal year 2011 appropriations and an additional 20 percent cut in the fiscal year 2012 appropriations. This is a far greater cut than overall federal or total U.S. Fish and Wildlife Service funding.

In sharp contrast, there is tremendous demand both in California and across the country for threatened and endangered species grant funding. With the increased utilization of HCPs and enhanced activity in recent years to update and finalize Recovery Plans, the CESCO program is currently receiving requests far greater than the amount available.

Local jurisdictions managing conservation plans in counties across California are working through the California Habitat Conservation Planning Coalition in seeking this funding increase. The conservation plans include the Yolo Natural Heritage Program, the Solano HCP, the East Contra Costa County HCP/NCCP, the Santa Clara Valley HCP/NCCP, the Coachella Valley Multispecies Conservation Plan, the Western Riverside County Multispecies Conservation Plan and the San Diego Multispecies Conservation Plan.

Item 2: Streamlining Permitting for Critical Infrastructure and Economic Stimulus Projects and Creation of “Green” Jobs.

LEGISLATIVE POSITION:

Request recognition of Habitat Conservation Plans (HCPs) as a reliable way of streamlining critical infrastructure and economic stimulus project permitting in a manner that is consistent with federal environmental regulations. HCPs not only facilitate such projects through permit streamlining, but the planning, implementation, management, and monitoring needs associated with regional HCPs plans also create many quality “green” jobs.

BACKGROUND:

There has been a dramatic increase in infrastructure projects associated with state and federal infrastructure initiatives and economic stimulus legislation. Regional HCPs are an excellent tool for streamlining the necessary project permitting and environmental mitigation associated with these investments in a manner that will be consistent with federal environmental regulations. Not only do HCPs facilitate and streamline job creating investments, but also as discussed above, the planning, implementation, monitoring, and management needs related to these plans create “green” jobs. Creation of these types of jobs has been noted as a top priority of the current presidential administration.

Item 3: The Use of Local Fee Money to Match Federal Section 6 Grants

LEGISLATIVE POSITION:

Advocate implementation of the revised grant guidelines for the U.S. Fish and Wildlife Service (USFWS) Section 6 Grant Program so that a significant portion of the Conservancy’s fee funds can be used as match.

BACKGROUND:

In 2008, USFWS staff made clear to the Conservancy staff and others that USFWS interpreted its grant guidelines to prohibit use of mitigation funds as match for Section 6 Grants.

The rationale expressed for this policy is that mitigation funds are compulsory and don't leverage additional funds. The Conservancy and other concerned parties have argued that this policy was not evident in the grant guidelines and does not seem logical for a grant program designed for HCPs. Section 6 grants do leverage huge amounts of conservation whether or not local fee funds are used as match. The very existence of the Section 6 program has been an incentive to develop regional HCPs, which are far better for conservation than the pre HCP project-by-project land-use permitting process. Without local governments such as those in East Contra Costa County voluntarily agreeing to approve and implement HCPs and require mitigation through their land use authority, the amount and quality of mitigation from these areas would be substantially reduced. The 2008 policy had the potential to derail conservation planning efforts in many parts of California and severely hamper the efforts of existing plans to spend current and future Section 6 grants. The policy also could have a chilling effect on access by HCPs to other federal, state and private grant programs if the USFWS is seen to shy away from consideration of local fee funds as credible source of matching funds for its own HCP grant program.

In 2010, the California Habitat Conservation Planning Coalition made a substantial effort to engage the U.S. Fish and Wildlife Service and resolve the fees as match issue. The Coalition met with Gary Frazer (Deputy Secretary of the U.S. Fish and Wildlife Service and other senior administration officials in Washington in March and Mr. Frazer came to California for a meeting with the Coalition on this matter in September. The Coalition also sent numerous communications on the matter, commissioned legal analysis and enlisted the support of Senators Boxer and Feinstein. The publication of the FY2011 Request for Proposals for Section 6 funding released in November 2010 documents a change in policy on this issue. Beginning in the FY2011 grant process, fees collected for non-federal mitigation can be used as match for this grant program. USFWS Field office staff will be invested with the authority to implement this policy. Based on initial conversations, staff estimates that in East Contra Costa County approximately half of fees collected will be eligible to be used as match (equivalent to the portion of the HCP that is not mitigation-based). While this would not allow all fees to be used as match as had been hoped, this would free up a significant amount of matching funds over future years. Together with a significant allocation of state bond funds, the immediate crisis over matching funds would be addressed. However, the Conservancy needs to continue to work with USFWS to make sure that anticipated changes in the eligibility of match funds actually occurs.

Item 4: Appropriation of State Funds to Match the Conservancy's Four Approved Federal Section 6 Grants

LEGISLATIVE POSITION:

Request the Wildlife Conservation Board to provide a substantial contribution of approximately \$20 million toward the required non-federal match for the Conservancy's five approved Section 6 grants.

State funding has already been earmarked in the voter-approved Proposition 84 for Natural Community Conservation Plans.

BACKGROUND:

Section 6 HCP Land Acquisition funds are typically granted to States. The States administer the expenditure of the funds for specific land acquisition projects associated with the HCP named in the grant award. The Wildlife Conservation Board (WCB) is the state agency in California responsible for administering the Section 6 Land Acquisition grants. The Section 6 grants for the ECCC HCP/NCCP require a 55% non-federal match (e.g., 45% of the cost may be covered by federal funds, but 55% must be covered with non-federal funds). The Conservancy's six approved Section 6 grants have a combined value of \$32,494,990. The required non-federal match is \$39,716,143. The HCP includes commitments for state and federal funding contributions and a substantial state contribution at this time would help the Conservancy meet the match requirements of approved Section 6 grants and conserve value habitat.

WCB administers various funding State programs to benefit wildlife, including a funding program specifically for NCCPs. Proposition 84, approved by voters in 2006, included a \$90 million line-item for NCCPs. Only four local government-led NCCPs in the state are actively seeking WCB funds for land acquisition, and the East Contra Costa County HCP/NCCP is the only one of these in northern California. In 2010, WCB staff proposed allocating the Conservancy \$5 million from its funds on hand as an initial contribution. So far, in four separate grant awards for four acquisitions, WCB has awarded the Conservancy \$4,052,646. The Conservancy plans to work with WCB to continue to seek grants on a project by project basis toward a fund-raising goal of \$20 million from WCB's Proposition 84 funds, thereby covering about half the non-federal match requirements of the already-approved Section 6 grants. Other potential state sources of funds that would be pursued include funds administered by the Coastal Conservancy and the Department of Water Resources.

The Delta Legislation package approved in late 2009 bolsters the Conservancy's request. That legislation allocated \$24 million of the \$90 million NCCP line-item in Proposition 84 to NCCP projects of Delta counties. The East Contra Costa County NCCP is the only approved in NCCP in the Delta, so this allocation could aid the Conservancy's long-standing request for \$20 million from Proposition 84. During the FY2011 budget process, an attempt was made to significantly reduce or redirect this allocation. Conservancy staff worked closely with the County's lobbyist to try to protect the allocation. Whether or not due to these efforts, the allocation was protected. Future efforts to reduce the allocation are anticipated. The Conservancy will continue to seek to protect the allocation.

Item 5: Habitat Conservation Plans and Natural Community Conservation Plans as a suitable device to fulfill the requirements of SB375.

LEGISLATIVE POSITION:

Advocate for consideration of the HCP/NCCP's as a suitable device toward fulfilling the requirements of SB375.

BACKGROUND:

SB 375 (Steinberg), also known as California's Sustainable Communities Strategy and Climate Protection Act is a new state law which became effective January 1, 2009. SB 375 calls for the integration of transportation, land use, and housing planning, and also establishes the reduction of greenhouse gas (GHG) emissions as one of the main goals for regional planning. SB 375 requires the sustainable communities strategy to "gather and consider the best practically available scientific information regarding resource areas and farmland in the region." SB 375 requires regional planning agencies to use this information to prepare Sustainable Communities Strategies and to award regional transportation funds based on these Strategies. Certain projects consistent with the Strategies will be exempt from CEQA or qualify for CEQA streamlining. As the Sustainable Conservation Strategy for this region is assembled, the East Contra Costa County HCP/NCCP should be viewed as a source of data and a valuable piece of the Strategy puzzle.

Item 6: Habitat Conservation Plans and Natural Community Conservation Plans as a suitable place to spend fees from future climate change legislation.

LEGISLATIVE POSITION:

Advocate for HCP/NCCP's to be viewed as a suitable place to spend fees collected pursuant to future state and federal climate change legislation as HCP/NCCP's effectively mitigate impacts of climate change by providing for ecological adaptation.

BACKGROUND:

One predicted impact of climate change is disruption of ecological systems that have evolved to current climate systems. Wildlife corridors and large regional conservation efforts will help ameliorate the ecological impacts by conserving a range of environmental gradients and enabling natural systems to adapt to these changes.

The Global Warming Solutions Act of 2006 (AB 32) required the Air Resources Board to prepare a Scoping Plan to achieve reductions in greenhouse gas (GHG) emissions in California. The Scoping Plan, approved by the ARB Board December 2008, provides the outline for actions to reduce California's greenhouse gas (GHG) emissions and discusses the options for possible uses of allowances and revenues to be generated under the program. One such option is to provide funds toward programs that help the State adapt to climate change.

At the federal level, climate change legislation involving "cap and trade" programs have been under discussion (though not as much of late). These programs would collect substantial fees and invest the revenue towards programs to reduce emissions or address the impacts. The National Wildlife Federation is leading a coalition urging that 5% of revenues collected pursuant to such a cap and trade program be invested in natural resource conservation efforts that will enable ecosystems to adapt to climate change. If this were to occur, such revenues could be orders of magnitude larger than the Section 6 program

Should funds become available to mitigate the impacts of climate change, HCP/NCCPs should be considered as a sound investment since they contain all the vital ingredients necessary to enable ecosystems to adapt to climate change.

Item 7: Habitat Conservation Plans and Natural Community Conservation Plans are critical conservation tools

LEGISLATIVE POSITION:

Advocate for HCP/NCCP's to be viewed as critical partnerships and flagship programs that should receive increased support and elevated stature at the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

BACKGROUND:

Both USFWS and CDFG have been helpful partners in implementing the East Contra Costa County HCP/NCCP, especially at the regional and field office level. However, this support could be improved if HCP/NCCPs were as a high a priority in these organizations as they were in the early 1990s when the regional conservation planning effort got underway.

Recent state legislation presents a unique opportunity to advocate for more support for HCP/NCCPs. In September 2010 the California Legislature passed and the Governor signed AB2376. This bill seeks to strengthen the capacity and effectiveness of the Department of Fish and Game (DFG) in fulfilling its public trust mission and protecting California's wildlife resources for all the people of the state. AB 2376 calls on the State Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature by January 1, 2012, a "Strategic Vision" for DFG and the Fish and Game Commission (FGC). The bill authorizes the Governor to appoint a "blue ribbon" or citizen commission to assist in carrying out this task. DFG convened the blue ribbon commission and associated advisory committees in 2011 and is drafting the Strategic Vision. The Executive Committee and blue ribbon committee guiding the Strategic Vision process invited a presentation from the Conservancy staff on September 14, 2011 and Conservancy staff stressed the value of NCCPs and the need for increased CDFG support for them. The Conservancy should continue to seek enhanced support of NCCPs as a key in DFG fulfilling its mission to protect wildlife resources.

The USFWS is also editing its HCP handbook and soliciting general input on how it can improve its mission. A representative from USFWS in Washington came to the CHCPC's meeting in Coachella in 2010 and specifically requested input from the Coalition on USFWS can improve. The Conservancy should provide comments to U.S. Fish and Wildlife service via the CHCPC on the need to identify the HCP program as a flagship program that deserves greater attention and support.

