



*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

Thursday, April 4, 2013

9:00 a.m.

City of Pittsburg
Pittsburg City Hall, Council Chambers
65 Civic Avenue
Pittsburg, CA 94565

AGENDA

9:00 a.m. Convene meeting and adjourn to Closed Session

Closed Session

CS1) Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to Gov.
Code, § 54956.9(b): One potential case.

CS2) Conference with Real Property Negotiators

Property: APN 020-171-001 and 020-172-004; 8831 Byron Highway,
Knightsen, CA

Agency Negotiators: John Kopchik and Abigail Fateman

Negotiating Parties: Conservancy and Ronald Nunn Family LP

Under negotiation: Price and payment terms

9:45 a.m. Open Session

Item 1 will not begin before 9:45 a.m.

- 1) Introductions.**
- 2) Report on any actions taken in Closed Session.**
- 3) Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of January 23, 2013.**

- 5) Consider the following actions related to the Periodic Fee Audit:
 - a) DETERMINE development fee and wetland mitigation fee amounts (“fee amounts”) to recommend to participating cities and the County, on the basis of the East Contra Costa County HCP/NCCP Mitigation Fee Audit And Nexus Study dated March 2013 (“2013 Fee Report”), consistent with requirements in the HCP/NCCP for periodic review of HCP/NCCP mitigation fees.
 - b) PROVIDE the 2013 Fee Report and the Board’s recommendation on fee amounts to participating cities and the County so that they that they may consider adjusting their fees and making necessary findings.
 - c) DIRECT staff to apply the revised fee amounts in future agreements between the Conservancy and Participating Special Entities.
 - d) ACCEPT update from staff on issues raised at the October 2 public workshop.
- 6) Consider REVIEWING the Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2012 Annual Report.
- 7) Consider AUTHORIZING staff to execute an annual contract for on-going biological consulting services with Nomad Ecology for \$45,000.
- 8) Consider ACCEPTING update on activities of the East County Water Management Association and the Integrated Regional Water Management Plan.
- 9) Consider ACCEPTING update on legislative platform activity.
- 10) Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Contra Costa Transportation Authority for take coverage of the State Route 160/State Route 4 Bypass Phase 2 Connectors Project, as further described in Exhibit 1 (the Planning Survey Report), provided the Wildlife Agencies concur with the Agreement.
- 11) Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Chevron Pipe Line Company for take coverage of the Chevron Pipeline KLM Site 1357 Repair Project.
- 12) Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for take coverage of the Phillips 66 Pipeline Repair Project 196,920.27.22.
- 13) Consider APPROVING Implementation Policy Regarding Installation of Renewable Energy Facilities on Contaminated Land.
- 14) Adjourn to Governing Board meeting on June 24, 2013.

If you have questions about this agenda or desire additional meeting materials, you may contact the Contra Costa County Department of Conservation and Development at 925-674-7203.

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.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for January 23, 2013

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of January 23, 2013.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: April 4, 2013 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
Monday, January 23, 2013
City of Clayton

The Board convened the meeting at 9:08 a.m. and announced adjournment to closed session.

1) Introductions. *(The attendance list only reflects the names of people who signed the meeting attendance record)*

Governing Board members in attendance were:

Joel Bryant	City Council, City of Brentwood
Hank Stratford	City Council, City of Clayton
Randy Pope	City Council, City of Oakley
Salvatore Evola	City Council, City of Pittsburg

Other attendees (who signed the sign-in sheet):

Randi Adair	California Department of Fish and Wildlife
Joe Ciolek	Agricultural-Natural Resources Trust of Contra Costa County
Kelly Davidson	HCP – Public Advisory Committee
Garrett Evans	City of Pittsburg
Dick Sestero	West Coast Home Builders
Eric Tattersall	United States Fish and Wildlife Service
Craig Weightman	California Department of Fish and Wildlife

Conservancy Staff and consultants in attendance were:

Chris Beale	Resources Law Group, Conservancy Attorney
Robert Spencer	Urban Economics (Fee Auditor)
John Kopchik	Conservancy Staff
Krystal Hinojosa	Conservancy Staff
Abigail Fateman	Conservancy Staff
Maureen Parkes	Conservancy Staff

- 2) **Report on any actions taken in Closed Session.** Board Member Hank Stratford stated there were no actions to report out of Closed Session.
- 3) **Public Comment on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).** There were no public comments.
- 4) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of October 22, 2012.** The meeting record was approved. (3-0-1, Bryant, Evola, Stratford; Pope abstaining)
- 5) **Consider the following Governing Board administrative matters:**
 - a) **WELCOME new Board Members and CONFIRM Conservancy Chair and Vice Chair for 2013.**
 - b) **DETERMINE Governing Board meeting time and locations in 2013.**

- c) **APPROVE** awarding a certificate to Assemblymember Jim Frazier to honor his service on the Governing Board of the East Contra Costa County Habitat Conservancy.

Items 5a and 5c were approved as recommended. Regarding Item 5b, the Board decided to meet on the 4th Monday of every third month from 3pm – 5pm, to rotate locations as set forth in the staff report and to consider the possibility of rescheduling the December meeting at a later date. (4-0, Bryant, Evola, Pope and Stratford)

- 6) **Consider the following actions related to HCP/NCCP Mitigation Fees:**
RECEIVE presentation from Robert Spencer of Urban Economics on the East Contra Costa County HCP/NCCP Mitigation Fee Audit (December 2012) and HCP Fee Burden Analysis (December 2012). **REVIEW** and **DISCUSS** this matter and **ACCEPT** public comment on it. **SCHEDULE** an action on this matter for the next Conservancy Board meeting. Robert Spencer of Urban Economics gave a presentation on the East Contra Costa County HCP/NCCP Mitigation Fee Audit (December 2012) and HCP Fee Burden Analysis (December 2012). Louis Parsons, Discovery Builders, spoke regarding the matter stating that the report was not a nexus study, that the mitigation fee act findings were never adequately supported in the original HCP, and substantial categories of fees were missing from the cost burden analysis. Board Member Randy Pope requested that Mr. Parsons provide him with follow-up documentation of his specific concerns so he could consider it. Bob Nisbet, East Bay Regional Park District, spoke in support of maintaining the adequacy of the fees. Seth Adams, Save Mount Diablo, stated that this a long term infrastructure project and stressed that it is imperative to be conservative at the beginning to ensure there are funds later. The item was scheduled for action at the next board meeting as outlined in the staff report. (4-0, Bryant, Evola, Pope and Stratford)
- 7) **Consider DETERMINING** representation on Public Advisory Committee (PAC) for 2013. Joel Bryant congratulated Kelly Davidson on her appointment to the Public Advisory Committee and complimented her qualifications. The Board determined that the current PAC composition is appropriate and the composition will remain unchanged in 2013. (4-0, Bryant, Evola, Pope and Stratford)
- 8) **Consider APPOINTING** one Conservancy Board Member as the primary representative and one as the alternate to the East County Water Management Association Governing Board. John Kopchik provided background on the East County Water Management Association Governing Board and stated that membership and participation in the Association has benefited the Conservancy in prior grant rounds awarded to the East County Region. Over \$2,000,000 has been awarded to Conservancy projects through ECWMA. Randy Pope was appointed as the primary representative and Hank Stratford was appointed as the alternate to the East County Water Management Association. (4-0, Bryant, Evola, Pope and Stratford)
- 9) **Consider AUTHORIZING** the Executive Director to sign the sub-grant agreement with the Contra Costa Water District to receive \$650,000 awarded for land acquisition and habitat restoration through the Integrated Regional Water Management Plan (IRMWP) grant process. John Kopchik provided background on grant process. The item was approved. (4-0, Bryant, Evola, Pope and Stratford)

10) **Consider APPROVING the 2013 Conservancy Work Plan.** John Kopchik provided a summary of the Work Plan, stating that priorities will include completing the In Lieu Fee Agreement with U.S. Army Corps of Engineers (and possibly other agencies), land acquisition, restoration and preserve management and management planning. The item was approved. (4-0, Bryant, Evola, Pope and Stratford)

11) **Consider the following actions related to legislative matters:**

- a) **ADOPT the 2013 Legislative Platform;**
- b) **ADOPT Resolution 2013-01 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 2014 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 2013**

John Kopchik presented the legislative matters. He informed the Board that the California Habitat Conservation Planning Coalition has asked the Conservancy to host the annual meeting this year, which would be a policy makers event that would bring attention to NCCPs. Items 11a , 11b, 11c and 11d were approved. (4-0, Bryant, Evola, Pope and Stratford)

