



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

GOVERNING BOARD

REGULAR MEETING

Wednesday, December 16, 2009
10:30 a.m.

City of Pittsburg
City Council Chambers, Anti-Chambers Room
65 Civic Avenue, Pittsburg, CA 94565

City of Brentwood
City of Clayton
City of Oakley
City of Pittsburg
Contra Costa County

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 Special Meeting of September 16, 2009.**
- 4) **Consider DETERMINING Governing Board meeting time and locations in 2010.**
- 5) **Consider DETERMINING representation on Public Advisory Committee (PAC) for 2010.**
- 6) **Consider ACCEPTING update on the Souza II Wetland Restoration Project.**
- 7) **Consider APPROVING the 2010 Conservancy Work Plan.**
- 8) **Consider APPROVING “Policy on Land Acquisition in Wind Turbine Areas” as revised since Governing Board Meeting on September 16, 2009.**

(continued on next page)

- 9) Consider the following ACTIONS related to grants from the Wildlife**
- a) AUTHORIZE Executive Director to sign all documents necessary to execute an agreement with the California Wildlife Conservation Board that would provide \$6,531,054 from the federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for land acquisition projects consistent with the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”).
 - b) AUTHORIZE Executive Director to sign all documents necessary to execute an agreement with the California Wildlife Conservation Board that would provide \$555,000 from the federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for the acquisition of the Fox Ridge Property.
- 10) Consider the following actions related to legislative matters:**
- a) ADOPT the 2010 Legislative Platform;
 - b) ADOPT Resolution 2009-03 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 by approximately \$40 million in the Fiscal Year 2011 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; and
 - d) AUTHORIZE a \$5,000 contribution toward the California Habitat Conservation Planning Coalition membership in 2010.
- 11) Consider the following actions related to Conservancy finances:**
- a) APPROVE the 2010 Conservancy Budget.
 - b) AUTHORIZE staff to execute an agreement with the East Bay Regional Park District for the provision of specific land acquisition services during 2010.
 - c) AUTHORIZE staff to amend existing contracts for on-going biological and conservation planning services with:
 - ICF Jones and Stokes: increase the payment limit by \$147,000 from \$220,000 to \$367,000 and extend the term through June 30, 2010;
 - H.T. Harvey and Associates: increase the payment limit by \$25,000 from \$43,000 to \$68,000 and extend the term through June 30, 2010; and
 - Monk and Associates: increase the payment limit by \$11,500 from \$20,000 to \$31,500 and extend the term through December 31, 2010.
 - d) AUTHORIZE staff to amend an existing a contract for legal services with Resources Law Group to increase the payment limit by \$30,000, from \$90,000 to \$120,000, and extend the term to June 30, 2010.
 - e) AUTHORIZE setting the calendar year as the Conservancy fiscal year.

12) Adjourn.

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.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Meeting Record for September 16, 2009 Governing Board Meeting

RECOMMENDATION

APPROVE the Meeting Record form the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of September 16, 2009.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: NO
ACTION OF BOARD ON: December 16, 2009 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 16, 2009

1) Introductions.

Governing Board Members in attendance were:

Bruce Connelley	Councilman, City of Oakley (Vice Chair)
Will Casey	Councilman, City of Pittsburg
Erick Stonebarger	Vice Major, City of Brentwood
Hank Stratford	Councilman, City of Clayton

Public Attendees:

Joe Ciolek	Agricultural/Natural Resource Trust of Contra Costa County
Liam Davis	California Department of Fish & Game (CDFG)
Seth Adams	Save Mount Diablo

Conservancy Staff members in attendance:

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

2) Public Comment. No public comments.

3) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Special Meeting of July 16, 2009. The Board approved the Meeting Record (3-0 Connelley, Casey, Stonebarger).

4) Consider ACCEPTING update on the Souza II Wetland Restoration Project. Mr. Kopchik provided a background on the Souza II Wetland Restoration Project and Ms. Fateman gave a powerpoint presentation on the highlights of construction to date. The presentation depicted the restoration design schematic, construction schedule, planting plan, pre-construction surveys, measures taken to protect brittle scale (*Atriplex depressa*) a known covered plant that exists on-site, fencing and BMP’s. Mr. Stonebarger asked if the electrical poles on-site are planned for removal and Mr. Kopchik explained the Conservancy’s intent to continue to work on removal/relocation with PG&E and to determine costs. Ms. Fateman concluded that the construction is now complete and the planting phase of the project will begin in November and recommended March as a good time to visit the property. Mr. Kopchik expressed interest in holding a ground breaking or completion ceremony in order to promote public awareness of the conservation/restoration efforts of the Conservancy and the Board concurred. The Board approved the recommendation in the staff report (3-0 Connelley, Casey, Stonebarger).