Resolution No: 2012-01

RESOLUTION OF THE

East Contra Costa County Habitat Conservancy Governing Board

TO SUPPORT

THE CALIFORNIA HABITAT CONSERVATION PLANNING COALITION TO SEEK
FEDERAL FUNDING FOR LOCAL CONSERVATION PLANNING

WHEREAS, jurisdictions across California have embarked on Habitat Conservation Plans (HCPs) or Natural Community Conservation Plans (NCCPs) to conserve species and their habitats and aid our economies and job creation through efficient permitting; and,

WHEREAS, these HCPs and NCCPs provide regulatory relief by streamlining the permitting process, identifying the costs earlier in the process, and providing time for complying with state and federal environmental regulations; and,

WHEREAS, these HCPs and NCCPs offer opportunities for landowners to voluntarily participate in the selling of conservation easements, transfer of development rights or sale of land; and,

WHEREAS, these HCPs and NCCPs set a national example of how to integrate conservation of biological resources and the protection of an important agricultural industry with rapid growth within the six county region; and,

WHEREAS, these HCPs and NCCPs aid in the recovery of endangered and threatened wildlife species and enhance their habitats; and,

WHEREAS, regional, landscape level conservation planning efforts will protect a broad diversity of species and habitats; and,

WHEREAS, more than \$1.8 million from various local, state and federal sources was spent to prepare and finalize the East Contra Costa County HCP/NCCP and an additional \$350 million is planned to be spent over the next 30 years to implement that plan; and,

WHEREAS, the East Contra Costa County Habitat Conservancy is a joint exercise of powers authority formed by the Cities of Brentwood, Clayton, Oakley and Pittsburg and Contra Costa County to implement the East Contra Costa County HCP/NCCP; and

WHEREAS, appropriations for the U.S. Fish and Wildlife Service to make grants for Habitat Conservation Plan land acquisition and planning have fallen, land costs have increased, the number of HCPs has increased and the program does not have adequate funding to meet the nation-wide need.

WHEREAS, the Cooperative Endangered Species Conservation Fund provides grants for preparation of HCPs and also grants for acquisition of land by approved HCPs.

NOW, THEREFORE, BE IT RESOLVED that the Board of the East Contra Costa County Habitat Conservancy does hereby support working together with agencies from counties across California to request that the United States Congress provide \$80 million for the Cooperative Endangered Species Conservation Fund in the fiscal 2013 Interior, Environment and Related Agencies Appropriations bill anticipated to be passed by Congress in 2012.

Approved by the following vote on: January 11, 2012.

Ayes:

Noes:

Abstain:

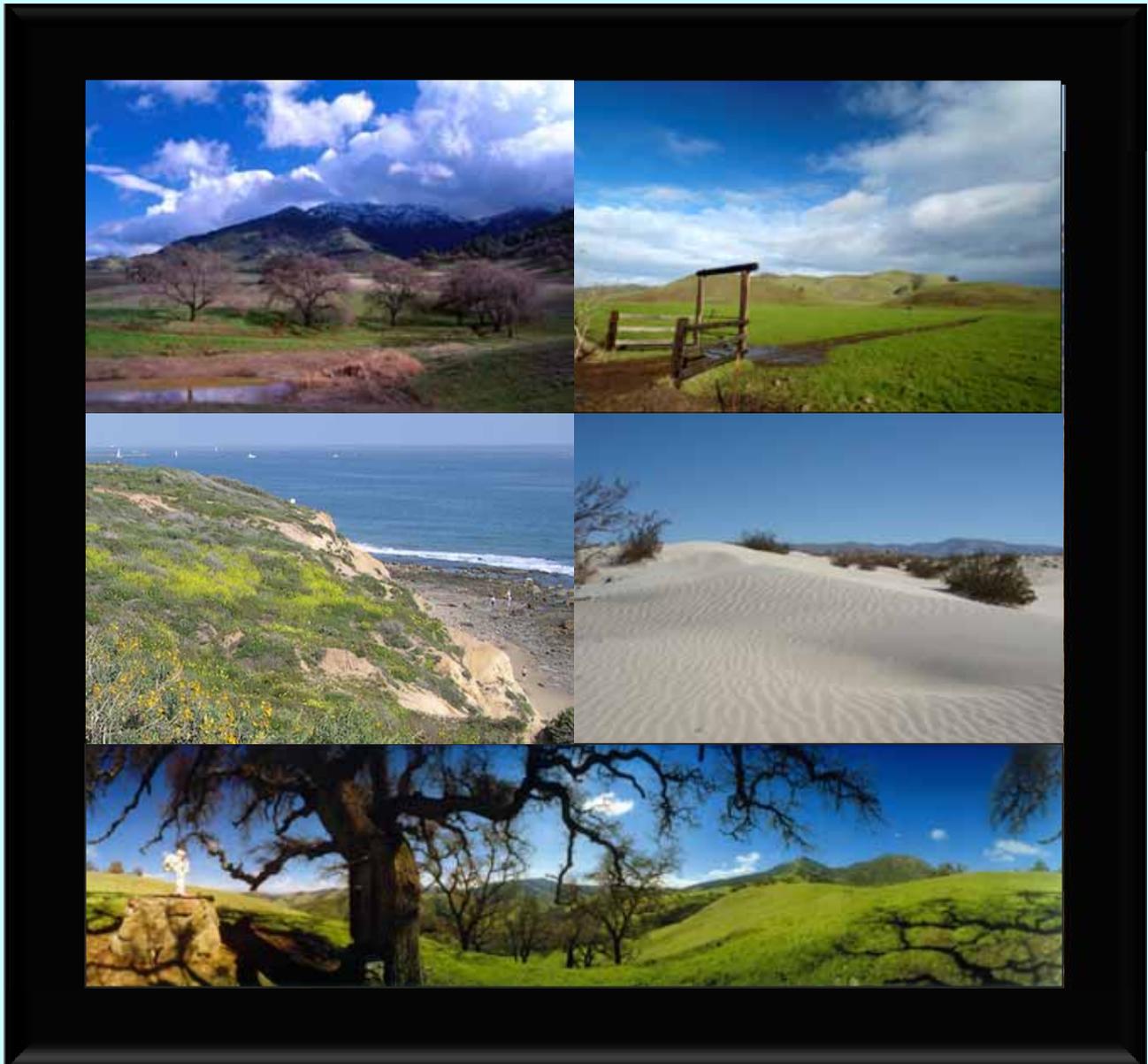
Attest: _____
John Kopchik, Executive Director

California Habitat Conservation Planning Coalition

U.S. Fish and Wildlife Service

Cooperative Endangered Species Conservation Fund:

Fiscal Year 2012 Funding Request



March 2011

REQUEST

The California Habitat Conservation Planning Coalition requests that Congress fund the Cooperative Endangered Species Conservation Fund (the “Fund”) at the President’s budget request level of \$100 million in Fiscal Year 2012. This would bring the program closer to the FY2001 funding level of \$125M, corrected for inflation, and help satisfy the urgent need for funding for endangered species conservation efforts, particularly conservation associated with regional Habitat Conservation Plans. The California Habitat Planning Coalition includes local agencies, conservation organizations and business organizations supporting regional Habitat Conservation Plans.

SUPPORTED BY

Local Agencies:

Coachella Valley Association of Governments
Coachella Valley Conservation Commission
Contra Costa County
East Contra Costa County Habitat Conservancy
Placer County
Riverside County
Sacramento County
San Diego County
San Joaquin Council of Governments
Santa Clara County
Solano County Water Agency
Western Riverside County Regional Conservation Authority
Yolo Natural Heritage Program JPA
Yolo County

Conservation Organizations:

California Land Conservancy
California Native Plant Society
Endangered Habitats League
Friends of the Desert Mountains
Institute for Ecological Health
The Nature Conservancy
Sierra Foothills Audubon Society

Business/Infrastructure:

Building Industry Association of the Bay Area
Building Industry Association of Southern California
Pacific Gas and Electric Company
The Sauls Company

CALIFORNIA HCPs

Key Regional HCPs:

Yuba- Sutter HCP/NCCP
Yolo Natural Heritage Program
Western Riverside County MSHCP/NCCP
South Sacramento HCP
Solano HCP
Santa Clara Valley HCP/NCCP
San Joaquin County Multi-Species Conservation and Open Space Plan
San Diego North County Multiple Species Conservation Program NCCP
San Diego Multiple Habitat Conservation Program NCCP
San Diego County Multiple Habitat Conservation Open Space Plan NCCP
San Diego County Multiple Species Conservation Program NCCP
Placer County Conservation Plan
Natomas / Metro Air Park HCPs
East Contra Costa County HCP/NCCP
Coachella Valley MSHCP/NCCP
Butte Regional Conservation Plan (HCP/NCCP)



THE VALUE OF HCPs AND THE COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND

HCPs Benefit Business and the Environment:

Regional Habitat Conservation Plans (HCPs) establish a coordinated process for permitting and mitigating the incidental take of endangered species. This process creates an alternative to the project-by-project approach. Rather than individually surveying, negotiating, and securing mitigation and permit coverage, proponents of public and private projects are covered by an umbrella regional permit. Habitat preservation, restoration and stewardship are conducted in a coordinated way by a local conservancy. Some benefits of regional HCPs are:

- Purchase, restore, and permanently protect large, interconnected and biologically rich blocks of habitat.
- Redirect money away from the process of permitting and toward the protection of resources.
- Improve regulatory certainty and permitting efficiency for local jurisdictions and the development community.
- Provide fair compensation to willing landowners for permanent protection of their land.

Federal Funds Spur Substantial State and Local Investments: The Cooperative Endangered Species Conservation Fund (Fund) provides grants to states for land acquisition consistent with approved HCPs, for assistance with preparation of HCPs and for other projects that help endangered species to recover. Funds for HCP land acquisition are by far the largest component. In California, the funds are subsequently granted to local agencies.

Major advantages of the Fund are that it leverages federal dollars and promotes regional HCPs. Grants from the Fund typically require a substantial non-federal match. The potential for grants from the Fund provides a key incentive for state and local agencies to develop and implement HCPs for the benefit of federally protected species.