12) **Consider the following actions related to Conservancy finances:**

- a) **APPROVE the 2013 Conservancy Budget.** Mr. Kopchik presented the 2013 Conservancy budget. This item (12a) was approved. (4-0, Bryant, Evola, Pope and Stratford)
- b) **AUTHORIZE staff to execute annual contracts for on-going consulting services with:**
 - **ICF Jones and Stokes: not to exceed \$289,000 for the term from January 1, 2013 through December 31, 2013;**
 - **H.T. Harvey and Associates: not to exceed \$260,000 for the term from January 1, 2013 through December 31, 2013;**
 - **Restoration Resources: not to exceed \$50,000 for the term from January 1, 2013 through December 31, 2013;**
 - **Thunder Mountain Enterprises: not to exceed \$50,000 for the term from January 1 2013 through December 31, 2013;**
 - **Monk and Associates: not to exceed \$50,000 for the term January 1, 2013 through December 31, 2013.**
- 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, 2013 through December 31, 2013.**

Abby Fateman presented the proposed contracts for on-going consulting and legal services. She provided overviews of the general scope of work for each contract. The items (12b and 12c) were approved. (4-0, Bryant, Evola, Pope and Stratford)

13) **Consider the following actions related to land acquisition:**

- a) **AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”) and a federal subgrant agreement with the California Wildlife Conservation Board (WCB) for federal funds for acquisition of the Adrienne Galvin Property (APN 080-070-014; 6041 Morgan Territory Road, Clayton, CA, 94517).**
- b) **AMEND the authorization approved on October 22, 2012 related to the acquisition of the Alaimo Property (APN 094-100-011; 6110 Kirker Pass Road, Pittsburg CA, 94565) to substitute federal grant funds for the portion of the acquisition that was to have been funded with state grant funds.**

John Kopchik provided an overview of the proposed Adrienne Galvin acquisition and the proposed change to the funding plan for the Alaimo acquisition. Mr. Kopchik also explained that he had heard from the California Wildlife Conservation Board since the meeting packets went out that they wanted to add language to the subgrant agreement for the highly disturbed Alaimo property to ensure that restoration of natural resources be part of the future management of the property. Seth Adams, Save Mount Diablo spoke in favor of the projects, stating that Alaimo property was part of an important corridor and has value not proportionate to its size because it allows for restoration, eliminates an in-holding and may provide a place for staging and use by the East Bay Regional Park District. Bob Nisbet, East Bay Regional Park District gave an overview of the properties and answered questions from the Board regarding the buildings on the Adrienne Galvin property and potential equestrian uses. Items 13a and 13b were approved as recommended, with the addition that the subgrant agreement for the Alaimo property include language to ensure that restoration of natural resources be part of the future management of the property. (4-0, Bryant, Evola, Pope and Stratford).

- 14) **Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project 196,920.27.22.** Krystal Hinojosa summarized the written materials in the staff report. The item was approved. (4-0, Bryant, Evola, Pope and Stratford)
- 15) **Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Pacific Gas and Electric Company for the Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project.** Krystal Hinojosa summarized the written materials in the staff report. The item was approved. (4-0, Bryant, Evola, Pope and Stratford)
- 16) **Consider AUTHORIZING the Executive Director to send a letter to the East Bay Regional Park District (EBRPD) approving the sale and conveyance of 1.8 acres of land and 2.88 acres of access/maintenance easement from lands previously acquired for the HCP/NCCP Preserve System to Contra Costa County as needed for the construction and operation of the Vasco Road Safety Project.** John Kopchik provided an overview of the purpose of the letter. The item was approved. (4-0, Bryant, Evola, Pope and Stratford)

Adjourned to Closed Session at 11:45am.

Reconvene Open Session.

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

- 17) **Adjourn** (the next regular meeting is on March 25, 2013 at the City of Pittsburg.)

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2012 Annual Report

RECOMMENDATION

REVIEW Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2012 Annual Report.

DISCUSSION

Attached please find a Draft 2012 Annual Report for the East Contra Costa County Habitat Conservancy. The Annual Report is a required component of the HCP/NCCP that allows the Governing Board, wildlife agencies, Conservancy member agencies, stakeholders, partners and the general public to review the status of Plan implementation. The attached document is an initial draft that requires additional work by staff to fully incorporate and double-check data from the Conservancy's databases. Governing Board feedback on the draft would be appreciated. The Annual Report will be finalized by staff to reflect comment from the Governing Board and incorporate the remainder of the information from the databases. A Final Annual Report will be brought back to the Board at its next meeting for review and approval.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: April 4, 2013 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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Finances / Contracts

RECOMMENDATION

AUTHORIZE staff to execute a \$45,000 contract for biological consulting services with Nomad Ecology.

DISCUSSION

Staff recommends the action set forth below with respect Nomad Ecology, a firm providing on-going services to the Conservancy. This recommended contract amount is lower than the 2012 contract with Nomad (\$63,000) but maintains contiguity on critical implementation and monitoring tasks.

- 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, monitoring 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 Wildlife grant (the grant contract names Nomad as the firm with suitable expertise to conduct the monitoring), and Conservancy funds.

CONTINUED ON ATTACHMENT: No
ACTION OF BOARD ON: April 4, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

__ UNANIMOUS
A YES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HEREBY 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 KUTSURI, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

The recommended 2013 contract would continue the preserve inventory tasks that Nomad Ecology has performed for the past two years and the monitoring of the Souza II and Lentzner Spring restoration projects. Additional funds would be available in the contract for on-call biological services and review of restoration 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 \$8,500 for this task]
- Botanical Surveys required by the HCP/NCCP to document covered and no-take plant populations on acquired lands [Approximately \$10,000 for this task]
- Review of management, monitoring and restoration plans [Approximately\$ 3,500 for this task]
- On-call biological services [Approximately \$8,000 for this task]

The proposed contract is consistent with the Conservancy's proposed 2013 budget.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update on activities of the East County Water Management Association.

RECOMMENDATION

ACCEPT update on activities of the East County Water Management Association and the Integrated Regional Water Management Plan.

DISCUSSION

In December 2010, the Conservancy Governing Board approved joining the East County Water Management Association (ECWMA). Membership and participation in ECWMA enables the Conservancy to receive future allocations from grants to the East Contra Costa County Integrated Water Management Plan (IRWMP), grants that are applied for and managed by ECWMA.

The East County Water Management Association was awarded two grants (2011 and 2012) from the California Department of Water Resources through Proposition 84 funding to create a complete IRWMP by updating the existing Functionally Equivalent IRWMP (which consists of a framework document linking disjunct, previously completed plans that address only a portion of the IRWMP scope). The update to the East Contra Costa County IRWMP is expected to be completed and brought to ECWMA and member agencies for adoption in early fall 2013. An adopted IRWM Plan is required to apply for implementation funds through the Region. In the past the Conservancy has received a total of \$2,150,000 through the IRWMP grant process.

The Conservancy worked with ECWMA partners to submit a grant proposal on March 29th to the California Department of Water Resources for \$3,391,246. Of that grant total, the Conservancy is requesting \$500,000 to fund the Knightsen Wetlands Habitat and Flood Protection Project. The funding would support acquisition, habitat restoration planning and construction.

CONTINUED ON ATTACHMENT: No
ACTION OF BOARD ON: April 4, 2013 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.

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*CATHERINE KUTSURI, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update on legislative platform activity

RECOMMENDATION

ACCEPT update on legislative platform activity.

BACKGROUND

At its January 23, 2013 meeting, the Governing Board adopted a Legislative Platform for 2013 as well as Resolution 2013-01 authorizing cooperation with the California Habitat Conservation Planning Coalition (“CHCPC”) to pursue a federal funding request of \$80 million for the Cooperative Endangered Species Conservation Fund (“CESCF”) for fiscal year 2014.

As discussed in January, robust federal funding opportunities for HCPs are key to ensuring the ability of the Conservancy to fulfill the land acquisition component of its mission. The Conservancy to date has been awarded \$33,494,990 in federal funding through the CESCF, through six separate annual grants, which accounts for over 70% of the total grant funding awarded to date. However, these federal funds have been severely threatened in recent years. CESCF funding dropped from a relatively stable \$85 million in FY2010 to \$60 million in FY2011 to \$47.7 million in FY2012. The President’s budget request for FY2013 was \$60 million (the Budget for FY2014 has not yet been released), and the CHCPC has requested \$80 million, which would come close to restoring FY2010 funding levels while taking into account overall reductions in federal spending.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: April 4, 2013 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.