5) Consider APPROVING Policy on Land Acquisition in Wind Turbine Areas, as recommended by staff and Public Advisory Committee (PAC). Mr. Kopchik provided an

overview of Item 5. He explained that the HCP provides limited guidance on this issue and that is why the proposed policy has been developed by the Conservancy in conjunction with the United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (CDFG). Mr. Kopchik explained the policy will not only provide further clarification on the issue but also increased certainty and consensus between all concerned parties. The proposed policy was brought to the PAC on August 13, 2009 for review and comment and Staff is recommending approval of Item 5. Mr. Stonebarger raised issue with the wording of Part One, number 2, with regard to the provision that the Conservancy will be “encouraged to not renew wind leases,” because it implies that the Conservancy and landowner is discouraging a critical renewable energy resource in the County. He recommended staff work on altering the wording of the policy so as not to discourage wind lease renewal but rather focus on reducing impacts if renewal does occur. The Board approved the recommendations in the staff report with the following modification: Directed staff to seek to revise the portion of Policy that encourages the Conservancy to not renew wind leases in order to provide less impression that wind turbines will be removed throughout the Preserve Area, perhaps by focusing on language that emphasizes a stronger commitment to reducing biological impacts associated with wind turbines. Such revisions will be pursued in conjunction with USFWS and CDFG staff. Conservancy staff is authorized to approve the Policy after seeking concurrence from the Vice Chair that the Policy is consistent with the intent of the Board action. (3-0 Connelley, Casey, Stonebarger)

6) Consider APPROVING Resolution No: 2009-02 which authorizes Conservancy staff to: a) submit a grant application to the California Department of Fish and Game (CDFG) for \$150,000 from the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program; and b) enter into a grant agreement to accept such grant funds as are approved by CDFG. Mr. Kopchik provided an overview of Item 6. The Board approved the recommendations in the staff report (3-0 Connelley, Casey, Stonebarger).

7) Consider REFERRING to the Public Advisory Committee (PAC) for review and recommendation the question of whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies in order to purchase mitigation credit from the Conservancy and use of a portion of the Conservancy’s restoration project sites toward mitigation obligations. Consider DIRECTING staff to also discuss this issue with agencies that are party to the HCP/NCCP Implementing Agreement. Mr. Kopchik provided an overview of Item 7. He explained that he has been contacted by several proponents of non-covered activities who are looking for mitigation opportunities in the East Bay Area, and would like to utilize existing preserve system restoration sites for mitigation purposes. He explained that although there is not a pressing need to make a policy decision at this time, this is an important issue that will arise in the future and referral to the PAC will encourage early discussions on how to handle this issue. Mr. Kopchik asked the board to explore whether this is an option worth pursuing, considering the positive and negative aspects of allowing outside mitigation opportunities within the Preserve System. Mr. Davis commented that mitigation from non-covered activities may be an issue unique to this Plan and should be reviewed and discussed in more detail. The Board approved the recommendations in the staff report for Item (a) and (b) and directed staff to include United States Army Core of Engineers (USACE) and the Regional Water Quality Control Boards as agency parties to this discussion. (4-0)

Agenda Item 3

- 8) **Consider ACCPETING update from staff on the issue of using HCP/NCCP mitigation fees as match for U.S. Department of the Interior Section 6 grants. Consider AUTHORIZING additional action by staff to represent the Conservancy's views on this matter.** Mr. Kopchik provided an overview of Item 8. Mr. Stonebarger suggested requesting letters from the congressional delegation and from the other local agencies involved in the HCP/NCCP. Mr. Kopchik stated that the Department of Interior was currently working constructively on the issue and the advice provided to the statewide coalition from legislative advocates was to bring additional pressure such as recommended down the road if necessary. The Board approved the recommendation in the staff report (4-0).