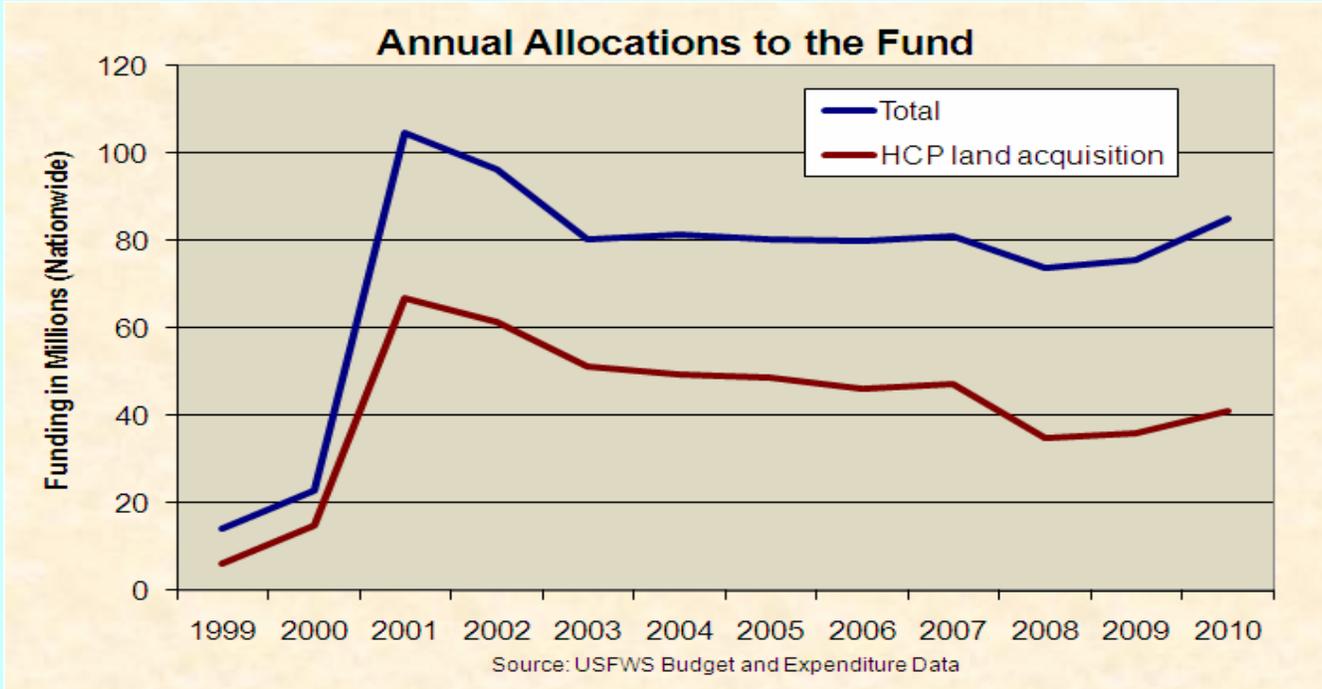
Scott Hein



WHY THE FUND ALLOCATION NEEDS TO INCREASE

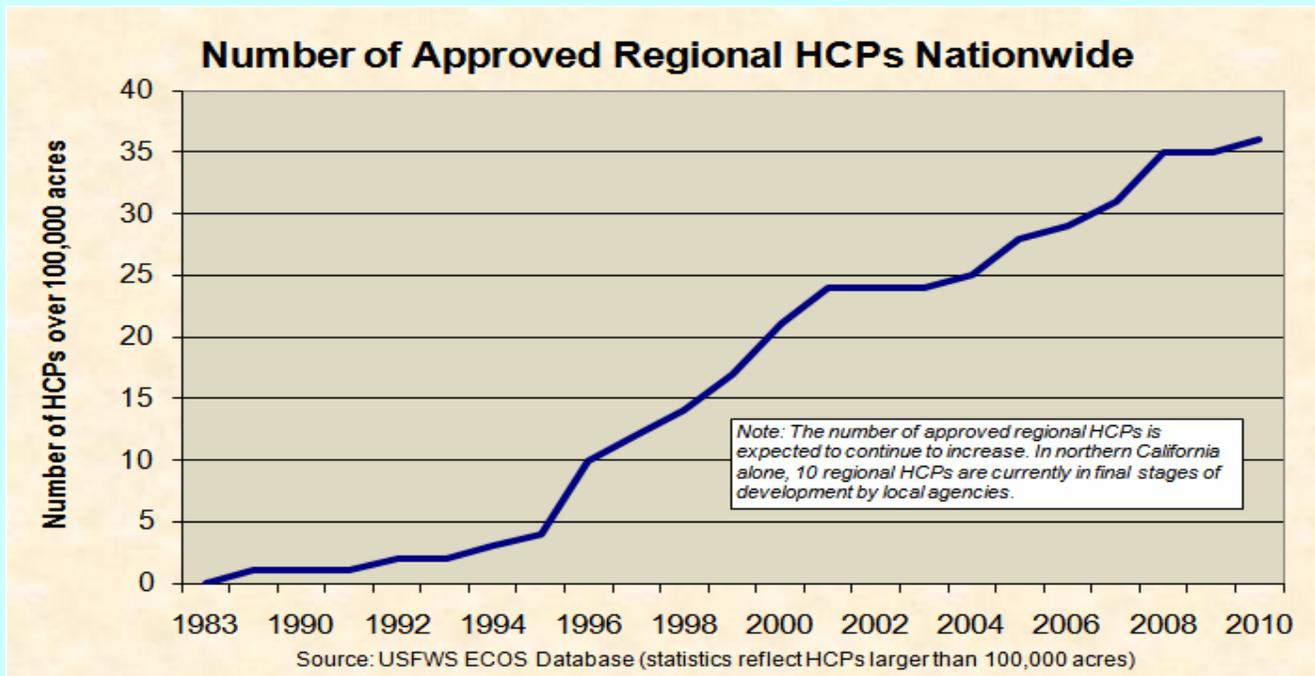
A) Funding Levels Have Declined and Stagnated

Allocations to the Cooperative Endangered Species Conservation Fund have declined & stagnated over the last decade. The Fund is currently down 20% from the FY2001 high of \$104.7 million.



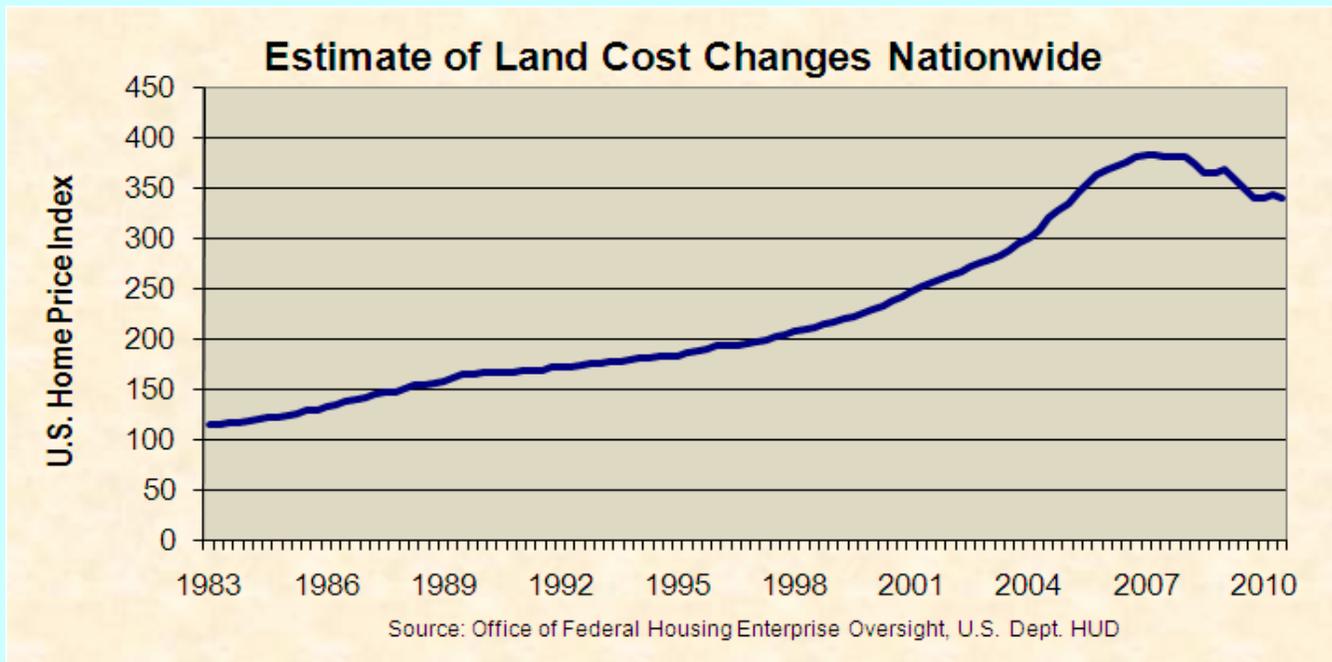
B) The number of Approved HCPs Continues to Grow

While funding has declined, the number of approved HCPs that need such funds has increased dramatically. The number of approved, large-scale HCPs in the country has grown from one in 1983 to 35 in 2008.



C) Land Conservation Costs Have Grown

While funding has declined, the costs of preparing and implementing HCPs have steadily increased. For example, land acquisition costs for many HCPs have almost doubled in the last decade.



INCREASING THE FUND TO \$100 MILLION IN FY 2012

The California Habitat Conservation Planning Coalition proposes increasing the Fund to \$100 million in FY2011 in order to bring it closer to the FY2001 funding level of \$125 million, corrected for inflation. To attempt to keep pace with the actual funding needs and the prolific growth in the number of regional HCPs, the Fund needs to increase more substantially in future years when Federal funds are less constrained. In FY 2008, grant applications from California alone eclipsed the total value of the Fund. Demand will multiply rapidly in the near future. Approximately ten regional HCPs are in the final stages of preparation in California alone.



CONSERVATION BENEFITS OF CALIFORNIA HCPs

Regional HCPs in California are a primary mechanism for the conservation of land and species in some of the fastest growing areas of the state. Collectively, these regional HCPs in California will conserve more than 1.4 million acres of land. Conserved land will be restored, enhanced and managed for the benefit of the widest array of species found in the United States. Conserved land will also provide valuable open space to residents and visitors, protecting the natural beauty of these regions and providing numerous recreational opportunities.

Key Regional HCPs	Covered Species	Acres To Be Conserved*
Butte Regional Conservation Plan	41	n/a
Coachella Valley MSHCP/NCCP	27	240,000
East Contra Costa County HCP/NCCP	28	30,000
Natomas / Metro Air Park HCPs	22	9,000
Placer County Conservation Plan	33	60,000
San Diego County Multiple Habitat Conservation Open Space Plan NCCP	263	158,000
San Diego MSCP - County Sub Area Plan	85	98,000
San Diego North County MSCP / NCCP	63	107,000
San Joaquin County Multi-species Conservation and Open Space Plan	97	101,000
Santa Clara Valley HCP/NCCP	30	45,000
Solano HCP	36	30,000
South Sacramento HCP	30	58,000
Western Riverside County MSHCP/NCCP	146	500,000
Yolo Natural Heritage Program	64	n/a
TOTAL		1,436,000

ECONOMIC BENEFITS OF CALIFORNIA HCPs

Regional HCPs in California provide coordinated, regional permits for public infrastructure and private development projects. These regional umbrella permits last 30 to 75 years, transfer authority to local government, and improve certainty of the permit process for project proponents. Regional HCPs in California are expected to permit projects with a cumulative value of \$1.6 trillion.



Key Regional HCPs	Regional Permits* Thru...	Est. Value of Covered Activities**
Butte Regional Conservation Plan	2041	n/a
Coachella Valley MSHCP/NCCP	2083	\$300 billion
East Contra Costa County HCP/NCCP	2037	\$12 billion
Natomas / Metro Air Park HCPs	2053	\$18 billion
Placer County Conservation Plan	2061	\$115 billion
San Diego County Multiple Habitat Conservation Open Space Plan NCCP	2061	\$228 billion
San Diego MSCP - County Sub Area Plan	2047	\$118 billion
San Diego North County MSCP / NCCP	2060	\$104 billion
San Joaquin County Multi-species Conservation and Open Space Plan	2051	\$109 billion
Santa Clara Valley	2060	\$25 billion
Solano HCP	2040	\$12 billion
South Sacramento HCP	2061	\$45 billion
Western Riverside County MSHCP/NCCP	2079	\$500 billion
Yolo Natural Heritage Program	2041	n/a
TOTAL		\$1.6 trillion

* The term of regional permits is estimated for those HCPs in preparation.

** Assumes a value of \$1 million per acre for every acre of development that may be covered under the HCP.

EXAMPLES OF CONSERVATION ACCOMPLISHMENTS

Preserving the Desert Ecosystem, the Coachella Valley Multiple Species HCP/NCCP:

To help conserve remaining active desert sand dunes in the Coachella Valley, \$5,542,000 from the Fund were matched with \$5,558,680 in state and local dollars to acquire 1,560 acres adjacent to existing preserves for the Coachella Valley Fringe Toed Lizard. To protect Peninsular bighorn sheep habitat, the Wildlife Conservation Board provided \$1,259,730 in a Recovery Land Acquisition grant, matched by \$539,019 in funds from the Coachella Valley Mountains Conservancy, to acquire 946.7 acres in the Santa Rosa Mountains.



Reynolds, Western Riverside County MSHCP: The Western Riverside County Regional Conservation Authority acquired approximately 606 acres in the Lake Elsinore area completing the last phase of a multi-year acquisition project. The property was purchased for \$3.2 million with \$1.4 million coming from the Fund and the remainder from local MSHCP fees. This acquisition protects critical connections with the Santa Ana Mountains. This acquisition conserves foraging habitat for raptors and maintains linkages for bobcat and mountain lions.



Escondido Creek and Del Dios Highlands Preserves, San Diego MSCP: The County and its partners have acquired over 1,500 acres in these Preserves to protect valuable habitat and key linkages. The Preserves are rich in biodiversity and include oak woodland, riparian, coastal sage scrub and chaparral habitat supporting peregrine falcon, California gnatcatcher, least bell's vireo and other at-risk species. The total land cost of \$37.6 million was funded with \$4.7 million from the Fund, \$15.8 million of County general funds and \$17.1 million in State funds.



Irish Canyon, East Contra Costa County HCP/NCCP: Six properties totaling more than 2,700 acres were acquired for the HCP/NCCP Preserve System in 2010 at a total cost of \$15.5 million. The Fund covered \$8.9 million of the total cost. The remaining \$6.6 million was provided by the East Bay Regional Park District and a private foundation. The 320-acre Irish Canyon property shown here protects the headwaters of a key tributary to Mount Diablo Creek and supports prime breeding habitat for California red-legged frog.



Scott Hein



California Habitat Conservation Planning Coalition

A coalition that includes local agencies, conservation organizations and business organizations supporting regional Habitat Conservation Plans.

Contact:

John Hopkins, CHCPC Director
Institute for Ecological Health
409 Jardin Place
Davis, California 95616
Phone: 530-756-6455
Email: ieh@cal.net

California Habitat Conservation Planning Coalition

Voluntary 2012 Membership Contributions

Background

This statewide Coalition of local governments, wildlife agencies, NGOs and business organizations focuses on improving Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs) in California. The Coalition has four goals.