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

BY: _____, DEPUTY

Conservancy staff have pursued a variety of activities in furtherance of the legislative platform and in accordance with Resolution 2013-01 since January. These include:

- Regular conference calls and communication with other CHCPC members regarding coordinated outreach to elected officials on FY2014 funding for the CESCOF.
- Outreach to the local congressional delegation (Congressmen McNerney and Miller) regarding support for increasing CESCOF funds in FY2014. Congressman McNerney has agreed to again take the lead on preparing a joint letter, to be signed by members of Congress to the leadership of the Subcommittee on Interior, Environment and Related Agencies emphasizing the importance of CESCOF funding. This letter is expected to be completed later in April 2013.
- Revision of the CHCPC's briefing book on the CESCOF funding request for FY2014 (attached.)
- The Executive Director traveled to Washington, D.C. for meetings on March 6 and 7 with the CHCPC to advocate for the FY2014 CESCOF funding request. The CHCPC group met with staff of the House and Senate delegations from the region, including a meeting with Congressman McNerney, and with staff at the U.S. Fish and Wildlife Service, the Department of the Interior and the Office of Management and Budget and the U.S. Army Corps of Engineers.

ATTACHMENTS:

- CHCPC briefing book on FY2014 CESCOF funding request

CALIFORNIA HABITAT CONSERVATION PLANNING COALITION

**U.S. Fish and Wildlife Service
Cooperative Endangered Species Conservation Fund:
Fiscal Year 2014 Funding Request**

CONSERVING NATURAL RESOURCES



FACILITATING ECONOMIC DEVELOPMENT

March 2013

REQUEST

The California Habitat Conservation Planning Coalition requests that Congress fund the Cooperative Endangered Species Conservation Fund (the "Fund") at \$80 million in Fiscal Year 2014. This would partially restore the Fund to its earlier level and help satisfy the urgent need for funding for endangered species conservation efforts, particularly conservation associated with Habitat Conservation Plans.

HABITAT CONSERVATION PLANS

Regional Habitat Conservation Plans (HCPs) both conserve endangered species and create a means to permit and mitigate the effects of economic development. The comprehensive, scientific, and transparent conservation planning and permitting process made possible by regional HCPs creates conservation opportunities and regulatory streamlining opportunities that are not possible under the more conventional project-by-project approach. Habitat preservation, restoration and stewardship are carried out strategically by locally-based conservation agencies. The California Habitat Planning Coalition includes local agencies, conservation organizations and business organizations supporting regional Habitat Conservation Plans.



SUPPORTED BY

Local Agencies:

City of San Diego
Coachella Valley Association of Governments
Coachella Valley Conservation Commission
Contra Costa County
East Contra Costa County Habitat Conservancy
Placer 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:

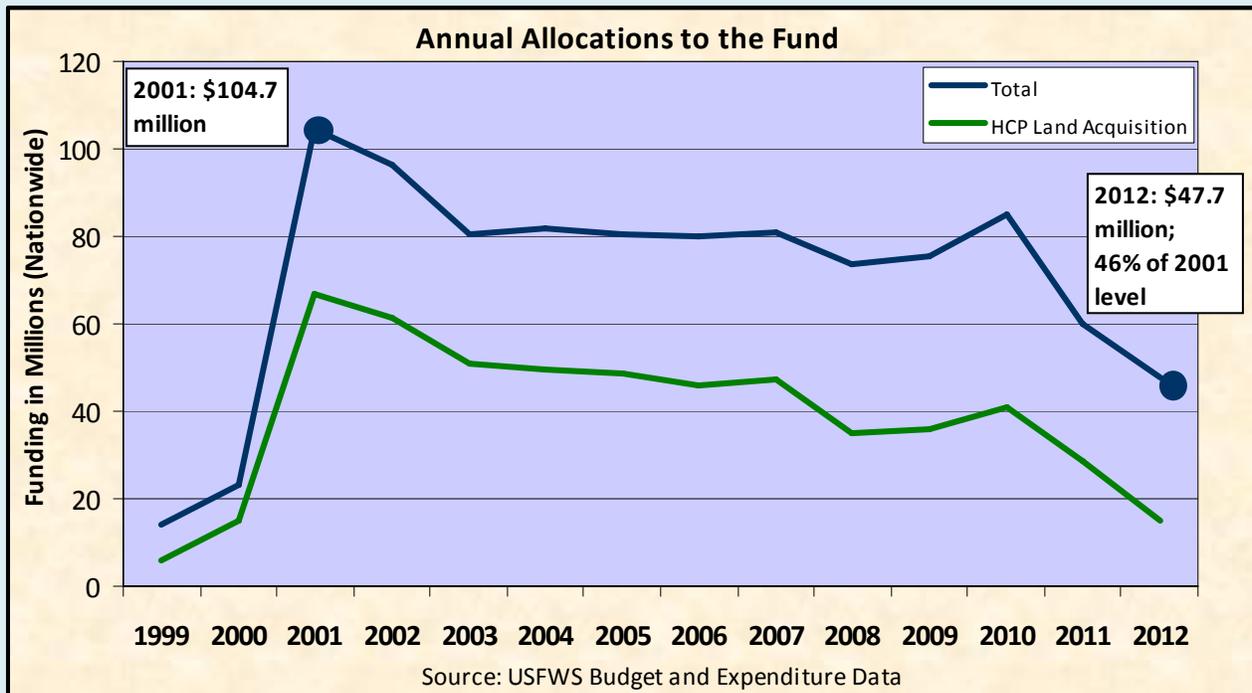
California Land Conservancy
California Native Plant Society
Endangered Habitats League
Friends of the Desert Mountains
Institute for Ecological Health
The Nature Conservancy

Business/Infrastructure:

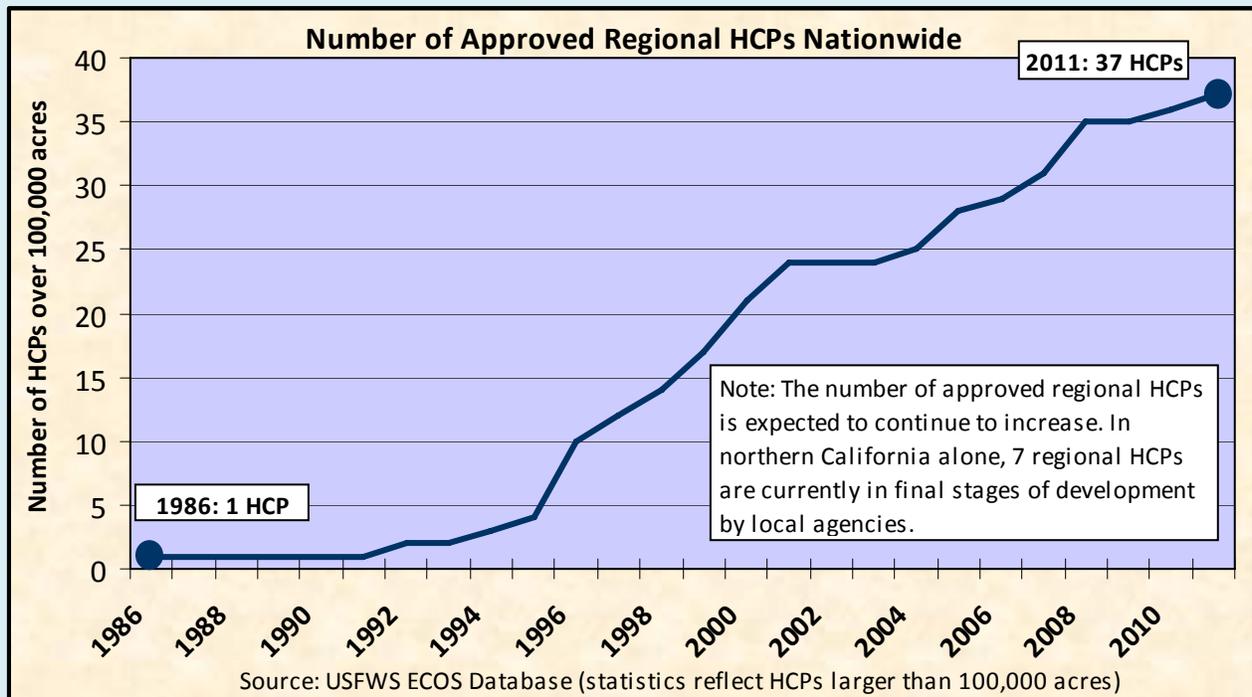
Building Industry Association of the Bay Area
Building Industry Association of San Diego County
Building Industry Association of Southern
California, Inc.
East County Renewables Coalition
Pacific Gas and Electric Company

WHY THE FUND ALLOCATION NEEDS TO INCREASE

A) FUNDING LEVELS HAVE DECLINED DRAMATICALLY



B) THE NUMBER OF APPROVED HCPS CONTINUES TO GROW



The Coalition's proposed partial restoration of the Fund to \$80 million is still much less than the funding between 2001-2010. Grant requests are far more than the available funding. The Fund will need to increase substantially in future years to keep pace with the expected growth in the need to fund approved plans.