Adjourn to Closed Session

9) **Closed Session: Conference With Real Property Negotiators**

Property: APN 075-200-008 (Clayton area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties Conservancy, Save Mount Diablo and East Bay Regional Park District

Under negotiation: Price and payment terms

10) **Closed Session: Conference With Real Property Negotiators**

Property: APN 075-080-007, 075-200-002, 075-200-009 (Clayton area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties: Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

Reconvene Open Session

- 11) **Report on any actions taken in Closed Session.** The Chair reported on the following closed session Items:

The Board approved executing a funding agreement for the property, pending the Vice Chair's concurrence with the final version of the funding agreement.

The Board approved executing a funding agreement for the property, pending the Vice Chair's concurrence with the final version of the funding agreement.

- 12) **Adjourn.** The Board adjourned to the next regular meeting on December 16, 2009.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Determine Governing Board meeting time and locations in 2010.

RECOMMENDATION

Consider DETERMINING Governing Board meeting time and locations in 2010.

DISCUSSION

The Governing Board meetings are regularly held on the third Wednesday of every third month (see meeting dates on next page). According to the Joint Powers Agreement (JPA) the hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board. Governing Board members have discussed a preference to have the meeting location alter every other session between the City of Oakley and the City of Pittsburg. Additionally, during the Governing Board meeting on September 16, 2009 a board member suggested that the regular time for meetings should be changed from 10:30 a.m. to 12 p.m. Staff would like for the board to approve the proposed dates and locations for the 2010 meetings as well as vote on keeping the existing 10:30 a.m. meeting time or change the meeting time until 12 p.m. as suggested. Since the 12 p.m. meeting time will be held during the lunch hour, changing the meeting time would require provision of a light lunch and beverage to board members, staff, and the public in attendance. If the noon option is selected, staff requests that the Board authorize the expenditure of up to \$500 per year for provision of a light lunch.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: December 16, 2009 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 proposed dates and locations for the 2010 Governing Board Meetings are as follows:

Date:	Location:
March 17 th , 2010	(City of Oakley)
June 16 th , 2010	(City of Pittsburg)
September 15 th , 2010	(City of Oakley)
December 15 th , 2010	(City of Pittsburg)

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update for 2010 Public Advisory Committee.

RECOMMENDATION

Consider DETERMINING representation on Public Advisory Committee (PAC) for 2010.

DISCUSSION

The Board initiated the PAC in February 2007 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 implantation. 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.

At PAC inception, the Board appointed the initial members. Two seats remained unfilled in the category representing suburban and rural residents of the Plan area during 2008. The Conservancy posted an RFP and application on its website, sent notices to the entire Conservancy email list and placed notices in the Contra Costa Times (11/27/08 and 12/4/08) and a total of six applications were received. During the December 17, 2008, Board meeting, applications for this vacancy were reviewed and two applicants were selected to serve as official members of the Public Advisory Committee.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: December 16, 2009 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

 UNANIMOUS
AYES: _____
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ABSENT: _____
ABSTAIN: _____

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

BY: _____, DEPUTY

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 12, 2009. **The PAC members were in agreement that the current composition is satisfactory, recommended that the composition be unchanged in 2010 and recommended that there be additional outreach to encourage attendance of PAC meetings by non-members, thereby expanding general participation and building a reserve of potential future members.** Staff concurs with the PAC recommendations.

The current composition of the Public Advisory Committee is as follows:

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
- 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, New 2009 member)
- Sharon L. Osteen (Resident of Clayton, New 2009 member)

Staff members from interested public agencies are also 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: December 16, 2009
TO: Governing Board
FROM: John Kopchik, Executive Director
SUBJECT: Souza II Wetland Restoration Project

RECOMMENDATION

ACCEPT update on the Souza II Wetland Restoration Project.

BACKGROUND

The Board approved the Project at the July 16, 2009 meeting and detailed background information on the Project may be found in the materials for that meeting. Construction on the Souza II Wetland Restoration Project started on August 17, 2009. Earthwork was completed on September 2, 2009, and the work was accepted by staff from the Conservancy and the East Bay Regional Park District. The planting phase of the project started on December 7, 2009.

Staff will present a slide show during the meeting of photos showing the project's progress.