- Securing adequate federal, state and local funding to assist preparation and implementation of NCCPs and HCPs.
- Coordinating NCCPs and HCPs with other federal, state and regional natural resource protection and permitting programs, including programs for adaptation to climate change.
- Facilitating the development and improving the effectiveness of NCCPs and HCPs.
- Strengthening understanding of and support for NCCPs and HCPs among decision makers, stakeholders and the public.

The Coalition's 2011 Activity

The Obama administration proposed a major increase in the Cooperative Endangered Species Conservation Fund (Section 6 of the Endangered Species Act) in the fiscal 2012 budget released in January, thanks partly to the Coalition's earlier work. However the extreme budget cutting mood in Congress has drastically changed the budget situation. The House is proposing to reduce Section 6 funding to under \$3 million, abolishing all new grants. For fiscal 2011 the Congress only appropriated \$60 million, a 30 percent cut. For fiscal 2012 even the Senate is only proposing \$47 million.

In these very difficult times we will work to develop Congressional champions, reach out to entities in other parts of the country that utilize Section 6 grants and promote the importance of Section 6 grants to the U.S. Fish and Wildlife Service (USFWS), Department of the Interior and the White House Office of management and Budget.

The Coalition made an extensive effort this year to work with the USFWS to resolve the issue of new Critical Habitat designations in areas with approved HCPs. We were able to develop a consensus position among disparate Coalition partners and send proposals to USFWS in Washington. In a September phone conversation with the USFWS Assistant Director for Endangered Species and others demonstrated that our concerns have been heard and we may expect the administration to develop a suitable new position.

The Coalition also developed a consensus position on how to improve implementation of HCPs and submitted proposals to the USFWS Landowner Tools, adding to our previous suggestions on speeding plan preparation. In the fall we saw the internal Landowner Tools recommendations and submitted comments. While the recommendations incorporated some our suggestions, there was little emphasis on speeding up plan preparation.

Finally the Coalition held a day long Business meeting in June to discuss the various projects and next steps. In October it held a day-long meeting in San Diego County, followed by a field trip to preserves of the San Diego MSCP. The October meeting attracted 60 people and focused on plan monitoring and management and climate change. The County of San Diego made video recordings of all the presentations, which we will use of future educational work.

Voluntary 2012 Membership Contributions

In order to sustain and build the coalition's work in 2011 we need a source of funding. This provide for some staff time and expenses, as well as other costs. We obtain base funding for the Coalition through a system on voluntary membership contributions. This income will also improve the Coalition's ability to obtain grant funding.

There is a tiered schedule of recommended voluntary membership contributions for 2012 to reflect the varying funding capacities of Coalition members:

Approved regional NCCP	\$ 5,000
Approved HCPs	\$ 1,000
HCP/NCCPs in preparation:	\$ 1,000
Businesses:	\$ 5,000
Small businesses	\$ 500
Large NGOs :	\$ 5,000
Small NGOs	\$ 500

In addition, individuals will continue to play a major role through participation in Work Groups and the Steering Committee.

The Institute for Ecological Health (IEH) is the fiscal agent for the coalition. IEH is a 501(c)(3) non-profit corporation, so contributions from taxable entities will be tax deductible as provided by law. There is no overhead, so 100 percent of contributions will fund the Coalition's program.

2011 Membership Contributions

The coalition received total of \$25,300.00 from the County of Contra Costa, the County of San Diego, San Joaquin Council of Governments, the Solano County Water Agency, the Yolo Natural Heritage Program, PG&E, ICF-International, The Nature Conservancy, Endangered Habitats League and the Institute for Ecological Health

The 2012 Program and use of Membership Contributions

Contributions will pay for staff time provided by IEH, as well as other expenses. Staff will provide support for our Calendar 2012 campaign to protect funding for Section 6 of the federal Endangered Species Act, with a particular focus on increasing funding for HCP land acquisition grants. We will also help to promote federal HCP loan guarantee legislation. Staff will also assist other Work Groups and the Steering Committee, organize Coalition business meetings and an annual meeting. A major 2012 project will be to complete a wide-ranging white paper on increasing HCP effectiveness that outlines helpful changes that various sectors (USFWS, Fish and Game, local jurisdictions and stakeholders) could make. An additional work group will develop new ideas for funding the implementation of HCP/NCCPs to order to help implementation of individual plans . We will also seek opportunities for funding through implementation of the state's Climate Change law (AB32) and the Sustainable Communities work of the Strategic Growth Council. We will work to develop conservation plan champions at various state levels. We will use video of presentations at the October 2011 meeting in San Diego to develop and educational program, with particular emphasis on a Northern California outreach program. We will produce three editions of an E-newsletter.

We will also seek grant funding for a consultant-led project to develop a report on the economic benefits of regional HCPs to governments, landowners and developers and a report on ways to increase endowment returns.

IEH's rate is \$45 an hour. In addition, IEH will continue to provide some pro bono time.

Management and Reporting

The Coalition's Steering Committee oversees spending of the Coalition's funds. There are quarterly reports and there will be a 2012 annual report. Contributors will receive the annual report and, if they wish, the quarterly reports.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2012 Budget and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) **APPROVE the 2012 Conservancy Budget.**
- b) **AUTHORIZE staff to execute annual contracts for on-going consulting services with:**
 - **ICF Jones and Stokes: not to exceed \$280,000 for the term from January 1, 2012 through December 31, 2012;**
 - **H.T. Harvey and Associates: not to exceed \$65,000 for the term from January 1, 2012 through December 31, 2012;**
 - **Nomad Ecology: not to exceed \$63,000 for the term from January 1, 2012 through December 31, 2012;**
 - **Restoration Resources: not to exceed \$50,000 for the term from January 1, 2012 through December 31, 2012;**
 - **Monk and Associates: not to exceed \$50,000 for the term January 1, 2012 through December 31, 2012.**
- c) **AUTHORIZE staff to execute a contract for legal services with Resources Law Group not to exceed \$90,000 for a term from January 1, 2012 through December 31, 2012.**

DISCUSSION

Item (a): Please find attached a proposed 2012 Conservancy Budget (Table I-1) and supporting tables prepared by staff for discussion by the Board.

Table I-1: The 2012 Conservancy Budget, Table I-1, includes summary cost estimate information from the HCP as well as recommended expenditures from the various funding

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

 UNANIMOUS
AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

sources controlled by the Conservancy or related to the HCP, including the Development Fee Account, the Wetland Mitigation Fee Account, and the various grant funds awarded to support implementation tasks associated with the HCP. The California Wildlife Foundation Account (which contains pre-plan mitigation payments collected by the wildlife agencies as well as mitigation payments from activities not covered by the HCP; the wildlife agencies control disbursements from this account) is not reflected in the 2012 Budget. Rather than budget these funds as if they were controlled by the Conservancy (as we have done in the past), the 2012 Budget assumes the Conservancy may request transfer of funds from this account to the Conservancy account as needed.

Tables I-2 through I-10: Tables I-2 through I-10 present detailed cost estimates by program area (e.g., Administration, Land Acquisition, etc.). Detailed estimates are excerpted from the HCP as a point of comparison with the detailed estimates provided for the proposed 2012 Budget. The 2012 estimates that form the basis for the 2012 Budget are shaded light blue. The 2008, 2009, 2010 and 2011 Budget amounts are also provided for comparison purposes. Table I-2 summarizes County staff costs, which are distributed among the various program areas. Tables I-3 through I-10 provide the basis for the budget in Table I-1 for each program area. The purpose of including these tables is to provide more information on what these program areas encompass and how the estimates were derived.

Background on HCP cost estimates presented for comparison: As was the case in developing previous Budgets, staff felt the cost estimate information presented in Table 9.2 of the HCP/CCP, *Summary of East Contra Costa County HCP/NCCP Implementation Costs (Rounded to the Nearest \$10,000) for Maximum Urban Development Area*, would provide a useful basis of comparison for the 2012 Budget. Staff reviewed this table and the supporting tables in Appendix G of the HCP/NCCP and extracted cost estimate information for the first five years of implementation. Staff then calculated the estimated average annual costs during this five year period. This estimated average annual cost is a useful point of comparison in crafting the 2012 Budget, but should be used for general comparison purposes rather than as a detailed yardstick. Since the costs of some tasks may change significantly during the five year period (e.g. land management), the annual average of the five-year cost estimate may over or under-estimate needs in early years.

Tables II: Table II presents updated information on approved grants. The total amount of grant funding that has been approved for award to the Conservancy is \$45,746,267. Of this amount, \$25,889,590 has been spent (this total includes approximately \$1.6 million that has been spent by the Conservancy but not yet reimbursed by grant funders). Awarded grant funds not yet spent total \$19,831,777, but of this amount, approximately \$5 million is encumbered for previously-approved land acquisition projects. Grant funding totals do not reflect funding provided by East Bay Regional Park District (EBRPD), either through its own funds or grants received by EBRPD. EBRPD has contributed more \$13 million of its funds or its grant funds toward joint land acquisition projects alone. Approved grant totals include only those Proposition 84 funds that have actually been approved by the California Wildlife Conservation Board (WCB) to date (\$4,052,646). The Conservancy has adopted a medium-term goal through its Legislative Platform of securing \$20 million from Proposition 84 (e.g. \$16 million more than has been received to date).

Table III: Table III is an update of the Budget Status Table presented in July. It compares the approved 2011 Budget with actual expenditures that had cleared the accounting process by mid December and also takes into account expenditures projected to occur before the end of the year but not yet reflected in the Conservancy's accounting. Table III indicates that Conservancy expenses for 2011 will be within the approved Budget.

Considerations in developing the 2012 Budget: The proposed 2012 Budget has been adapted from the 2011 Budget approved last year. Key changes include the following:

- Projected expenditures have been revised to reflect continued refined understanding of task costs (for example, the comparison of projected and actual costs presented in Table III) and knowledge about program opportunities available to the Conservancy in 2012. Noteworthy aspects of the allocations proposed for 2012 include the following:
 - Recommended expenditures for Land Acquisition remain high. This category is very heavily funded by grants, the vast majority of which have deadlines for expending funds that should not be missed. Further, market conditions are favorable for land acquisition. As a result of all these factors, the recommendation for this category is aggressive. However, it should be noted that, like last year, the recommended expenditures may exceed what we are capable of spending this year and will depend on willing sellers, the timing of acquisitions, the ability to procure match and the pace of grant procurement. Nonetheless, staff felt it prudent to recommend an ambitious figure, though somewhat reduced from last year to be more realistic.
 - Overall, Budget allocations have decreased 20% from the 2011 Budget. Excluding land acquisition, Budget allocations have decreased 24% since last year. The primary reason for the reduced budget is that we have already spent the \$1.4 million Integrated Regional Water Management Plan Grant that we had to spend in 2011. Consequently, no large wetland restoration project is recommended for construction in 2012.
 - Monitoring, research and adaptive management is up slightly from the 2011 Budget because: a) the \$2.25 million grant from the Moore Foundation in 2010 included \$250,000 for a study of avian impacts and work to implement this grant will get underway in 2012; and b) grant funds are available to conduct the wetland and rare plant assessment.
 - The preserve management budget is down from 2011 even though management effort is expected to increase this year. The reason for this is that EBRPD is that lease revenues from previously acquired properties is expected to be able to carry a significant fraction of EBRPD management costs.

Recommendation on 2012 Budget: Staff recommends that the Governing Board discuss the Proposed Budget, determine any modifications or clarifications, and approve the Budget with any modifications. Consistent with the expenditure policies approved in October 2007, the total amounts for each program area in the Budget would be figures that could not be exceeded without amendment of the Budget. The detailed estimates provided in Tables I-2 through I-10 provide the basis for the program area totals but the subcategories presented are estimates not binding totals. However, one exception is that the total estimated maximum cost of all County

staff support (\$540,525) as well as the estimated maximum cost of the Contract Planner working full time for the Conservancy (\$186,120; for a combined total of \$726,645) should also be designated by the Board as an expenditure limit that may not be exceeded without further approval of a revised amount. This recommendation is offered to be consistent with the Joint Exercise of Powers Agreement forming the Conservancy which provides that the Governing Board shall set an annual limit on the amount of County staff costs that may be recovered from the Conservancy.

Item (b): Staff recommends the actions set forth below with respect to five firms providing ongoing consulting services to the Conservancy. All contracts are consistent with the recommended 2012 Budget.