ECONOMIC AND CONSERVATION BENEFITS OF HCPs

Regional HCPs provide State and Federal regional permits for public infrastructure and private development projects based on conservation strategies that minimize conflicts between the environment and economic development. 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.

"The City of Desert Hot Springs needs new development, new investment in our community. With the Coachella Valley Multiple Species HCP, our city will know where development is approvable and where it is not. That will help us bring jobs to our community - pure and simple."

- Rick Daniels, City Manager, City of Desert Hot Springs



HCPs Are Good for Businesses and Jobs

- HCPs streamline permitting for development and infrastructure projects. In the short term, this expedites:
 - Construction jobs and construction-related activity
 - Wages spent in the local economy
 - Tax revenue from wages and purchase of building materials

In the long term, streamlined permitting expedites:

- New jobs in new commercial areas
 - Increased economic activity overall via the arrival of new homeowners and new businesses
 - Ongoing tax revenue from wages, sales taxes and property taxes
- The permitting certainty that HCPs provide to developers can be the deciding factor in whether or not a project moves forward—and therefore whether an area sees new jobs, tax revenue and economic growth.
 - The HCP land acquisition process provides jobs to appraisers, clean-up contractors, realtors, surveyors and title companies.
 - Through the land acquisition process, HCPs provide a market for willing sellers of land, allowing them to turn those assets into liquid capital.

HCPs generate economic efficiency by redirecting dollars formerly spent on conflict over permitting and regulations towards conservation and resource protection.



"PG&E worked under an existing Habitat Conservation Plan to receive state and federal wildlife permitting for reliability upgrades to the 30-mile long Contra Costa-Las Positas 230kV transmission line. This was an efficient process which was very helpful in streamlining permitting to facilitate timely construction, while also fostering positive agency relationships."

*- Diane Ross-Leech, Director,
Environmental Policy, Pacific Gas and Electric Company*

ECONOMIC AND CONSERVATION BENEFITS OF HCPs



Regional HCPs are a primary mechanism for the conservation of land and species, especially in fast-growing areas. Collectively, regional HCPs in California will conserve more than 1.5 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 also provides valuable open space to residents and visitors, protecting the natural beauty of these regions and providing numerous recreational opportunities.

HCPs Are a Better Way to Conserve Natural Resources

- HCPs purchase, restore and permanently protect large, interconnected and biologically rich blocks of habitat.
- HCPs employ the best available science to coordinate conservation actions in a regional manner and maximize benefits to species and ecosystems.

HCPs Facilitate Infrastructure Projects

- For public infrastructure projects, greater certainty that permits will be issued and faster processing means less cost to taxpayers.
- New and well-maintained infrastructure is a key component of economic growth.
- Because regional HCPs are "master" permits, they eliminate the need for the Fish and Wildlife Service to process numerous individual project permits, saving staff time and tax dollars.
- HCPs benefit renewable energy projects.

HCPs Provide Support for Working Farmers and Ranchers

- Purchase of agricultural conservation easements creates a new source of capital for working farmers, helping to maintain healthy and functioning rural economies while also protecting the habitat value that agricultural land provides.



"In the City of San Diego, a Section 6 grant became the critical catalyst that facilitated the development of a Habitat Conservation Plan to protect the remaining vernal pools in the City, 99% of which have been eliminated."

- Jim Whalen, J. Whalen Associates Inc.

"We aren't seeking a handout, an "earmark" or special favors. We are only asking that the program be funded appropriately so we can, again, compete and show the nation that we know how to balance environmental protection with economic development."

- Richard Kite, Rancho Mirage City Council Member, Chair, Coachella Valley Conservation Commission

CONSERVATION OUTCOMES AND SAMPLE ACCOMPLISHMENTS OF CALIFORNIA HCPs

- The East Contra Costa County Habitat Conservancy partnered with the East Bay Regional Park District to acquire six properties totaling 672 acres in 2012. The total cost of these acquisitions was \$6.5 million, and was paid with Section 6 funds (45%), state bond funds (25%), private foundation grants (20%), and regional park funds (10%).

“By leveraging county funds with federal and state dollars, we have been able to acquire over 18,000 acres of open space to preserve these precious habitats and allow future generations of San Diegans to enjoy them.”

*- Greg Cox, Chairman,
San Diego County Board of Supervisors*

Key Regional HCPs	Covered Species	Acres To Be Conserved
Butte Regional Conservation Plan	41	150,000
City of San Diego MSCP Subarea Plan	85	52,727
Coachella Valley MSHCP/NCCP	27	745,000
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	19	49,390
Solano HCP	36	30,000
South Sacramento HCP	30	58,000
Western Riverside County MSHCP/NCCP	146	500,000
Yolo Natural Heritage Program	64	under development
TOTAL		2,148,117

- The 2,748 acre Desert Ranch property (right) was acquired in the spring of 2012 under the Coachella Valley HCP/NCCP. This purchase conserves key habitat for the endangered Peninsular bighorn sheep at the foot of the Santa Rosa Mountains. Section 6 funds provided \$2.6 million of the \$4.2 million purchase price. The acquisition was facilitated by a partnership among non-profits, local, state, and federal agencies. This and other acquisitions in the same area over the last 10 years have conserved almost 9,000 acres of valuable big horn sheep habitat.



- The Western Riverside County Regional Conservation Authority acquired approximately 18.80 acres (left) from the Cachia family in the Tenaja area for \$690,000 on November 23, 2010. The purchase price was paid with federal Section 6 funds. This acquisition contributes to the completion of a critical linkage connecting the Santa Rosa Plateau reserve with the Cleveland National Forest. This linkage is of particular importance for both bobcat and mountain lions.

ECONOMIC OUTCOMES AND SAMPLE ACCOMPLISHMENTS OF CALIFORNIA HCPs



- The environmental coverage provided by the Coachella Valley Multiple Species Habitat Conservation Plan helped make five freeway interchanges "shovel ready", streamlining the completion of this critical infrastructure along the Interstate 10 freeway. Three of the interchange projects, including the Bob Hope Dr. Interchange (shown above at its opening), were completed as of 2012. These projects are estimated to create 2,050 jobs upon completion.



- The eBART project (right), permitted through the East Contra Costa County Habitat Conservation Plan, is a 10-mile extension of the BART system. This \$462 million project will generate over 600 construction jobs and 40 to 80 permanent jobs.

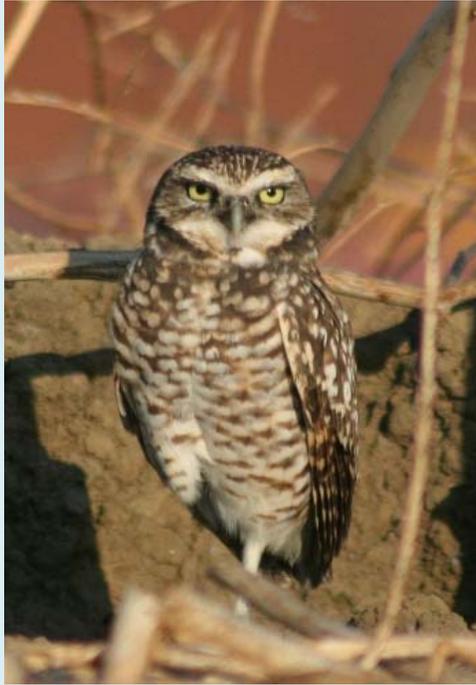


Key Regional HCPs	Regional Permits* Thru...	Est. Value of Covered Activities**
Butte Regional Conservation Plan	2041	under development
City of San Diego MSCP Subarea Plan	2047	\$37 billion
Coachella Valley MSHCP/NCCP	2083	\$300 billion
East Contra Costa County HCP/NCCP	2037	\$12 billion
Natomas / Metro 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	\$20 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	under development
TOTAL		\$1.6 trillion

* For those HCPs in preparation, the term of regional permits is estimated.

** Refers to the market value of the completed project (or, for public infrastructure projects, to the construction cost.) Assumes a value of \$1 million per acre for every acre of development that may be covered under the HCP.