CONTINUED ON ATTACHMENT: <u>No</u>	
ACTION OF BOARD ON: <u>December 16, 2009</u> APPROVED AS RECOMMENDED: _____	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
<u> </u> UNANIMOUS	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.
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
	ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
	BY: _____, DEPUTY

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Conservancy Work Plan – 2008 & 2009 Summary & 2010 Work Plan

RECOMMENDATION

APPROVE the 2010 Conservancy Work Plan.

DISCUSSION

The Conservancy Work Plan: 2008 and 2009 Summary and 2010 Work Plan provides both a summary of tasks initiated and completed in 2008 and 2009 and tasks planned for 2010 (attached).

Section 8.11.1 of the HCP/NCCP provides a schedule for early implementation tasks, indicating whether these tasks should be completed in the first six months, in the second six months or in 1-5 years of HCP implementation. The HCP 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, staff has developed the 2010 Conservancy Work Plan. As mentioned, the Work Plan also includes a summary of tasks that have been completed in during the first two years of implementation. In cases where a task appeared in the HCP implementation schedule, the recommended timeline from the HCP is juxtaposed with staff's recommended timeline in the Work Plan for comparison purposes.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: December 16, 2009 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 “Actions Taken in 2008 and 2009” column provides detail on the task, the type of work that has been completed and the end result for actions taken in 2008 and 2009. The “Actions Planned for 2010” column provides detail on the task, the type of work planned and end result for actions planned in 2010. The initial year (2008) of implementation was heavy on Plan administration. This was partly because there were a lot of start-up administrative tasks to do and because administrative tasks tend to be more discrete and easy to itemize than 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. The many administrative tasks included creating documents, maps, and informational pamphlets, training/assisting local agency staff on processing planning survey applications (PSA)/projects through the HCP/NCCP, general Plan implementation including taking whatever steps necessary to ensure the Plan is being implemented effectively and efficiently.

Some key changes from the 2009 Work Plan include the following:

Land acquisition: The fast pace initiated in 2009 need to continue or increase.

Restoration: Small planting projects are on the agenda for 2010 as well planning for a bigger effort in 2011. The Conservancy is far enough ahead that we can adopt a pace for restoration that is more sustainable than the pace we managed to set the first two years.

Management: With preserve lands now in place and Management Plans to be completed soon, work on this task will increase substantially this year.

Monitoring: During 2010 and over the next several years, attention will be focused on the development of the Monitoring and Adaptive Management Program. Efforts have been underway on development and implementation of Restoration Management Plans for projects during 2008 and 2009. In 2010, Staff efforts will focus on the inventory phase of this process by focusing on collection of basic information as the Preserve System is being assembled.

Volunteers: Another new area focus in 2010 will be to increase efforts on the development of a Conservancy volunteer program. This program will provide opportunities to assist with plantings and to perform monitoring. A variety of potential partnerships with other organizations will be explored.

Outreach: We need to expand general awareness of our efforts.

Lessons learned: During the first two years of implementation the Conservancy has had many valuable experiences which have lead to process improvements for 2010. One such example is to work more closely with and utilizing participating agency staff, such as our partnership with the East Bay Regional Park District, for their experience and expertise on land acquisitions, restoration and creation projects, and management plan preparation including the creation of the Exotic Plant Control Plan, as the Conservancy continues to enhance the Preserve System.

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

Attachment:

- Conservancy Work Plan: 2008 & 2009 Summary and 2010 Work Plan

Conservancy Work Plan: 2008 & 2009 Summary and 2010 Work Plan

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
HCP/NCCP Administration (general)						
1	Hire key administrative staff of Implementing entity or secure agreements or contacts with other organizations to fulfill these roles.	6 Months - 1 Year	Complete (Winter 2008)	Key staff has been provided by the County and an E.D. has been designated. Agreement with EBRPD provide land acquisition services. Consultants and attorneys were retained to provide assistance.	In 2009, a consultant was hired to provide assistance to the Conservancy as a staff Conservation Planner, 3 days a week in lieu of hiring a full-time employee. 2009 agreement with EBRPD for acquisition services.	Continue to retain consultant to assist Conservancy as a staff Conservation Planner, 3 days a week in lieu of hiring a full-time employee. 2010 agreement with EBRPD.
2	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	The Public Advisory Committee (PAC) was initiated in 2008 and met quarterly. Two new PAC members were recruited in late 2008 to represent suburban and rural interests.	Two new members will joined the PAC during 2009. Meetings continued to be held quarterly. Staff made a number of presentations on the Plan to interested parties. Staff wrote an article on the Plan for the Save Mount Diablo newsletter.	PAC meetings will continue to be held quarterly. The Conservancy will actively recruit additional PAC participation using the website and other means. Staff will pursue greater media coverage of Plan activities to improve awareness of the public at large. Public events will be held to commemorate accomplishments. Monthly meetings with wildlife agencies to help coordinate implementation of the HCP, begun in 2008, will continue in 2010.
2a	Develop a Conservancy Volunteer Program	N/A	Ongoing	---	Begin discussing the development of a volunteer program with the PAC. Explored partnering with the Contra Costa Watershed Forum's Volunteer Monitoring Program and other volunteer programs in order to collaborate on volunteer activities and involvement.	Finalize development of the program including drafting program overview and identifying goals and objectives for volunteer efforts. Conduct one large volunteer restoration event during 2010 and at least 6 volunteer monitoring events.
3	Establish HCP/NCCP Implementation web site.	6 Months - 1 Year	Development Complete Spring 2008, Maintenance Ongoing	The website has been converted from the HCPA's website to the Conservancy's website and Conservancy staff now maintain. New website includes all needed forms and will be updated regularly based on Plan implementation.	More documentation of conservation actions will be included, access to resources will be improved, and public involvement opportunities were highlighted.	In addition to the ongoing actions from 2009, staff will continue to update the website with news on Conservancy land acquisitions and restoration/creation projects, and highlight public involvement opportunities in 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
4	Develop and maintain annual budgets and work plans.	N/A	On-going (approval before start of 2008)	Completed for 2008. Conservancy staff will prepare drafts of both the 2009 annual budget and the 2009 work plan for Board discussion in December 2008 .	Completed for 2009. Conservancy staff have prepared the 2010 annual budget and the 2010 work plan for Board discussion in December 2009.	Conservancy staff will prepare the 2011 annual budget and the 2011 work plan for Board discussion in December 2010.
5	Calculate the amounts of automatic annual fee increases and distribute these calculations to the cities and the county by March 15 of each year, in accordance with Chapter 9 of the HCP/NCCP.	N/A	2009 adjustment complete. 2010 adjustment planned for March.	Conservancy staff calculated the 2008 adjustments based on the formulas in the HCP and distributed the new fee amounts to the cities and the county for incorporation in development review and permitting. T	The calculations will be performed again in March 2009.	The calculations will be performed again in March 2010.
6	Prepare and submit annual report to CDFG and USFWS.	Required by March 15 following first full year of implementation	Planned (March 2010)	No annual report is due for 2008. However, Conservancy staff has started creating the initial incidental take vs. preserved acres tracking system which will be an integral part of the annual report.	Conservancy completed incidental take vs. preserved acres tracking system. Staff completed entry of data into tracking system in preparation for annual report in 2010.	The 2008-2009 HCP Start-Up Period Annual report will be issued by March 15, 2010.
7	Pursue State and Federal Grants to assist in funding preserve acquisition and other implementation tasks	N/A	On-going	New grants include \$250K augmentation from the USBR for land acquisition, a new \$150K grant award from CDFG for restoration at the Souza 2 property and a \$5M WCB grant has been recommended.	New grants awarded in 2009 include \$880,000 from the Gordon and Betty Moore Foundation for land acquisition, \$2,500,000 from the USFWS/CDFG Section 6 Program for land acquisition and \$150,000 for restoration from the CDFG NCCP Local Assistance Grant Program.	Conservancy staff continue to research and apply for available grant monies which make up a significant portion of the funding for implementation of the HCP/NCCP during 2010. Staff will apply for Section 6 funds and for non-federal grant funds that can match the Section 6 funds.
7a	Administer grants already awarded	N/A	On-going	Substantial staff time is required to prepare grant contracts, invoices, and required periodic grant reports for the many grants already received. Staff performed these duties for various grants during 2008.	Staff continued with these duties in 2009. Staff pursued streamlined approaches for largest grants received, the Section 6 grants, which will be administered through the Wildlife Conservation Board. WCB agreed to make the FY06 Section 6 Grant block grant. To avoid complications associated with block grant agreements, the WCB Board authorized staff to disburse funding for the FY07, FY08 and FY09 grants.	Staff will continue with these duties in 2009 and continue to pursue additional streamlining of the Section 6 granting process.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