ICF Jones and Stokes:

The recommendation is to execute a contract for \$280,000 for a one year term from January 1, 2012 through December 31, 2012. Please find an overview below:

- Contract amount: \$280,000
- Primary tasks: full-time contract planner to manage HCP/NCCP permitting program, preparation of preserve management plans, monitoring program plan, recreation plan, exotic pest control plan, support to effort to coordinate wetlands permitting with the HCP/NCCP
- Funding sources: Conservancy funds, administrative charges collected from applicants, grant funds from California Department of Fish and Game for development of preserve management plan

ICF Jones and Stokes has provided a range of services to the Conservancy since 2007 and a continuation of that support is vital in 2012. Staff worked with Jones and Stokes to develop cost projections for key tasks that will continue in 2012 and used this information as background in crafting the Proposed 2012 Conservancy Budget. As a result of general economic condition and the somewhat slow pace of fee revenues, the contract limit has been reduced from the 2009 and 2010 levels which were between \$300,000 and \$500,000. Key tasks for ICF Jones and Stokes in 2012 include:

- Preparation of preserve management plans and system-wide management plans required by the HCP; a first draft of the Byron Hills Preserve Management Plan will be finalized early in 2012 and a final plan approved later in 2012. Work on the system-wide Exotic Plant Control Program Plan will also be initiated in 2012. [Approximately \$35,000 for this task]
- Initiate preparation of the Monitoring Program plan, as required by the HCP/NCCP [Approximately \$20,000 for this task]
- Provision of a consulting planner at \$100/hour to assist the Conservancy five days a week for 12 months with review of permit applications, development and upkeep of comprehensive tracking databases, and general program support (in lieu of the Conservancy hiring a full-time planner); [Approximately \$180,000 for this task]
- Assistance with completing the regional wetlands permitting programs initiated during development of the HCP; [Approximately \$10,000 for this task]

- Assistance with preparation of the 2011 Annual Report and additional design on databases required to track the Conservancy's compliance with the Plan; [Approximately \$25,000 for this task]
- Provision of biological expertise to assist with answering questions and assist with day to day operation of the Plan; [Approximately \$10,000 for this task]

The proposed contract is consistent with the Proposed 2012 Conservancy Budget.

H.T. Harvey & Associates:

The recommendation is to execute a contract for \$65,000 for the term January 1, 2012 through December 31, 2012. Please find an overview below:

- Contract Amount: \$65,000
- Primary tasks: As-built Report for Upper Hess Restoration Project; finalization of report on CEQA species, small restoration/planting plan, and restoration opportunities analysis on new land acquisitions.
- Funding sources: Department of Fish and Game grant, State Water Quality Control Board grant, Conservancy funds

H.T. Harvey and Associates provided a range of services to the Conservancy in 2011, including design and engineering for the Upper Hess Creek Habitat Restoration Project. Continuation of certain services is vital in 2012. Staff worked with H.T. Harvey and Associates to develop cost projections for key tasks that will continue in 2012 and used this information as background in crafting the Proposed 2012 Conservancy Budget. The 2012 contract is significantly smaller than the previous contract as the Conservancy is not building a large restoration project in 2012. If it is determined that there are opportunities for restoration projects on recently acquired preserve properties, staff may recommend amending this contract to provide budget for project development, design and studies. The Conservancy has a grant for wetland restoration that must be spent by early 2015 (\$650,000 from the Integrated Regional Water Management Plan). The availability of these funds as well as the restoration opportunities on recent acquisitions may result in staff requesting an amendment to this contract.

Key tasks for H.T. Harvey and Associates include:

- Complete As-built documents for Upper Hess Creek Watershed Habitat Restoration Project, which is necessary to document the constructed details of the property for credit under the HCP/NCCP and in anticipated regional wetlands permitting programs. (Approximately \$15,000 for this task)
- Preparation of final comprehensive report analyzing all special status species with a potential to occur in the area (a list many times larger than the 28 covered species) with respect to the conservation measures of the HCP. The report is intended as a document the Conservancy and other customers of the Plan can use to streamline their CEQA measures. With this report and the HCP EIR, project proponents would have effective base upon which biological impact sections could tiered. [Approximately \$13,000 for this task]
- Conservancy properties restoration assessment, development of opportunities and constraints analysis, development of concept designs [Approximately \$27,000 for this task]

- Ang property work plan [Approximately \$5,000 for this task]
- On-call biological services including advising on adaptive management of restoration projects [Approximately \$5,000 for this task]

The proposed contract is consistent with the Conservancy's proposed 2012 budget.

Nomad Ecology: The recommendation is to execute a contract with Nomad ecology for \$63,000 for the term January 1, 2012 through December 31, 2012. Please find an overview below:

. Contract amount: \$63,000

- Primary tasks: Monitoring of Souza 2 and Lentzner wetland restoration projects; comprehensive wetland and rare plant survey on new acquisitions, contribution of botanical expertise to development of management and restoration plans and on-call biological services related to unanticipated botanical and wildlife tasks that may be encountered on properties or projects;
- Funding sources: Department of Fish and Game grant (the grant contract names Nomad as the firm with suitable expertise to conduct the monitoring), Conservancy funds

Nomad Ecology has performed the past year of monitoring on two of the Conservancy's wetland restoration projects: Lentzner Spring and Souza II. The 2012 contract would continue these tasks and add two preserve-wide wetland inventory tasks as well as review of monitoring and management plans. Key tasks for Nomad Ecology include:

- Monitoring hydrology and vegetation on Souza II and Lentzner wetland project [Approximately \$15,000 for this task]
- Preserve-wide wetland inventory (necessary to document the location and extent of wetland preservation that has occurred on acquired properties; this information will also help with future wetland restoration planning) [Approximately \$20,000 for this task]
- Botanical Surveys, including documentation of covered and no-take plant populations on acquired lands [Approximately \$20,000 for this task]
- Review of management and restoration plans [Approximately 3,000 for this task]
- On-call biological services [Approximately \$5,000 for this task]

The proposed contract is consistent with the Conservancy's proposed 2012 budget.

Monk and Associates: The recommendation is to authorize staff to execute a contract with Monk and Associates for \$50,000 for the term January 1, 2012 through December 31, 2012. Please find an overview below:

- Contract amount: \$50,000
- Primary tasks: Monitoring of Souza I and Upper Hess wetland restoration projects and design of vernal pool fairy shrimp habitat restoration project, restoration opportunities analysis and on-call biological services related to unanticipated botanical and wildlife tasks that may be encountered on properties or projects;
- Funding sources: Dept of Fish and Game grant, Conservancy funds

Monk and Associates designed the Souza I pond restoration/creation project (2008) and has been providing the required monitoring for that project. Staff recommends that they continue this

work and add the monitoring of the Upper Hess project to their workload. Additionally Monk and Associates have had other work approved in 2011 (design of a small vernal pool restoration on Vaquero Farms) that we did not move forward with due to timing and workload issues. Staff would like to include those tasks in their 2012 contract.

- Monitoring hydrology and vegetation of Souza I and Upper Hess wetland restoration projects [Approximately \$25,000 for this task]
- Design vernal pool fairy shrimp restoration project [Approximately \$15,000]
- Conservancy properties restoration assessment, [Approximately \$5,000]
- On-call biological tasks [Approximately \$5,000]

The proposed contract is consistent with the Conservancy's proposed 2012 budget.

Restoration Resources, Inc.: The recommendation is to authorize staff to execute a contract with Restoration Resources, Inc. for on-call maintenance tasks for \$50,000 for the term January 1, 2012 through December 31, 2012. Please find an overview below:

- Contract amount: \$50,000
- Primary tasks: Management work on Souza I, Souza 2, Upper Hess and future restoration projects
- Funding sources: Department of Fish and Game grant, Conservancy funds

The Conservancy has now completed construction on five wetland restoration/creation projects: Lentzner Springs Wetland (2008), Vasco Caves - Souza I Pond (2008), Souza II Wetlands (2009), and Irish Canyon (2010) and Upper Hess (2011). These projects need varying degrees of maintenance over the coming years. Anticipated maintenance activities include weeding, replacing plants, repairing silt fences and other Best Management Practices that prevent silt from entering waterways and fencing on new properties.

Restoration Resources Inc. is the contractor that built and provided the first two years of maintenance on the Souza II Wetland Restoration Project. The staff of Restoration Resources is intimately familiar with the site, the wetland features, and plants that have been installed. They offer a competitive fee schedule, are extremely responsive to Conservancy staff requests and have the expertise to provide the maintenance needed. The Conservancy requested proposals for the maintenance contractors in 2010. From that pool of contractors, the Conservancy moved forward with three different firms. In 2011 the Conservancy is continuing contracts with two of those firms. This decision was based primarily on amount of work available on Conservancy projects, the exceptional performance by Restoration Resources and the staff time needed to administer and manage three contracts.

Tasks included in this contract include:

- Plant maintenance: weeding and replacement seeding/planting as needed
- Invasive plant control
- Willow and possible tree planting at Upper Hess and perhaps elsewhere
- Installation and maintenance of erosion control measures
- Fence/gate installation and maintenance
- On-call biological maintenance and property management tasks

The proposed contract is consistent with the Conservancy's proposed 2012 budget. This is the same contract level as 2011. One other firm will also be used to provide management of the Lentzner Springs wetland restoration projects, but work for this firm is expected to be less than \$20,000 in 2012.

Item (c): The recommendation is to authorize staff to execute a one-year contract for legal services with Resources Law Group for \$90,000.

- Contract amount: \$90,000
- Primary tasks: General legal support including agreements, assistance with extending coverage to Participating Special Entities, assistance with expenditure of WCB funding, support to Legislative Program, support to land acquisition program, support to effort to coordinate wetlands permitting with HCP, including drafting in Lieu Fee Instrument.
- Funding Source: Conservancy funds, administrative charges collected from applicants.

Resources Law Group assisted with developing all of the agreements related to the HCP/NCCP and have also assisted with a large number of initial implementation tasks since approval of the HCP. Many tasks are nearing completion, such as development of a template deed restriction, development of a template Participating Special Entity Agreement and development of model agreements with EBRPD for land acquisition and restoration. However, substantial future and on-going work remains. Key tasks include:

- General legal support to the operations of the Conservancy, including advising the Governing Board and staff, legal support to Conservancy meetings, reviewing application of agreement templates, legal assistance to staff with the take authorization program (including reviewing and finalizing agreements with Participating Special Entities), development of agreements with EBRPD for management funding and legal support to the Conservancy's legislative program. [approximately \$50,000 for this task]
- Assisting with development of regional wetlands permitting programs coordinated with the HCP/NCCP, including negotiating and continued drafting of an agreement with the wetlands regulatory agencies to coordinate wetlands permitting with the HCP (In Lieu fee Instrument). [approximately \$30,000 for this task]
- Assisting with the land acquisition programs, including assisting staff with applying agreement templates, specialized due diligence on land acquisition prospects, assistance with interacting with state and federal granting agencies. [approximately \$10,000 for this task]

In 2011, the Conservancy initially approved a contract for \$70,000 (down from \$85,000 in 2010) and then amended the contract mid year to increase the payment limit to \$110,000 to reflect greater than expected costs with the Oakley generating Station agreement and with the support to the wetlands permitting program. The recommended contract amount of \$90,000 recognized that many of the foundational documents associated with the Conservancy have been completed but that a big effort is expected this year on regional wetlands permitting.

This recommended contract amount is consistent with the recommended 2012 Conservancy Budget.