- The new I-15 /French Valley Interchange (left) relied heavily on the Western Riverside County MSHCP for coverage under the Endangered Species Act. Without the MSHCP, this project would have likely have taken years to receive species permitting. This new \$17 million interchange broke ground in June 2012 with a completion date in 2014 and is a critical improvement to the transportation system in the southern Riverside County.



“Our common vision includes protecting mountains and desert and facilitating development and infrastructure to keep up with growth. The Multiple Species Plan is the method for protecting habitat and jobs.”

- Richard W. Kite, Rancho Mirage City Council, Chair, Coachella Valley Conservation Commission



California Habitat Conservation Planning Coalition

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

Contact:

John Hopkins, Director
California Habitat Conservation Planning Coalition
409 Jardin Place
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Printed on recycled paper

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with Contra Costa Transportation Authority to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Contra Costa Transportation Authority for the State Route 160/State Route 4 Bypass Phase 2 Connectors Project (“SR 160/SR 4 Connectors 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 Contra Costa Transportation Authority for take coverage of the State Route 160/State Route 4 Bypass Phase 2 Connectors Project, 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 Conservancy’s issuance of a Certificate of Inclusion to the PSE is a public agency action that must comply with CEQA. As further described below, the State Route 160/State Route 4 Bypass Phase II Connectors Project was analyzed in a certified CEQA document; minor changes to the project have been reviewed and addressed in CEQA Addenda.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: April 4, 2013
OTHER _____

APPROVED AS RECOMMENDED: _____

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

For purposes of the Project, Contra Costa Transportation Authority is the CEQA lead agency. The predecessor agency (the State Route 4 Bypass Authority) certified an EIR for the entire SR 4 Bypass Project in 1994 (State Clearinghouse Number 89032824). This EIR included the State Route 160/State Route 4 Bypass Phase II Connectors Project that is the subject of this Agreement. Subsequent to certification of the EIR, the State Route 4 Bypass Authority and the Contra Costa Transportation Authority have adopted a CEQA Addendum (Addendum #9), finding that minor changes to the project would not result in any new or worsened conditions. In consultation and coordination with Caltrans, Contra Costa Transportation Authority is as of March 2013 preparing another CEQA Addendum (known as a CEQA Revalidation). The minor refinements that are the subject of this 2013 Revalidation are encompassed in the accompanying Application. The PSE anticipates completion of the Revalidation by May 2013. The Conservancy is a CEQA responsible agency for purposes of the Project and, as such, will rely on the previous environmental documents cited above prepared by the State Route 4 Bypass Authority and the Contra Costa Transportation Authority for purposes of fulfilling its responsibilities under CEQA.

Reference the CD containing copies of the following items:

1. Addendum #9 to the Environmental Impact Report for the State Route 4 Bypass Project (June 2011)
2. 1994 Resolution to the Environmental Impact Report for the State Route 4 Bypass Authority
3. 1994 Findings and Statement of Overriding Considerations
4. Notice of Determination with the County Clerk and Receipt for Environmental Filing Fees

ITEM (B). As part of the State Route 160/State Route 4 Bypass Phase II Connectors Project (“SR 160/SR 4 Connectors Project”), the Contra Costa Transportation Authority (“CCTA”) is seeking take coverage for the construction of the northbound and southbound connector ramps between the State Route 160 and State Route 4 Bypass. Primary components of the SR 160/SR 4 Connectors Project include construction of the additional lanes, widening of existing roadway to accommodate auxiliary lanes, construction of a new bridge over the State Route 4 Bypass, a new bridge over the existing State Route 4/State Route 160 connector, and a new bridge over the Union Pacific Railroad (UPRR) right of way. Additional components consist of installation of bioswales in the median, removal of a portion of the existing sound wall to accommodate construction along the east side of the State Route 4 Bypass and then replacing that portion and extending the wall north along State Route 160 to Oakley Road, and installation of retaining walls at the edge of the Oakley Road Bridge in order to accommodate construction of auxiliary lanes.

The application for take coverage is limited to those activities specifically associated with the Project, as further described in Exhibit 1. The Project area consists of 53.05 acres which includes 18.01 acres of permanent impact, 2.73 acres of temporary impact, 9.94 acres of urban land cover, and 22.37 acres which was previously mitigated for in the Biological Opinion (“BO”) for Segment 1 of the State Route 4 Bypass Project.

(Reference Figures 1 for the Project Location, Figures 2a-g Site Plans, Figures 3, 3a, 3b for the Land Cover and Impact Maps and Representative Photos, and Figure 4 Habitat Survey Maps in the Planning Survey Report Application for more information on the Project).

Contra Costa Transportation Authority is requesting take coverage for the SR 160/SR 4 Connectors 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. CCTA does not require any city or county land use permits for the proposed project and is therefore eligible to apply for take coverage as a PSE. As a PSE, CCTA 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, certain public and private infrastructure projects are an eligible covered activity within the HCP/NCCP inventory area. The Project is an eligible covered activity.

In order to receive permit coverage under the HCP/NCCP, the Conservancy and the Contra Costa Transportation Authority 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 Contra Costa Transportation Authority to perform all avoidance, minimization, and mitigation measures applicable to the Project. Conservancy staff has prepared the proposed Participating Special Entity Agreement (“Agreement”) and Contra Costa Transportation Authority agrees to the terms and conditions therein (attached).

Attached as Exhibit 1 to the Agreement is the completed Planning Survey Report (“PSR”) for the SR 160/SR 4 Connectors Project, prepared by CCTA in consultation with Conservancy staff. The PSR documents the results of the planning-level surveys conducted throughout the SR 160/SR 4 Connectors Project site where ground disturbing impacts will occur and within Right-of-Way of the Project corridor and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the SR 160/SR 4 Connectors 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, land cover types, species habitat, and the fee calculator worksheet.

Key provisions of the Agreement:

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

Type	Existing Acres	To be Permanently Disturbed (Acres)	To be Temporarily Disturbed (Acres)
Annual Grassland	12.5	12.5	
Ruderal	8.24	5.51	2.73
Urban (Exempt from fees)	9.94		
Mitigated under Segment 1 BO	22.37		
Total Acres Covered Under HCP/NCCP Permit	53.05	18.01	2.73
Total Impacts (subject to fees)	20.74		

- The Agreement provides that the CCTA will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$20,000.
- In addition, as set forth in the Agreement (page 6-7), CCTA will pay the Conservancy \$299,589.08, which amount includes all HCP/NCCP development mitigation fees necessary for the Project. The payment does not include an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”).
- Staff is proposing that this Agreement not require a Contribution to Recovery from the CCTA. The HCP/NCCP provides that the Conservancy may, at its discretion, require Participating Special Entities to pay an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species, a.k.a. the Contribution to Recovery. Staff does not recommend requiring such a Contribution to Recovery for this Project. The intent of such contributions is to ensure that local agencies implementing the HCP/NCCP do not subsidize Participating Special Entities’ coverage under the HCP/NCCP by absorbing plan preparation costs or the expense of the HCP/NCCP’s contribution to recovery component without reimbursement. However, CCTA member agencies include all of the Conservancy’s member agencies. Therefore, staff does not believe such a contribution is warranted in this circumstance. In 2008, the Conservancy covered the State Route 4 Bypass, Segment 2, Phase 2 Project, the same rationale was applied to that project and the applicant, the State Route 4 Bypass Authority, did not pay a Contribution to Recovery charge.

- The table below summarizes the required development fees and administrative costs:

FEE SUMMARY for the SR 160/SR 4 Connectors Project	
Development Fee:	\$295,115.64
Temporary Impact Fee:	\$4,473.44
TOTAL FEES AND CONTRIBUTIONS	\$299,589.08
Maximum Administrative Costs	\$20,000.00
MAXIMUM AMOUNT TO BE PAID	\$319,589.08

- The Agreement provides that the Fees and Administrative Costs must be paid before work commences. CCTA anticipates paying fees in June 2013 in order to secure the HCP/NCCP Permit before starting work in September 2013. The PSE Agreement requires the amount of fees to be adjusted annually, including any changes in the first year that occur before work commences, as required by the HCP/NCCP. The fees are subject to change pending the adoption of the 2013 periodic fee audit by the Conservancy’s Governing Board. If the Conservancy Board approves changes to the fees based on the periodic fee audit on April 4, 2013 the fees will be adjusted to match the Board-approved fees. If the periodic audit is not adopted on April 4, then fees will be as shown above.
- 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, Swainson’s hawk, and Golden Eagle.

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

- Contra Costa Transportation Authority 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 Contra Costa Transportation Authority 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.