8	Coordinate with other Regional HCPs and pursue a legislative program that will aid the Conservancy's implementation of the Plan.	N/A	On-going	Participated in the coalition of northern California HCPs called NCCPP and helped that group host its annual conference. Sought increased nationwide funding for the Section 6 program.	Participated in the coalition of northern California HCPs called NCCPP and helped that group host its annual conference. Helped form the California Habitat Conservation Plan Coalition to unite northern and southern efforts. Adopted Conservancy's first legislative platform. Sought increased nationwide funding for the Section 6 program, a change to the FWS policy prohibiting mitigation as a match for Section 6 funds, among other items. Proposed 2010 Platform.	Continue to participate in coalition to pursue common policy objectives and to learn from the experiences of other HCPs. Implement 2010 Legislative Platform, including continued work on mitigation as match and Section 6 funding..
9	Provide accounting services for the Conservancy.	N/A	On-going	Duties include processing all requests for payment, making deposits, tracking all account activities, providing summary reports as needed, and ensuring that fees are tracked and expended in compliance with the Mitigation Fee Act.	Continued 2008 work.	In addition to the ongoing actions from 2008-2009 the Conservancy will commission an independent audit of the accounts and records of the Conservancy since inception. The auditors written report will be presented to the Board.
10	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 and the implementation of state and federal wetlands regulations.	N/A	On-going (end of 2010)	This process started early in the development of the HCP. Much of the important work to achieve this goal has been accomplished. Measures in the HCP for wetlands have been designed to address species needs and, to the greatest extent possible, meet the requirements of wetlands regulations. In late 2008, staff meet with key staff and state and federal wetland regulators to seek to develop an interagency agreement for wetlands conservation and permitting and one or more regional wetland permits.	In 2009 staff continued to meet with state and federal regulators and the Corps of Engineers to update them on restoration progress and seek continued support for regional permitting. Staff expects that a public draft of the Corps regional permit will be circulated in early 2010.	Prepare a public draft of the regional permit and continue coordination efforts between implementation and state and federal wetland regulations in 2010 with a goal of completing regional permitting instruments in 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
11	Pass local ordinances to implement HCP/NCCP (cities and County).	0-6 Months	Complete (October-November)	This task is for the cities and the County. Conservancy staff has provided assistance to the cities and the County in the crafting or ordinances. The cities and the County approved the ordinances in October and November. The ordinances took effect in January 2008.	---	---
12	Develop checklists and other materials for local planners to ensure compliance by each project receiving coverage under the Plan.	0-6 Months	On-going (materials to be updated in 2009)	Checklists and other resource materials were developed for local planner to ensure compliance by each project receiving coverage under the Plan. Feedback of the permitting process was received at a December 2008 meeting with the local planners.	Checklist and other resource materials were updated and expanded in 2009 to include feedback received from local planners.	Checklists and other resource materials will continue to be updated, expanded, and created in 2010.
13	Develop template survey report that may be used by project proponents as a guide and by local jurisdictions to evaluate the completeness of the survey reports they review.	0-6 Months	Complete (Spring 2008)	Draft planning survey template was provided to Permittee staff on September 6, 2007 and to the Governing Board in October 2007 for review and comment. It was revised based on comments received and reissued for December 6, 2007 training. The first official version was released in January, revised in February and revised again in March to reflect fee updates.	---	Additional review and revision is on-going based on experiences with projects that have used the form during 2009. A new version of the form is expected by early 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
14	Assist local jurisdictions with training staff to review and process 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	The Conservancy hosted a series of trainings in 2008. There was an information session for builders and developers concerning the operations of the HCP/NCCP on January 9, 2008. Refresher trainings are planned for 2009. Conservancy staff is in the process of developing a brochure explaining the process for applying for and receiving take authorization. Conservancy staff will remain available to local jurisdictions for assistance and technical support on as needed basis.	Refresher trainings for local jurisdictions in 2009. Conservancy staff completed the brochure explaining the process for applying for and receiving take authorization. Conservancy staff provided local jurisdictions assistance and technical support on as needed basis.	Staff will continue to provide assistance and technical support to local jurisdictions in 2010. Staff will hold regular meetings with the Contra Costa County Public Works Department, Environmental Unit Staff, in order to assist with facilitation of HCP/NCCP applicable CIP's.
15	Provide each participating local jurisdiction with detailed maps of fee zones and land cover so they can process and evaluate HCP/NCCP applications.	0-6 Months	Complete	At the request of city staff, Conservancy staff prepared detailed maps of fee zones for inclusion in city ordinances in 2008 and a detailed map is on the website. The Conservancy will continue to provide mapping and GIS support to implementation of the HCP by local jurisdictions.	---	Staff will check-in with participating local jurisdictions to evaluate whether using the maps for processing and evaluating HCP/NCCP applicability is useful.
16	Receive and Reviewing applications for coverage under the HCP/NCCP and collecting development fees.	0-6 Months	Ongoing	City, County and Conservancy staff have started the review of applications. The Conservancy's role will be limited to assisting the cities and the County, considering offers of land in lieu of development fees, considering other special circumstances set forth in Chapter 8.7.1 of the HCP and considering applications of Participating Special Entities (see item 20 below).	---	---