Attachments:

- Proposed 2012 Conservancy Budget and supporting tables

Proposed 2012 Conservancy Budget: Recommended Expenditures and Comparison to Budgets From Previous Years

Table I-1

Cost Category	Proposed 2012 Expenditures						Approved 2011 Conservancy Budget		Approved 2010 Conservancy Budget		Approved 2009 Conservancy Budget		Approved 2008 Conservancy Budget	
	Development Fee Account	Wetland Mitigation Fee Account	Grant Funding	TOTAL (2012)	% of Total	% Change from 2011	TOTAL (2011)	% of Total	TOTAL (2010)	% of Total	TOTAL (2009)	% of Total	TOTAL (2008)	% of Total
Program Administration and Permitting Program	\$609,596	\$0	\$0	\$609,596	5%	0%	\$606,981	4%	\$514,189	3%	\$493,665	3%	\$494,575	4%
Land Acquisition	\$100,000	\$0	\$11,168,217	\$11,268,217	85%	-20%	\$14,025,099	84%	\$14,046,303	89%	\$14,046,495	85%	\$9,900,667	84%
Management, Restoration & Recreation Planning & Design	\$71,029	\$0	\$200,000	\$271,029	2%	-11%	\$303,259	2%	\$232,139	1%	\$328,170	2%	\$338,322	3%
Habitat Restoration/Creation	\$0	\$50,000	\$281,069	\$331,069	3%	-61%	\$843,259	5%	\$331,920	2%	\$980,239	6%	\$407,326	3%
Environmental Compliance	\$115,921	\$20,000	\$20,000	\$155,921	1%	-6%	\$165,770	1%	\$151,303	1%	\$166,495	1%	\$109,000	1%
HCP/NCCP Preserve Management and Maintenance	\$159,202	\$0	\$50,000	\$209,202	2%	-21%	\$264,257	2%	\$298,151	2%	\$293,247	2%	\$404,100	3%
Monitoring, Research, and Adaptive Management	\$55,202	\$20,000	\$200,000	\$275,202	2%	4%	\$263,817	2%	\$169,565	1%	\$94,345	1%	\$66,500	1%
Remedial Measures	\$6,000	\$0	\$0	\$6,000	0%	0%	\$6,000	0%	\$6,000	0%	\$6,000	0%	\$6,000	0%
Contingency Fund (5% of non-land acquisition costs)	\$92,601	\$0	\$0	\$92,601	1%	-24%	\$122,367	1%	\$84,863	1%	\$117,808	1%	\$90,141	1%
TOTAL PROPOSED 2012 EXPENDITURES	\$1,209,552	\$90,000	\$11,919,286	\$13,218,838	100%	-20%	\$16,600,808	100%	\$15,834,433	100%	\$16,526,464	100%	\$11,816,631	100%

Personnel Summary: Comparison of HCP Cost Projections With Conservancy's Approach to Staffing¹

Table I-2

Personnel Cost estimates from the HCP

	Total cost per FTE per Year (from HCP)	Estimated FTEs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	How These Functions Are/Will Be Performed in the Conservancy
Administrative Personnel				
Executive Director ("E.D.")	\$134,640	1	\$134,640	County principal planner (80% FTE)
IT- Database / GIS Manager	\$87,516	0.5	\$43,758	County GIS staff, County IT staff & contract planner
Budget Analyst	\$74,052	1	\$74,052	Principal planner (10% FTE); County accountants
Acquisition Specialist	\$100,980	1	\$100,980	County prin. plnr.(10% FTE); outsourced to EBRPD/others
Grant Specialist / Conservation Planner	\$94,248	1	\$94,248	County Senior Planner (20% FTE) & contract planner
Admin - Secretary	\$60,588	0.5	\$30,294	County secretaries
Total administrative personnel		5	\$477,972	
Restoration Planning, Design, & Implementation and Monitoring Personnel²				
Senior Specialist	\$107,712	1	\$107,712	Outsourced to consultants
Project Manager	\$99,054	1	\$99,054	County senior planner (40% FTE) and consultants
Technical Support	\$64,320	1	\$64,320	County associate planner (10% FTE) & consultants
Total restoration personnel		3	\$271,086	
Preserve Management and Maintenance Personnel				
Preserve Manager	\$100,980	1	\$100,980	Outsourced to Conservancy land partners
Laborer	\$53,856	2	\$107,712	Outsourced to Conservancy land partners
Admin - Secretary	\$60,588	0.5	\$30,294	Outsourced to Conservancy land partners
Total Management and Maintenance Personnel		3.5	\$238,986	
TOTAL PERSONNEL (FROM HCP)		11.5	\$988,044	

County Staff Cost Estimates for the 2012 Conservancy Budget

	Projected average billing rate				Estimated FTE				Estimated Annual Cost			
	2012	2011	2010	2009	2012	2011	2010	2009	2012	2011	2010	2009
Principal Planner	\$159	\$152	\$193	\$194	0.80	0.80	0.70	0.70	\$239,684	\$228,104	\$254,120	\$255,462
Senior Planner	\$129	\$123	\$161	\$158	0.80	0.80	0.70	0.70	\$193,775	\$185,511	\$211,534	\$207,783
Associate Planner	N/A	\$131	\$135	\$135	0.10	0.10	0.25	0.25	\$0	\$24,628	\$63,345	\$63,345
IT staff	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	\$0	\$0	\$0	\$0
GIS staff	\$130	\$121	N/A ⁴	N/A ⁴	0.25	0.25	N/A ⁴	N/A ⁴	\$61,142	\$56,964	\$0	\$0
Accounting staff	\$98	\$87	N/A ⁴	N/A ⁴	0.25	0.25	N/A ⁴	N/A ⁴	\$45,924	\$40,784	\$0	\$0
Secretarial staff	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	\$0	\$0	\$0	\$0
Senior management staff	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	\$0	\$0	\$0	\$0
TOTAL COUNTY PERSONNEL									\$540,525	\$535,991	\$528,999	\$526,590

Notes:

- (1) Costs detailed in this Table are not reflected in summary Budget because they are split estimates for program areas
- (2) Costs for these staff are equally split between three program areas: Planning & Design, Restoration, and Monitoring
- (3) Reflects expected step increases and projected 0% cost of living adjustment in October 2010.

Program Administration and Permit Program¹

Table I-3

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
Office Space	\$28,500	\$5,700	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
Office Equipment by Employee	\$21,750	\$4,350	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
General Office Equipment	\$38,600	\$7,720	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
GIS/Database Equipment	\$17,500	\$3,500	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
Maintenance of General Office Equipment	\$2,275	\$455	\$0	\$0	\$0	\$0	\$455	costs included in planner rates
Maintenance of GIS Database equipment	\$3,250	\$650	\$0	\$0	\$0	\$0	\$650	costs included in planner rates
Employees								
Executive Director	\$673,200	\$134,640	\$0	\$0	\$0	\$0	\$0	Principal planner performs these functions
IT- Database / GIS Manager	\$218,790	\$43,758	\$0	\$0	\$0	\$0	\$0	Contract planner/GIS planner (below) share database responsibilities; IT staff costs included in planner rates
Budget Analyst	\$370,260	\$74,052	\$0	\$0	\$0	\$0	\$0	Duties performed by County finance team
Acquisition Specialist	\$504,900	\$100,980	\$0	\$0	\$0	\$0	\$0	Outsourced to EBRPD; principal planner provides some of this
Grant Specialist / Conservation Planner	\$471,240	\$94,248	\$0	\$0	\$0	\$0	\$0	Senior planner perform these functions
Admin - Secretary	\$151,470	\$30,294	\$0	\$0	\$0	\$0	\$0	Secretary costs included in planner rates
Principal Planner	n/a	n/a	\$89,881	\$114,052	\$145,211	\$145,978	\$102,666	Principal planner 30% FTE (position also has budget increments in other categories)
Senior planner	n/a	n/a	\$72,666	\$69,567	\$90,658	\$59,367	\$24,448	Senior planner 30% FTE (position also has budget increments in other categories)
Senior GIS Planner	n/a	n/a	\$36,685	\$34,178	previously covered in other planner rates			(position also has budget increment in other category)
Accountant	n/a	n/a	\$45,924	\$40,784	previously covered in other planner rates			Accountant 25% FTE
Senior Planner (new)	n/a	n/a	\$0	\$0	\$0	\$0	\$184,356	planner for cost-efficiency and flexibility purposes
Employees Subtotal	\$2,389,860	\$477,972	\$245,156	\$258,581	\$235,869	\$205,345	\$311,470	
Travel	\$33,250	\$6,650	\$4,000	\$3,000	\$3,000	\$3,000	\$6,000	
Vehicle / Mileage Allowance	\$5,063	\$1,013	\$4,000	\$5,000	\$3,000	\$3,000	\$1,000	
Insurance	\$187,000	\$37,400	\$20,000	\$20,000	\$20,000	\$25,000	\$35,000	
Legal Assistance (general)	\$150,000	\$30,000	\$50,000	\$50,000	\$45,000	\$50,000	\$50,000	incl. legislative and permitting support
Financial Analysis Assistance	\$15,500	\$3,100	\$20,000	\$40,000	\$20,000	\$10,000	\$3,000	Annual outside audit (no fee audit this year)
JPA Member Meeting Stipend	\$30,000	\$6,000	\$0	\$0	\$0	\$0	\$0	
In-Lieu funding for Law Enforcement/Fire	\$17,938	\$3,588	\$0	\$0	\$0	\$0	\$2,000	
Contractor assistance with program admin.	\$0	\$0	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	Annual report, database analysis, tech review of permit apps; general tech support
Contract planner	\$0	\$0	\$165,440	\$150,400	\$112,320	\$112,320	\$0	Manages take auth. process; manages databases; general coordination role (estimate assumes)
Membership in CHCPC	\$0	\$0	\$5,000	\$5,000	\$0	\$0	\$0	Primary method for implementing Legislative Program
Miscellaneous equipment and supplies	\$0	\$0	\$1,000	\$0	\$0	\$0	\$0	dedicated Conservancy laptop / food for GB meetings / etc.
East County Water Management Assoc.	\$0	\$0	\$10,000	\$10,000	\$0	\$0	\$0	Conservancy's projected share of IRWMP grant writing costs
Public Relations and Outreach	\$125,000	\$25,000	\$25,000	\$5,000	\$15,000	\$25,000	\$25,000	includes intern for legislative effort, public outreach, web page,
TOTAL	\$3,065,486	\$613,097	\$609,596	\$606,981	\$514,189	\$493,665	\$494,575	

Notes:
 (1) Tasks include administration of take authorization program, public outreach and involvement, financial management, grant applications and management, legal assistance and other general tasks associated with Conservancy operations.

Land Acquisition

Table I-4

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget				
			2012	2011	2010	2009	2008
<i>Capital Costs</i>							
Land Costs	\$33,396,556	\$6,679,311	\$11,000,000	\$13,750,000	\$13,750,000	\$13,750,000	\$9,350,000
Due Diligence	\$1,868,113	\$373,623	\$228,217	\$225,099	\$226,303	\$226,495	\$215,667
Planning Surveys	\$1,109,415	\$221,883	\$40,000	\$50,000	\$70,000	\$70,000	\$170,000
Site Improvements	\$963,900	\$192,783	\$140,000	\$165,000	\$165,000	\$165,000	\$165,000
TOTAL	\$37,337,984	\$7,274,817	\$11,268,217	\$14,025,099	\$14,046,303	\$14,046,495	\$9,900,667

Land Cost Estimates and Assumptions

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget				
			2012	2011	2010	2009	2008
Number of parcels	42	8	10	12	12	12	10
Number of properties	n/a	n/a	5	6	6	6	5
Overall acreage acquired	5,060	1,012	2,000	2,500	2,500	2,500	1,700
Average cost per acre	n/a	n/a	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500
TOTAL	\$33,396,556	\$6,679,311	\$11,000,000	\$13,750,000	\$13,750,000	\$13,750,000	\$9,350,000

Due Diligence

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget				
			2012	2011	2010	2009	2008
Number of Parcels to be Purchased	42	8.4	10	12	12	12	10
Number of Parcels Investigated	53	10.6	12	14	14	14	12
Appraisals	\$216,240	\$43,248	n/a	n/a	n/a	n/a	n/a
Preliminary Title Report	\$27,030	\$5,406	n/a	n/a	n/a	n/a	n/a
Phase I Site Assessment	\$324,360	\$64,872	n/a	n/a	n/a	n/a	n/a
Boundary Survey	\$331,197	\$66,239	n/a	n/a	n/a	n/a	n/a
Legal Description	\$216,240	\$43,248	n/a	n/a	n/a	n/a	n/a
Monumentation	\$248,146	\$49,629	n/a	n/a	n/a	n/a	n/a
Land acquisition specialist	\$504,900	\$100,980	n/a	n/a	n/a	n/a	n/a
Principal planner (0.1 FTE)	n/a	n/a	\$29,960	\$28,513	\$36,303	\$36,495	\$30,667
Senior GIS Planner (0.1 FTE)	n/a	n/a	\$24,457	\$22,786	n/a	n/a	n/a
Contract planner (0.1 FTE)	n/a	n/a	\$18,800	\$18,800	n/a	n/a	n/a
Proposed Agreement with EBRPD	n/a	n/a	\$100,000	\$100,000	\$100,000	\$100,000	\$90,000
Legal support to land acquisition	n/a	n/a	\$5,000	\$5,000	\$40,000	\$40,000	\$0
Due diligence contingency	n/a	n/a	\$25,000	\$25,000	\$25,000	\$25,000	\$50,000
Due diligence costs with other partners	n/a	n/a	\$25,000	\$25,000	\$25,000	\$25,000	\$45,000
TOTAL	\$1,868,113	\$373,623	\$228,217	\$225,099	\$226,303	\$226,495	\$215,667

Table I-4 (continued)