- Contra Costa Transportation Authority pays all required mitigation and administrative costs (to-date, as set forth in an invoice to be provided to CCTA by Conservancy staff), as outlined in the Agreement.
- The Conservancy issues Contra Costa Transportation Authority a Certificate of Inclusion. Take authorization would then be in effect, subject to the terms of the Agreement.
- Contra Costa Transportation Authority conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Contra Costa Transportation Authority develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Contra Costa Transportation Authority 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**
 - **Exhibit 1 and 2: Fee Calculator**
 - **Figures:**
 - Figure 1 Site and Vicinity
 - Figure 2a-g Project Plans
 - Figure 3 Existing Land Cover
 - Figure 3a Land Cover - Permanent and Temporary Impacts
 - Figure 3b Project Map
 - Figure 3c Photos of the Project Area
 - Figure 4 Planning Surveys Species Habitat Map
 - **Report of Surveys for Special-Status Plants**

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with Chevron Pipe Line Company to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Chevron Pipe Line Company for the Chevron Pipeline KLM Site 1357 Repair Project:

- a. AUTHORIZE staff to file a Notice of Exemption with the County Clerk for the project.**
- b. AUTHORIZE staff to execute a Participating Special Entity Agreement with Chevron Pipe Line Company for take coverage of the Chevron Pipeline KLM Site 1357 Repair Project.**

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a Participating Special Entity Agreement and to extend take authorization under the PSE Agreement to Chevron Pipe Line Company for the Chevron Pipeline KLM Site 1357 Repair Project is a public agency action that must comply with CEQA. For purposes of the Project, the Conservancy is the CEQA lead agency. The Conservancy has determined the Project is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: April 4, 2013 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

ITEM (B). Chevron Pipe Line Company (“Chevron”) plans to address a maintenance issue at Site 1357 on the KLM pipeline in eastern Contra Costa County, south of the Byron Airport and north of Byron Hot Springs Road. The KLM Site 1357 Maintenance Project would consist of a minor excavation to access the pipeline, a repair or maintenance improvement, the replacement of the soil upon completion of the repair and restoration and monitoring to restore the site to pre-project conditions.

The U.S. Department of Transportation (“DOT”) pipeline safety regulations require companies operating pipelines to conduct maintenance repairs to the pipeline within a set timeframe. This action is proposed as part of a pipeline integrity management plan in order for Chevron to comply with U.S. Department of Transportation (“DOT”) hazardous materials and safety regulations, and to facilitate the continued safe transportation of petroleum products.

Chevron detected a pipeline anomaly at this site along the KLM Line which requires urgent inspection and potential; repair in order to be in compliance with DOT pipeline safety regulations. Chevron identifies the repair site as Site 1357. It is located on property owned by the Contra Costa County and is managed by the Contra Costa County Public Works Department, Division of Airports as part of the Byron Airport Habitat Management Lands. This project is known as the Chevron Pipeline KLM Site 1357 Repair Project (“Project”).

The Project consists of a 30 foot by 10 work area and repair site (0.007 acre), a 12-foot-wide by 355.74-foot long access route covering (0.098 acre) and use of an existing rural access road (0.103 ac). There is also a 20-foot by 80-foot soil stockpile area (0.04 ac) located in immediately adjacent to the temporary access route. The total footprint area is 0.248 acres.

The 30 foot by 10 foot work area is located within an alkali seasonal wetland. The other project components, including the stockpile area have been located to avoid additional wetland impacts. Approximately 0.596 acres of downstream seasonal alkali wetland would be indirectly impacted by the Project. No actual permanent impacts would result from this Project. However, as further discussed below, some permanent impacts have been assumed for fee and impact calculation purposes.

(See Figures 1-5 and the Project Description in the Planning Survey Report Application for more information on the Project and its location).

The Project will occur in habitat suitable for several species covered by the HCP/NCCP. Chevron is requesting take authorization for the Project through the Conservancy as a Participating Special Entity. Chapter 8.4 of the HCP/NCCP provides that organizations, including public agencies and private organizations, may apply directly to the Conservancy for take coverage as a Participating Special Entity (“PSE”) for projects not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP. Chevron does not require any city or county land use permits for this Project and is therefore eligible to apply for take coverage as a PSE. As a PSE, Chevron 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, certain public and private utility infrastructure projects are an eligible covered activity within the HCP/NCCP inventory area. The Project is an eligible covered activity.

In order to receive permit coverage under the HCP/NCCP, the Conservancy and the Chevron 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 Chevron to perform all avoidance, minimization, and mitigation measures applicable to the Project. Conservancy staff has prepared the proposed Participating Special Entity Agreement ("Agreement") and Chevron agrees to the terms and conditions therein (attached).

Attached as Exhibit 1 to the PSE Agreement is the completed Planning Survey Report Application ("PSR") for the Project, which was prepared by Chevron in consultation with Conservancy staff. The PSR documents the results of the planning-level surveys conducted at the repair site and associated access areas where impacts will occur and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the Project to be covered through the HCP/NCCP. The PSR contains project vicinity maps, detailed maps showing the impacts associated with the Project site, land cover and species habitat maps, and the Fee Calculator Worksheets. Note, in order to ensure and demonstrate that the alkali wetland complex fully recovers from the impacts associated with the Project, Chevron developed and agrees to implement a 5-year post-project performance monitoring plan. The plan outlines performance criteria to document post project performance which will be used to determine if by year 5 the site has at minimum been restored to pre-project conditions. The plan provides that Chevron will meet and confer with the Conservancy to determine what additional mitigation measures and steps can be taken to address the shortfall if Chevron fails to meet the success criteria defined in the plan.

The PSR includes a section on additional site-specific conditions at the request of the County Airports Division. Chevron and Conservancy staff are amenable to including this section to help coordinate application of the HCP/NCCP with the unique circumstances of the airport. The site specific conditions include a number of provisions to address Federal Aviation Administration requirements when working near an active airport and to avoid conflicts with the management of Byron Airport Habitat Management Lands. Though the site specific conditions are intended to coordinate HCP/NCCP requirement with airport needs, Chevron remains responsible for securing any necessary landowner authorizations to conduct the Project.

Key provisions of the Agreement:

- The Project impacts are reflected in the table below:

Land Cover Type	Impact Type ¹ (acres)		
	Permanent	Temporary	Indirect Effects to Downstream Wetland (Temporary Impacts)
Alkali Grassland (Salt grass)	-	0.135	
Ruderal		0.103	
Alkali Wetland	0.007	0.003	0.596
Total	0.007	0.248	0.596

- The Agreement provides that Chevron will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$30,000. This project has required and is expected to continue to require far more staff effort than a typical pipeline repair project. This is because the repair site is located within an alkali wetland and the applicant wishes to assume presence of vernal pool fairy shrimp, circumstances which require significant additional staff work to develop and oversee the implementation of additional, long-term mitigation measures.
- In addition, as set forth in the Agreement (page 6), Chevron will pay the Conservancy \$50,725.62, which amount includes all HCP/NCCP mitigation fees necessary for the Project as well as a Contribution to Recovery for Endangered Species.
- The table below summarizes the required fees and administrative costs:

CHEVRON FEE SUMMARY	
Permanent Impact Development Fee	\$5,418.37
Permanent Impact Wetland Mitigation Fee:	\$2,398.94
Temporary Impact Development Fee:	\$2,170.26
Temporary Impact Wetland Mitigation Fee:	\$23,829.50
Contribution to Recovery for Endangered Species:	\$16,908.54
TOTAL FEES AND CONTRIBUTIONS	\$50,725.62
Maximum Administrative Costs	\$30,000.00
MAXIMUM AMOUNT TO BE PAID	\$80,725.62

¹ This table shows how impacts will be tracked under the HCP/NCCP. Because the applicant has chosen to assume presence of covered fairy shrimp species, some permanent impacts are being assumed. However, the project includes restoration and monitoring requirements to ensure that all land cover types recover to pre-project conditions.