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
17	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 2010)	The Conservancy staff has hired H.T. Harvey to review the habitat and mitigation needs of special status species and compare these to the habitat and mitigation needs of covered species. This report will be referenced by future CEQA documents for public and private projects to streamline the analysis of biological impacts.	Work initiated in 2008, first draft of this document was completed late 2009.	A final draft of this document will be complete and circulated in 2010.
18	Develop policies, a template agreement and application form for Participating Special Entities (entities with projects not subject to the land use authority of the cities or the County) so they may receive take authorization through the Plan.	N/A	Complete (early 2008, revised in 2009, to be updated in 2010)	Conservancy staff has completed work on this in cooperation with Resources Law Group. A template agreement and certificate of inclusion for Participating Special Entities (PSEs) was included in the Board's December 2007 packet and final version was used to provide coverage for Ameresco.	Conservancy staff had minor changes made to the PSE agreement during 2009.	Continue to assist PSE's with their applications and continue to review such applications and bring to the Board for approval. Several PSE applications are expected in 2010. PSEs have been the majority of applicants to date.
19	Establish GIS and other databases to track land acquisitions and HCP/NCCP impacts.	6 Months - 1 Year	On-going	Conservancy staff is working to establish one or more databases to track and cross tabulate the amount of acres of various types of impacts and the amount of acres of various types of conservation to provide a compliance monitoring function pursuant to the state and federal permits. Staff may track both in a GIS database in order to provide maps and analysis and in a non-GIS database in order to maintain redundant tracking system and to track actual acres reported rather than acres estimated by the GIS. The best approach is still being evaluated.	Work initiated in 2008 and continued in 2009. GIS databases were updated, including enhancements to the land cover map based on newly available site-specific data. An application tracking database was completed.	Work on GIS and other databases will continue in 2010 with specific emphasis on improving the HCP impact tracking database.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
Preserve Acquisition and Management						
20	Acquire land to meet Jump Start guidelines as described in Chapter 8.	0-6 Months	Complete	As described in Chapter 5 and Table 5-15, the HCP sets forth the goal of acquiring about 500 acres before the state and federal permits are issued. As described in Table 5-21 and Figure 5-12, 2,383 acres of land have already been acquired prior to permit issuance. The acquisition goal has essentially been met, but for these lands to be credited as part of the HCP Preserve System and count toward land preservation requirements, permanent preservation and management of these lands must be assured. For some of these lands, that simply means that the proposed conservation easement needs to be recorded. For others, it requires that the Conservancy work with the owner to record an easement or deed restriction and ensure management consistent with the HCP.	The Jump Start goal was more than met in 2009, with a total of about 4800 acres acquired or in the pipeline. EBRPD acquired the following 2 properties in 2009 with Conservancy support: Schwartz (153 acres) and Souza 2 (191 acres). EBRPD is expected to close on the following 2 additional partnership properties by the end of 2009: Fox Ridge (221 acres) and Vaquero Farms South (1644 acres). Three properties acquired by EBRPD without the Conservancy (2 of which were pre-HCP) are progressing toward becoming part of the Preserve System.	In 2010, the pace land acquisition should remain high if not increase. Two properties are already in contract and will close within 2010: Vaquero Farms North (577 acres) and Ang (460 acres). With a generous amount of grant funding available and a number of willing sellers, it is important to aggressively pursue land acquisition to stay well ahead of the Stay Ahead provision.
21	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	Conservancy staff will continue to meet with acquisition partners such as the East Bay Regional Park District, Save Mount Diablo, Agricultural-Natural Resource Land Trust of Contra Costa County, Contra Costa Water District, 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.	Conservancy staff proposes the following general approach to land acquisition in early years: (a) seek partners 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.	