Planning Surveys

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for Conservancy Budget</i>				
			2012	2011	2010	2009	2008
Land cover type surveys	\$166,412.00	\$33,282	\$8,000	\$10,000	\$10,000	\$15,000	\$30,000
Covered Species	\$83,206.00	\$16,641	\$8,000	\$10,000	\$10,000	\$10,000	\$10,000
Covered Plant Surveys	\$665,649.00	\$133,130	\$8,000	\$10,000	\$20,000	\$20,000	\$100,000
Covered Wildlife Surveys	\$194,148.00	\$38,830	\$8,000	\$10,000	\$20,000	\$10,000	\$30,000
Assess & document conservation value	\$0.00	\$0	\$8,000	\$10,000	\$10,000	\$15,000	\$0
Planning Survey Subtotal	\$1,109,415.00	\$221,883	\$40,000	\$50,000	\$70,000	\$70,000	\$170,000

Site Improvements

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for Conservancy Budget</i>				
			2012	2011	2010	2009	2008
Number of Parcels Purchased	42	8	10	12	12	12	10
Demolition of Old Facilities	\$212,500	\$42,500	\$25,000	\$30,000	\$30,000	\$30,000	\$30,000
Repair of Boundary Fence	\$390,166	\$78,033	\$55,000	\$60,000	\$60,000	\$60,000	\$60,000
Repair and Replacement of Gates	\$170,000	\$34,000	\$25,000	\$30,000	\$30,000	\$30,000	\$30,000
Signs (Boundary, Landmark, ect.)	\$106,250	\$21,250	\$15,000	\$20,000	\$20,000	\$20,000	\$20,000
Other Security (e.g., Boarding up barns)	\$85,000	\$17,000	\$20,000	\$25,000	\$25,000	\$25,000	\$25,000
TOTAL	\$963,915	\$192,783	\$140,000	\$165,000	\$165,000	\$165,000	\$165,000

Management, Restoration, and Recreation Planning and Design

Table I-5

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
Office Equipment	\$11,350	\$2,270	\$0	\$0	\$0	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Staff	\$456,810	\$91,362	\$78,404	\$60,634	\$69,514	\$125,545	\$85,697	see detail below
Travel	\$13,125	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Contractors	\$1,297,013	\$259,403	\$190,000	\$240,000	\$160,000	\$200,000	\$250,000	see detail below
TOTAL	\$1,861,131	\$372,226	\$271,029	\$303,259	\$232,139	\$328,170	\$338,322	

Staff

Position	Estimate from HCP	Cost Estimate Used for Conservancy Budget					Notes
		2012	2011	2010	2009	2008	
Senior Scientist (HCP estimate)	\$35,904	\$0	\$0	\$0	\$0		HCP assumed 33% FTE
Project Manager (HCP estimate)	\$33,018	\$0	\$0	\$0	\$0		HCP assumed 33% FTE
Technical Support (HCP estimate)	\$22,440	\$0	\$0	\$0	\$0		HCP assumed 33% FTE
Senior planner	\$0	\$48,444	\$46,378	\$60,438	\$89,050	\$48,897	20% FTE
Principal planner	\$0	\$29,960	\$14,257	\$9,076	\$36,495	\$36,800	10% FTE
TOTAL FOR CONSERVANCY 2010	\$91,362	\$78,404	\$60,634	\$69,514	\$125,545	\$85,697	

Contractors

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
Management and Recreation planning	\$750,000	\$150,000	\$100,000	\$80,000	\$80,000	\$60,000	\$100,000	2 preserve mngmnt plans, 2 systemwide plans
Restoration Planning	\$500,000	\$100,000	\$90,000	\$160,000	\$80,000	\$140,000	\$75,000	small projects for 2012/ start larger project for 2013
Restoration Design	\$47,013	\$9,403	\$0	\$0	\$0	\$0	\$75,000	lumped with planning
TOTAL	\$1,297,013	\$259,403	\$190,000	\$240,000	\$160,000	\$200,000	\$250,000	

Habitat Restoration/Creation

Table I-6

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
Creation/Restoration Construction	\$2,291,709	\$458,342	\$120,000	\$580,000	\$150,000	\$650,000	\$200,804	see detail below
Office Equipment	\$11,350	\$2,270	\$0	\$0	\$0	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Staff	\$456,810	\$91,362	\$48,444	\$60,634	\$39,295	\$77,614	\$53,897	senior planner (20% FTE)
Travel	\$13,125	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Contractors	\$769,830	\$153,966	\$160,000	\$200,000	\$140,000	\$250,000	\$150,000	see detail below
TOTAL	\$3,625,657	\$725,131	\$331,069	\$843,259	\$331,920	\$980,239	\$407,326	

Cost of Restoration/Creation Construction

Project Type	Approx. Acres Restored	Assumed cost per acre	Cost Estimate Used for Conservancy Budget					Notes/Location
			2012	2011	2010	2009	2008	
Large project (stream, vernal pool, pond, wetland)	5	\$90,000	\$0	\$500,000	\$0	\$450,000	n/a	large project at Land Waste Management
Small project (riparian / vernal pool)	1 or 2	\$100,000	\$120,000	\$80,000	\$150,000	\$200,000	n/a	riparian at Ang; vernal pool at Vaq.
TOTAL			\$120,000	\$580,000	\$150,000	\$650,000	\$200,804	

Contractors

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
Plans, Specifications, and engineering	\$176,297	\$35,259	\$20,000	\$50,000	\$20,000	\$50,000	\$35,000	
Development of bid package	\$23,503	\$4,701	\$10,000	\$30,000	\$10,000	\$50,000	\$5,000	Png/design oversight)
Construction Oversight	\$99,902	\$19,980	\$10,000	\$20,000	\$10,000	\$60,000	\$20,000	Includes inspectors and const. mgr
Post-construction Maintenance	\$470,125	\$94,025	\$120,000	\$100,000	\$100,000	\$90,000	\$90,000	mntnce of past projects
TOTAL		\$153,965	\$160,000	\$200,000	\$140,000	\$250,000	\$150,000	

Environmental Compliance

Table I-7

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
NEPA/CEQA	\$380,000	\$76,000	\$10,000	\$3,000	\$3,000	\$3,000	\$10,000	possible greenhouse gas addendum
CWA 404/401	\$0	\$0	\$2,000	\$15,000	\$10,000	\$20,000	\$10,000	manage existing permits/ start new
NHPA	\$41,000	\$8,200	\$2,000	\$20,000	\$12,000	\$12,000	\$10,000	manage existing permits/ start new
CDFG 1600-1607	\$8,000	\$1,600	\$2,000	\$10,000	\$10,000	\$20,000	\$1,000	manage existing permits/ start new
Report on non-covered species	\$0	\$0	\$15,000	\$20,000	\$25,000	\$40,000	\$50,000	streamlines CEQA for HCP users
Staff support to project permits	n/a	n/a	\$0	\$0	\$0	\$18,247	\$5,000	Principal Planner (0% FTE)
Develop regional wetlands permits	n/a	n/a	\$35,000	\$40,000	\$55,000	\$35,000	\$0	Contractor technical support
Develop regional wetlands permits	n/a	n/a	\$59,921	\$42,770	\$36,303	\$18,247	\$0	Principal Planner (20% FTE)
Develop regional wetlands permits	n/a	n/a	\$30,000	\$15,000	\$0	\$0	\$0	Legal support
Mid year budget correction	n/a	n/a	\$0	\$0	\$0	\$0	\$23,000	
TOTAL	\$429,000	\$85,800	\$155,921	\$165,770	\$151,303	\$166,495	\$109,000	

HCP/NCCP Preserve Management and Maintenance

Table I-8

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					Notes
			2012	2011	2010	2009	2008	
Office Equipment	\$31,050	\$6,210	\$0	\$0	\$0	\$0	\$1,000	partners / lease revenue
Vehicle Purchase	\$221,000	\$44,200	\$0	\$0	\$0	\$0	\$8,000	partners / lease revenue
Equipment - capital	\$75,000	\$15,000	\$0	\$0	\$0	\$0	\$3,000	partners / lease revenue
Field Facilities	\$750,000	\$150,000	\$0	\$0	\$0	\$0	\$70,000	partners / lease revenue
Contractors - Capital	\$225,000	\$45,000	\$50,000	\$50,000	\$40,000	\$45,000	\$45,000	construction, fencing, etc.
Recreation Facilities	\$0	\$0	\$0	\$0	\$0	\$0	\$0	partners
Preserve Staff	\$1,194,930	\$238,986	\$100,000	\$200,000	\$200,000	\$180,000	\$180,000	cost share with partners/ reliance on lease revenues
Conservancy staff coordination/oversight	\$0	\$0	\$39,202	\$14,257	\$18,151	\$0	\$0	senior & principal planner (10%&5% FTE)
Maintenance of Office Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	partners / lease revenue
Travel	\$875	\$175	\$0	\$0	\$0	\$0	\$100	partners / lease revenue
Vehicle Fuel and Maintenance	\$62,750	\$12,550	\$0	\$0	\$0	\$0	\$10,000	partners / lease revenue
Equipment - Operational	\$162,500	\$32,500	\$0	\$0	\$0	\$0	\$25,000	partners / lease revenue
Facilities Maintenance and utilities	\$57,500	\$11,500	\$0	\$0	\$0	\$0	\$10,000	partners / lease revenue
Water Pumping	\$9,375	\$1,875	\$0	\$0	\$0	\$0	\$2,000	partners / lease revenue
Contractors- operational	\$402,000	\$80,400	\$20,000	\$0	\$40,000	\$50,000	\$50,000	weed abatement, etc/
Recreation - operational	\$0	\$0	\$0	\$0	\$0	\$0	\$0	partners
TOTAL	\$3,191,980	\$638,396	\$209,202	\$264,257	\$298,151	\$275,000	\$404,100	

Monitoring, Research and Adaptive Management

Table I-9

	<i>Estimated Costs From HCP (Years 1-5)</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for Conservancy Budget</i>					<i>Notes</i>
			<i>2012</i>	<i>2011</i>	<i>2010</i>	<i>2009</i>	<i>2008</i>	
Office Equipment	\$11,350	\$2,270	\$0	\$0	\$0	\$0	\$0	Factored in contractor rates
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	\$0	\$0	Factored in contractor rates
Monitoring staff	\$456,810	\$91,362	\$39,202	\$47,817	\$93,565	\$63,345	\$5,000	Principal planner (5% FTE) and senior planner (10% FTE)
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	\$0	\$0	\$0	Factored in contractor rates
Travel	\$13,125	\$2,625	\$1,000	\$1,000	\$1,000	\$1,000	\$500	
Field Data Collection (Contractors)	\$1,070,700	\$214,140	\$70,000	\$50,000	\$60,000	\$30,000	\$50,000	wetland/rare plant surveys, etc
Directed Research	\$375,000	\$75,000	\$150,000	\$150,000	\$0	\$0	\$1,000	Grant-funded avian study
Adaptive Management	\$150,000	\$30,000	\$15,000	\$15,000	\$15,000	\$0	\$10,000	Based on monitoring results
TOTAL	\$2,159,818	\$431,964	\$275,202	\$263,817	\$169,565	\$94,345	\$66,500	

Remedial Measures

Table I-10

	Estimated Costs From HCP Years 1-5	One-Fifth of Five- Year HCP Estimate	Cost Estimate Used for Conservancy Budget				
			2012	2011	2010	2009	2008
Remedial measures	\$30,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
TOTAL		\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000

Contingency Fund

	Estimated Costs From HCP Years 1-5	One-Fifth of Five- Year HCP Estimate	Cost Estimate Used for Conservancy Budget				
			2012	2011	2010	2009	2008
Total cost of program excluding land acquisition	\$14,393,072	\$2,878,614	\$1,852,019	\$2,447,343	\$1,697,267	\$2,356,160	\$1,802,823
Contingency Fund	\$719,654	\$143,931	\$92,601	\$122,367	\$84,863	\$117,808	\$90,141
TOTAL		\$143,931	\$92,601	\$122,367	\$84,863	\$117,808	\$90,141

Assumptions: 5% Percent of total program funding (other than land acquisition funding) needed for contingency fund.