- The Fees and Administrative Costs must be paid before work commences. Chevron anticipates starting work between June to October 2013 (as soon as they are able to secure all the necessary regulatory permits).
- 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.)). Staff proposes a Contribution to Recovery in the amount of \$16,908.54. This amount is half of the mitigation fees required for the impacts and Staff believes this is consistent with the amount of Contribution to Recovery charged in previous, similar Participating Special Entity projects.
- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys for San Joaquin kit fox and western burrowing owl.
- The applicant chose to assume presence of covered shrimp in-lieu of conducting presence/absence surveys, an option for applicants under the HCP/NCCP provided the Conservancy is willing and able to agree. To accommodate this request, additional mitigation conditions have been developed and prepared by the Conservancy in consultation with USFWS and CDFW. These additional mitigation conditions include the post project monitoring plan for the site, payment of temporary impact fees for the indirect effects to downstream wetlands, and assumption of permanent impacts under the HCP/NCCP for 0.007 acres of alkali seasonal wetland. (These additional mitigation measures are outlined in Section V. Mitigation Measures of the Planning Survey Report Application).
- The Agreement provides a detailed measure to avoid impacts to special status plant species covered by the HCP/NCCP. The required rare plant surveys during the appropriate blooming season were infeasible prior to submission of the application. Given the urgent nature of the project as well as the short duration of the proposed impacts, Conservancy staff has worked with the applicant to develop a detailed measure which seeks to limit and avoid potential impacts to special status plant species. The additional measure is as follows:
 - Rare plant surveys will be conducted in April 2013 during the appropriate blooming season for each of the covered rare plants that require a rare plant survey to be conduct. The rare plant surveys will assess the repair site plus a 325 foot buffer around the repair site. The results of the surveys will be documented in a rare plant survey report to be submitted to the Conservancy. If special-status plant species are identified on or within 325 feet of the project area, 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.

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

- Chevron 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 Chevron 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.
- Chevron pays all required mitigation and administrative costs (to-date, as set forth in an invoice to be provided to Chevron by Conservancy staff), as outlined in the Agreement.
- The Conservancy issues Chevron a Certificate of Inclusion. Take authorization would then be in effect, subject to the terms of the Agreement.
- A rare plant survey report will be submitted to the Conservancy after the April 2013 spring blooming season survey is conducted, in accordance with the PSE Agreement and Exhibit 1.
- Chevron conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Chevron develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Chevron implements the Project subject to the terms of the Agreement.
- Chevron implements the Post-Construction Monitoring Plan and adheres to the terms and agreements therein.

Attachments:

- **PSE Agreement, including:**
 - **Main body of agreement**
 - **Exhibit 1: Planning Survey Report:**
 - Main body of planning survey report
 - Exhibit 1 and Exhibit 2, the Fee Calculators
 - Site Specific Conditions
 - Post Project Monitoring Plan
 - Figures 1-5
 - Preliminary Jurisdictional Determination
 - Wetland Delineation Report

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with Phillips 66 Pipeline LLC to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project, Line 200, Spring 2013:

- a. AUTHORIZE staff to file a Notice of Exemption with the County Clerk for the project.**
- b. AUTHORIZE staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for take coverage of the Phillips 66 Pipeline Repair Project 196,920.27.22.**

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a Participating Special Entity Agreement and to extend take authorization under the PSE Agreement to Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project, Line 200, Spring 2013 is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

ITEM (B). Phillips 66 Pipeline LLC (“Phillips 66”) owns and operates the Line 200 pipeline which runs through the southwest part of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) inventory area. The pipeline transports crude oil from the Bakersfield area to a Phillips 66 refinery in Rodeo.

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>April 4, 2013</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. ATTESTED _____ <i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

Phillips 66 is proposing to complete operational and safety repairs at three repair sites (Site IDs 193,220.16.33; 204,220.12.21; and 216,780.15.92) that are located along the existing Line 200 Mainline trunk pipeline within East Contra Costa County. One of the repairs is located within the Altamont Wind Resources Area, while the two remaining repairs are located in the Marsh Creek Road corridor, one in the Clayton area and one adjacent to Round Valley Regional Preserve. The U.S. Department of Transportation pipeline safety regulations require Phillips 66 to perform pipeline repairs within legally-mandated timeframes that range from immediately to 180 days. These pipeline repairs are all slated to occur in May or June, 2013.

All proposed work and all impacts are temporary. The repair sites themselves will each incur impacts to an area that is approximately 40 feet by 50 feet (2,000 square feet) (the “project footprint”). Within the project footprint, the applicant will dig a hole of approximately 10 feet by 20 feet. A shoring box will be installed in the hole to prevent it from collapsing. Earthen ramps will be installed at each end of the trench to provide wildlife an escape route in the event that they should become entrapped. The portion of the footprint that has not been dug will be considered the work area. A backhoe and pickup truck would be the only equipment that would enter the work area.

(See Figures and Project Description in the Planning Survey Report Application for more information on the Project and its location).

The Project will occur in habitat suitable for several species covered by the HCP/NCCP. Phillips 66 is requesting take authorization for the Project through the Conservancy as a Participating Special Entity. Chapter 8.4 of the HCP/NCCP provides that organizations, including public agencies and private organizations, may apply directly to the Conservancy for take coverage as a Participating Special Entity (“PSE”) for projects not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP. Phillips 66 does not require any city or county land use permits for this project. Therefore, in order to receive permit coverage under the HCP/NCCP, the Conservancy and Phillips 66 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 Phillips 66 to perform all avoidance, minimization, and mitigation measures applicable to the Project.

A Participating Special Entity’s project must also be an eligible covered activity under the HCP/NCCP in order to be covered as a PSE. As set forth in Section 2.3.3 and 2.3.4 of the HCP/NCCP, Utility Line or Facility Operation and Maintenance is an eligible covered activity within the HCP/NCCP inventory area, including within HCP/NCCP Preserves. The Project is therefore an eligible covered activity. However, it should be noted that the pipeline is within an easement owned by Phillips 66 on land owned by others. Phillips 66 is responsible for securing all landowner permissions that may be necessary to conduct the repair work and future rare plant surveys as required by the HCP/NCCP.

Conservancy staff has prepared a Participating Special Entity Agreement (“PSE Agreement”) for this Project (attached). Attached as Exhibit 1 to the PSE Agreement is the completed Planning Survey Report Application (“PSR”) for the Project, which was prepared by Monk and Associates

Inc., the biological firm hired by Phillips 66 to complete the PSR. The PSR documents the results of the planning-level surveys conducted at the repair site and associated access areas where impacts will occur and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the Project to be covered through the HCP/NCCP. The PSR contains project vicinity maps, detailed maps showing the impacts associated with the Project site, land cover and species habitat maps, and the Fee Calculator Worksheet.

Key provisions of the Agreement:

- The Project impacts are reflected in the table below:

Land Cover Type	Impact Type (acres)	
	Permanent	Temporary
Annual Grassland	-	0.20
Oak savanna	-	0.05

- The Agreement provides that ConocoPhillips will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$5,000.
- In addition, as set forth in the Agreement (page 6), Phillips 66 will pay the Conservancy \$10,924.14, which amount includes all HCP/NCCP mitigation fees necessary for the Project as well as a Contribution to Recovery for Endangered Species.
- The table below summarizes the required fees and administrative costs:

CONOCOPHILLIPS FEE SUMMARY	
Development fees:	\$5,462.07
Contribution to Recovery for Endangered Species:	\$5,462.07
TOTAL FEES AND CONTRIBUTIONS	\$10,924.14
Maximum Administrative Costs	\$5,000.00
MAXIMUM AMOUNT TO BE PAID	\$15,924.14

- The Fees and Administrative Costs must be paid before work commences. Phillips 66 anticipates starting work in May 2013.
- 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.)). Staff proposes a Contribution to Recovery in the amount of \$5,462.07. This amount is equal to the mitigation fees required for the impacts and Staff believes this is consistent with the amount of Contribution to Recovery charged in previous, similar Participating Special Entity projects.

- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys for San Joaquin kit fox, western burrowing owl and golden eagle.
- The Agreement provides a number of detailed measures to avoid impacts to special status plant species covered by the HCP/NCCP. The required rare plant surveys during the appropriate blooming season was infeasible prior to submission of the application. Given the urgent nature of the project as well as the short duration of the proposed impacts, Conservancy staff has worked with the applicant to develop a number of detailed measures beyond those required by the HCP/NCCP which seek to limit and avoid potential impacts to special status plant species. These additional measures include:
 - Rare plant surveys will be conducted in April and August of 2013 during the appropriate blooming season for each of the covered rare plants that require a rare plant survey to be conducted. The rare plant surveys will assess the repair site plus a 200 foot buffer around the repair site. The results of the surveys will be documented in a rare plant survey report to be submitted to the Conservancy by September 30, 2013. If special-status plant species are identified on or within 200 feet of the project area, 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 the encountered species are protected.

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

- Phillips 66 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 Phillips 66 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.

- Phillips 66 pays all required mitigation fees and administrative costs, as outlined in the PSE Agreement.
- The Conservancy issues Phillips 66 a Certificate of Inclusion. Take coverage would then be in effect, subject to the terms of the PSE Agreement.
- Phillips 66 conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Phillips 66 develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Phillips 66 implements the Project subject to the terms of the Agreement.
- A rare plant survey report will be submitted to the Conservancy by September 30, 2013 in accordance with the PSE Agreement and Exhibit 1.

Attachments:

- **PSE Agreement, including:**
 - Main body of agreement
 - Exhibit 1: Planning Survey Report
 - Main body of planning survey report
 - Project Vicinity Maps, Impact and Land Cover Maps, Species Habitat Maps
 - Mitigation Fee Calculator

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: April 4, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Implementation Policy Regarding Renewable Energy Facilities on Contaminated Land

RECOMMENDATION

APPROVE Implementation Policy Regarding Installation of Renewable Energy Facilities on Contaminated Land.

DISCUSSION

Through the RE-Powering America's Land initiative, the U.S. Environmental Protection Agency encourages renewable energy development on currently and formerly contaminated land, including landfills and mining sites, when it is aligned with the community's vision for the site. Conservancy staff has been approached on several occasions proponents of alternative energy projects on a contaminated site requesting guidance on how to apply the provisions of the HCP/NCCP in such circumstances. Staff has analyzed the HCP/NCCP and has consulted with the wildlife agencies and the project proponents on this matter. Staff recommends the Board approve the attached Implementation Policy to provide guidance on this issue and facilitate re-use of contaminated lands. The attached recommended Implementation Policy provides additional background. The Conservancy should consider additional implementation policies for contaminated lands to address the unique circumstances of future projects.

CONTINUED ON ATTACHMENT: YES
 ACTION OF BOARD ON: April 4, 2013
 OTHER: _____

APPROVED AS RECOMMENDED: _____

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

For Consideration on 4-4-13
**Implementation Policy of the East Contra Costa County Habitat
Conservancy (Conservancy) Regarding Installation of Renewable
Energy Facilities on Contaminated Land**

Purpose: The purpose of this Policy is to set forth guidelines on how to apply the mitigation fee provisions of the HCP/NCCP to projects involving the installation of certain types of renewable energy facilities on contaminated land.

Background: Through the RE-Powering America's Land initiative, the U.S. Environmental Protection Agency (U.S. EPA) encourages renewable energy development on currently and formerly contaminated land, including landfills and mining sites, when it is aligned with the community's vision for the site. According to EPA's materials on this initiative:

Potentially contaminated land, landfills, and mining sites can offer significant advantages over other sites, such as open space, for renewable energy development. Some of these sites have unique attributes that can lower development costs and shorten development timeframes.

Potentially contaminated lands, landfills, and mining sites offer developers a unique value proposition for renewable energy deployment:

- Leverage existing infrastructure: Development costs and timelines can be greatly reduced because these sites are often served by existing infrastructure such as transmission lines, substations, roads, water, and rail.
- Reduce project cycle times through streamlined permitting and zoning
- Improve project economics with reduced land costs and tax incentives
- Build sustainable land development strategy based on using over 15 million acres of Superfund, brownfields, and RCRA sites pre-screened for suitability with renewable energy
- Gain community support through land revitalization efforts
- Protect open space

Alternative energy development can also be an effective means to put contaminated land to more immediate use since alternative energy development may not require complete clean-up of the property. Alternative energy may provide a critical interim use, providing the economic activity necessary to fund the complete clean-up of the property in the future.

Renewable Energy and Contaminated Lands in Eastern Contra Costa County: Like many other areas of the state that have a long history of development there are a number of contaminated or potentially contaminated sites in eastern Contra Costa County. The U.S. EPA and the California Department of Toxic Substance Control (DTSC) provide maps and databases identifying such sites according to various criteria and standards. A review of the DTSC Envirostor database shows several dozen sites in the HCP/NCCP Plan Area meeting one or more of the criteria in the database, with the majority located

north of Highway 4. Many of these sites support an existing urban use and have either been cleaned or have a low-level of potential contamination that does not prevent continued use of the land. Any site, whether contaminated or not, with an existing “urban” land cover is exempt from requirements to comply with the HCP/NCCP. However, there are contaminated or formerly contaminated properties in the HCP/NCCP area that are not developed (e.g. do not have urban land cover) and are subject to compliance with the HCP/NCCP.

Alternative energy projects have been considered for at least one such property for several years. The USS POSCO Site LA in northern Pittsburg is a more than 100-acre vacant property on which waste products from steel mill operations were historically deposited. This property is currently being considered for 20-year solar energy project. The project would entail installation of photovoltaic solar panels throughout the property on posts drilled or driven directly into the soil. There would only be minor grading and only a small amount of paving to support electrical equipment. Vegetation on the site has been categorized as “ruderal” land cover pursuant to the HCP/NCCP definitions—ruderal is a form of disturbed or weedy grassland. Nonetheless, three special status species covered by the HCP/NCCP--western burrowing owl, Swainson’s hawk and golden eagle--are among the species that have been documented utilizing the site. The project proponent was attracted to the site for many of reasons outlined in the U.S. EPA initiative: access to electrical infrastructure, proximity to electrical demand, avoidance of open space impacts and other financial incentives related to locating on a contaminated site. The cumulative amount of impact fees and the timing of fee payment has been a key consideration. The project is awaiting consideration by the Pittsburg City Council.

Application of the HCP/NCCP: Solar energy development within the Initial Urban Development Area is an eligible covered activity under the HCP/NCCP. Coverage of wind energy development is specifically excluded from the HCP/NCCP because analyzing and mitigating for the impacts of bird strikes was outside the scope of the HCP/NCCP.

In the HCP/NCCP, temporary impacts are defined as any impact on vegetation or habitat that does not result in permanent habitat removal. Therefore, projects that will conclude before the HCP/NCCP expires in 2037 and that are assured to restore the site to pre-project conditions may be considered a temporary impact under the HCP/NCCP and may be subject to payment of temporary impact fees. The HCP/NCCP contemplates a one-time payment of such temporary impact fees. However, the unusual circumstances associated with locating a solar energy project on a contaminated property, such as the extent of pre-existing disturbance and the unique type of disturbance associated with a solar project were not specifically considered by the HCP/NCCP. Therefore an Implementation Policy is warranted to better define how to apply HCP/NCCP fees in these special circumstances.

Guidelines for Collecting HCP/NCCP Mitigation Fees: Alternative energy projects on contaminated properties may pay HCP/NCCP temporary impact fees on an annual

installment basis, in lieu of an upfront payment, provided all of the following conditions are met:

- a) The project site can be verified as a contaminated or formerly contaminated property. Identification of the project site as a contaminated or formerly contaminated property in the DTSC Envirostor database is one acceptable form of verification.
- b) The project is consistent with the HCP/NCCP definition of temporary impacts.
- c) The project is located within the HCP/NCCP Initial Urban Development Area shown in Figure 3-2 of the HCP/NCCP.
- d) In the most recent Annual Report, the HCP/NCCP is exceeding terrestrial land cover stay ahead requirements by at least 10%.
- e) Any grading or fill of jurisdictional wetlands and waters must be considered a permanent impact and mitigated as required in the HCP/NCCP.
- f) The project pays a one-year temporary impact fee each year for the life of the project. The first payment will be made before issuance of the first construction permit and one subsequent payment will be made each subsequent year on or before the anniversary of the issuance of the permit. The amount of the fee paid each year will be determined according to the following formula, which is consistent with the temporary impacts formula in Chapter 9 of the HCP/NCCP:

$$\text{fee for current year} = \frac{\left[\text{current development fee amount per acre} \right] \times \left[\text{project acres} \right] \times \left[\text{duration of project plus de-commissioning period and one year of recovery} \right] / 30}{\left[\text{duration of project, not including de-commissioning period or one year of recovery} \right]}$$

Under this formula, the fees for the decommissioning period and the recovery period are paid incrementally during the productive life of the project, such that no fees are due during the de-commissioning period. The length of de-commissioning period must be reasonably projected and must be at least one year. The HCP/NCCP sets a minimum recovery period of one year.

- g) The project site must be returned to pre-project conditions before the end of the de-commissioning period.
- h) The project is required to post bonds or other acceptable form of financial assurances adequate to pay for: i) the costs of de-commissioning the project and returning the site to pre-project conditions, and ii) the temporary impact fees that would be due during the estimated time necessary to de-commission the project and return the site to pre-project conditions.
- i) Conditions b, e, f, g and h are made enforceable conditions of approval of the project and/or are made enforceable conditions of a development agreement.