Table II

Grants Awarded to Conservancy for Implementation of East Contra Costa County HCP/NCCP¹

Funding Source	Agency	Purpose	Amount	Required Match	Amount Expended (12/31/11)	Remain (12/31/11)	Needs to be used by...	Complete ?	Notes
Section 6 (2006)	USFWS	Acquisition	\$6,531,054	\$7,982,399	\$6,531,054	\$0	June 2010	√	
Section 6 (2007)	admin	Acquisition	\$7,000,000	\$8,555,600	\$7,000,000	\$0	June 2011	√	
Section 6 (2008)	by WCB	Acquisition	\$6,000,000	\$7,333,333	\$2,788,709	\$3,211,291	5-14-12		\$1.4M encumb.
Section 6 (2009)		Acquisition	\$2,500,000	\$3,055,556	\$0	\$2,500,000	8-1-12		
Section 6 (2010)		Acquisition	\$6,000,000	\$7,333,333	\$0	\$6,000,000	7-31-13		\$1.08M encumb.
Section 6 (2011)		Acquisition	\$4,463,936	\$5,455,922	\$0	\$4,463,936	2014		end date TBD
CVPIA - HRP	USBR	Acquisition	\$1,241,631	\$500,000	\$1,241,631	\$0	Sep 2010	√	
IRWMP - Prop 50	SWRCB	Acquisition or restoration	\$750,000	\$500,000	\$750,000	\$0	June 2012	√	
IRWMP - Prop 50 (reprogrammed)	SWRCB	Acquisition or restoration	\$1,400,000	\$500,000	\$1,400,000	\$0	Mar 2012		reimbursement pending
IRWMP - Prop 84	DWR	Acquisition or restoration	\$650,000	\$650,000	\$0	\$650,000	2015		end date TBD
NCCP Local Assistance (2006)	CDFG	Start-up staffing	\$40,000	'=====	\$40,000	\$0	June 2008	√	
NCCP Local Assistance (2007)	CDFG	Start-up wetlands restoration	\$60,000	\$120,000	\$60,000	\$0	Dec 2008	√	
NCCP Local Assistance (2008)	CDFG	Wetlands restoration at Souza 2	\$150,000	=====	\$125,100	\$0	April 2011	√	
NCCP Local Assistance (2009)	CDFG	Hess Construction	\$150,000	\$111,000	\$135,700	\$14,300	Mar 2012		reimbursement pending
NCCP Local Assistance (2010)	CDFG	Wetland and rare plant inventory	\$27,000	\$0	\$27,000	\$0	April 2013		reimbursement pending
NCCP Local Assistance (2010)	CDFG	Restoration project monitoring/maint.	\$85,000	\$0	\$85,000	\$0	April 2013		reimbursement pending
NCCP Local Assistance (2010)	CDFG	Preserve monitoring plan development	\$50,000	\$0	\$0	\$50,000	April 2013		
NCCP Local Assistance (2011)	CDFG	Wetland and rare plant inventory (phase 2)	\$40,000	\$0	\$0	\$40,000	April 2014		
NCCP Local Assistance (2011)	CDFG	Restoration project monitoring/maintenance	\$50,000	\$0	\$0	\$50,000	April 2014		
NCCP Local Assistance (2011)	CDFG	Preserve management plan development	\$75,000	\$0	\$8,500	\$66,500	April 2014		reimbursement pending
Gordon and Betty Moore Foundation		Acquisition Fox Ridge	\$880,000	50% match desired	\$880,000	\$0	12/31/09	√	
Gordon and Betty Moore Foundation		Acquisition and research Souza 3	\$2,250,000	50% match desired	\$2,000,000	\$250,000	Sep 2012		
Gordon and Betty Moore Foundation		Acquisition Fan, Galvin, Moss Rock&VF Central	\$1,300,000	50% match desired	\$0	\$1,300,000			received & encumbered; not spent
Prop 84 NCCP account	WCB	Acquisition of Barron	\$973,930	\$0	\$973,930	\$0	Feb 2012	√	
Prop 84 NCCP account	WCB	Acquisition of Thomas	\$1,842,966	\$0	\$1,842,966	\$0	June 2012	√	
Prop 84 NCCP account	WCB	Acquisition of Affinito	\$1,005,750	\$0	\$0	\$1,005,750	Dec 2012		to be disbursed soon
Prop 84 NCCP account	WCB	Acquisition of Vaquero Farms Central	\$230,000	\$0	\$0	\$230,000	Dec 2012		to be disbursed soon
TOTAL			\$45,746,267	\$42,097,143	\$25,889,590	\$19,831,777			

Note 1: Funding from partners not included. EBRPD has contributed more than \$13 million of its own funds or its grants funds to joint land acquisitions.

Explanation of Acronyms:

CDFG: California Department of Fish and Game

CVPIA HRP: Central Valley Project Improvement Act Habitat Restoration Program

DWR: Department of Water Resources

EBRPD: East Bay Regional Park District

IRWMP: Integrated Regional Water Management Plan

NCCP: Natural Community Conservation Plan

Section 6: Cooperative Endangered Species Conservation Fund, HCP Land Acquisition subaccount (authorized in Section 6 of federal Endangered Species

SWRCB: State Water Resources Control Board

USBR: United States Bureau of Reclamation

USFWS: United States Fish and Wildlife Service

WCB: California Wildlife Conservation Board (affiliated with CDFG)

Table III, Budget Status: Comparison of Conservancy's 2011 Budget to Preliminary Summation of Expenditures as of December

(expenditures and revenues include Conservancy's own funds as well as grant funds disbursed on behalf of the Conservancy)

	<i>Expenditures</i>					
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D= B + C</i>	<i>E= A minus D</i>	<i>F= E/A*100</i>
	<i>Approved 2011 Conservancy Budget¹</i>	<i>Expenditures as of 12/15/11²</i>	<i>Projected Expenditures for work performed before 12-31-11 but not yet paid</i>	<i>Total Expenditures thru 12/31/11 (Actual plus Projected)</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration and Permitting Program	\$606,981	\$545,762	\$50,000	\$595,762	\$11,219	2%
Land Acquisition	\$14,025,099	\$7,805,339	\$10,000	\$7,815,339	\$6,209,759	44%
Management, Restoration & Recreation Planning & Design	\$303,259	\$236,774	\$5,000	\$241,774	\$61,486	20%
Habitat Restoration/Creation	\$843,259	\$752,757	\$5,000	\$757,757	\$85,502	10%
Environmental Compliance	\$165,770	\$139,735	\$5,000	\$144,735	\$21,035	13%
HCP/NCCP Preserve Management and Maintenance	\$264,257	\$31,881	\$25,000	\$56,881	\$207,375	78%
Monitoring, Research, and Adaptive Management	\$263,817	\$125,085	\$10,000	\$135,085	\$128,732	49%
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$122,367	\$0	\$0	\$0	\$122,367	100%
TOTAL EXPENDITURES	\$16,600,808	\$9,637,333	\$110,000	\$9,747,333	\$6,853,476	41%
FEE REVENUES YEAR TO DATE (YTD) (through 12/15/11)				\$822,967		
GRANT REVENUE YTD (through 12/15/11)³				\$8,929,700		
TOTAL REVENUES YTD (through 12/15/11)				\$9,752,667		
DIFFERENCE BETWEEN YTD REVENUES & EXPENDITURES (projected)				\$5,335		
ESTIMATED FUNDS IN CONSERVANCY ACCOUNT, 12/15/11⁴				\$1,600,000		

Notes:

(1) Budget amounts do not reflect augmentation formulas. The approved Budget allowed the expenditure limits for certain categories to increase in proportion to revenues. These augmentations are not included here in order to keep the comparison of expenditures to budget simple and conservative.

(2) Cost for work performed but not yet billed is not included (work performed in December is generally not reflected). Projections in Column C estimate these amounts.

(3) Includes \$1.3M in grant funds received from the Moore Foundation that will be spent in early 2012 for previously approved land acquisitions. Does not include \$1.05M in work already performed on grant-funded projects (e.g. Upper Hess Restoration) for which reimbursement is pending (the bulk of the reimbursement is expected to arrive in early 2012).

(4) Does not include more than \$15M in grant revenue that has been approved but will be received after 12-31-2011. Nor does the fund balance include the California Wildlife Foundation account which is held in trust for the Conservancy but is controlled by the wildlife agencies. That account has a current balance of more than \$3.6M.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 11, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Report on Upper Hess Creek Watershed Habitat Restoration Project

RECOMMENDATION

ACCEPT update on Upper Hess Creek Watershed Habitat Restoration Project.

BACKGROUND

The Upper Hess Creek Watershed Habitat Restoration Project (Project) on the Land Waste Management Property is the fifth wetland restoration project to be implemented as a result of the adoption of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The project is intended to create and restore wetland habitats important to HCP/NCCP covered species. Wetland habitat types included alkali wetland, pond, and creek channel restoration. The project and its initial management has been funded almost entirely by two grants, the Integrated Regional Water Management Plan grant administered by the State Water Resources Control Board and Local Assistance Grant from the California Department of Fish and Game.

Construction summary: Construction on the Project started in early August 2011. The earthwork work was completed in October and the fencing was completed in November. The project appears to have been constructed well, was completed on-time and within the approved budget. The Project was the most complex and intensive restoration project yet for the Conservancy. It included complicated earthwork such as clay liners and subterranean dikes. It also required a relatively substantial amount of staff and biologist time to oversee and conduct a variety of unusual project components, such as safely lowering the water level of the main stock pond so that the banks could be set back, better fringing habitat could be restored and erosion threats to

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON: January 11, 2012 APPROVED AS RECOMMENDED: _____
 OTHER: _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS
 ___ AYES:
 ___ NOES:
 ___ ABSENT:
 ___ ABSTAIN:

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
 CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY
 HABITAT CONSERVANCY

BY: _____, DEPUTY

the dam could be ameliorated, all while keeping the red-legged frogs which inhabit the pond out of harms way. An East Bay Regional Park District (EBRPD) construction inspector was intensively involved in supervising all aspects of construction throughout the project.

At the July Governing Board meeting, staff reported that one component of the project, the removal of the upper stock pond, might be eliminated from the construction tasks. The upper stock pond, which did not seem to function well as habitat for species in 2010, surprised the project team in 2011 by holding water long enough for some California red-legged frogs to use it for breeding. At the time construction started on the Project, the upper stock pond still held water and there were young tadpoles using the upper stock pond. The inundation period of the upper stock pond in 2011 was long enough to support the red-legged frog breeding cycle and affected the team’s opinion of the habitat value of the pond. A decision was made to leave the upper stock pond in place.

The table below summarizes the amount of restoration/creation designed to be accomplished through the Project.

Restoration Site Name	Alkali Wetlands (acres)	Other Waters (acres)	Breeding Pond Wetted (acres)	Channel Restoration (ln ft)
CTS Breeding Pond		0.005	0.12	114
Upper Stock Pond*		0.004		258
Channel Restoration	0.05			117
Main Stock Pond	0.10	0.002		
Alluvial Valley	2.32			
Total	2.47	0.007	0.12	231

A biological as-built report is proposed to be completed in early 2012 to precisely document the results of construction and the exact restoration acres (at the time of project completion) for purposes of measuring restoration credit under the HCP and to make the restoration project eligible for credit under anticipated regional wetlands permitting programs.

Costs:

The lowest of bid \$480,600 by GradeTech, Inc of Castro Valley CA was approved by the Conservancy Board and the EBRPD Board in July. The Conservancy also approved a 15% construction contingency of \$72,090, resulting in an overall limit for construction costs of \$550,690, which was built into the construction agreement between the Conservancy and EBRPD. During construction unanticipated site conditions required changes in construction plans that resulted in approximately \$29,964 of change orders (6.2% of the original construction contract; pending final figures from EBRPD).

The table below summarizes the total construction costs of the Project.

Upper Hess Construction Costs	
Original Contract	\$480,600
Change Orders	\$29,964
Total Cost	\$510,564

Contingency	\$72,090
Contingency Used	\$29,964
Unspent Contingency	\$42,126

The change orders resulted from several unexpected additions/changes to the project. These included the following:

- Additional excavation in the upper alluvial valley to improve ground water capture for the constructed wetland; (during initial excavations at the head of the valley, promising water-bearing strata were observed below the planned clay liner, so the upslope edge of the clay liner was lowered to be below the these strata)
- Adjustments to the fencing plan and the addition of gates to allow better access to the site;
- Purchase and installation of more erosion and water pollution control devices than was originally anticipated, as required by the final Storm Water Pollution Prevention Plan (SWPPP) for the Project which had to be completed after the construction plans were finalized. These measures included the installation of straw waddles, straw bales and additional seeding and mulch.

Staff will provide a brief presentation on the Project and present construction photos during the meeting. Staff would also be pleased to arrange field visits to the site to provide a first-hand view of the constructed project.