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
22	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	EBRPD has approved the HCP and Implementing Agreement and is a co-permittee with the other local agencies. EBRPD is also implementing its Master Plan and is buying land in the HCP area for park and open space purposes. Developing a mutually agreeable strategy will help to ensure that the land acquisition and management goals of EBRPD's land program and the similar goals of the HCP 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. Ensuring permanent protection and management for lands already purchased by EBRPD may present an early opportunity to develop such a case by case partnership.		
23	Conducting pre-acquisition surveys of potential acquisitions to determine their biological value for the HCP.	N/A	On-going	The HCP requires that planning surveys similar to those conducted by developers also be conducted on potential additions to the Preserve System to establish that the property proposed for acquisition will help to meet HCP requirements. Such surveys have been performed on a number of current and potential acquisitions.	Conservancy staff and consultants have developed protocols for a phased and more streamlined approach to this task that defers the most expensive field work until after agreement has been reached to purchase a property.	Continue streamlined approach in 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
24	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 (Complete in 2010)	Conservancy staff worked with Resources Law Group to develop draft templates of these documents. The Draft Easement and Deed Restriction Templates would be adapted case by case to bring parcels into the Preserve System, but having a template will make this process much more efficient and consistent. A draft was developed for use in agreements with EBRPD. Drafts of these documents or provisions will be shared with potential acquisition partners and with the Public Advisory Committee to receive comment before being approved by the Board and wildlife agencies. These documents probably will require periodic updating.	The draft template for Deed Restrictions is complete and in the process of being review by wildlife agency staff.	In 2010, staff will complete a draft of the Conservation Easements template.
25	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	Though not required immediately, Conservancy staff recommend starting now to explore opportunities for ensuring the funding of operations and management of the preserves after the 30 year permit term. This issue will also come up with each prospective acquisition and should be considered and addressed on a case-by-case basis until a general approach is established.	Continued work in 2009.	Work on this effort will continue in 2010. Progress on this effort will be provided in the 2008 & 2009 annual reports.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
26	Develop site-specific management plans for the Preserve System and individual preserves.	1-5 Years	On-going	Conservancy staff will work closely with biological experts and acquisition partners to assist in developing preserve management plans for each of the preserves. To avoid developing management plans parcel by parcel, conservancy staff will seek to develop interim management prescriptions and complete full management plans when enough parcels have been acquired to provide a logical management unit, consistent with the requirements of the HCP (2 years is generally the maximum time allowed, unless a plan for a nearby parcel is deemed adequate).	In 2009, a preserve management plan was drafted for the Byron Hills area and will cover four properties that have been acquired or are in the pipeline. In 2009, a Restoration Management Plan was drafted for the Souza II Wetland Restoration Project.	In 2010, Preserve Management Plans will be completed to cover Fox Ridge and Schwartz and work on other plans will commence.
27	Prepare an Exotic Plant Control Plan to address exotic and invasive plants on Preserve System lands	1-5 Years	On-going	---	An Exotic Plant Control Program will be developed by the Implementing Entity and implemented for the Preserve System in accordance with Conservation Measure 1.4. Development of program will be coordinated with the Contra Costa County Department of Agriculture, Weights, and Measures and other major resource management agencies in the inventory area, including CCWD, EBRPD, and CDPR. The program will be prepared within no more than 2 years of acquisition of the first parcel. During 2009 control of exotic plants was conducted on the Souza II property, prior to program development, because the infestations was serious.	In 2010 Staff will begin developing a draft of the Exotic Plant Control Program. Once developed, the program will be evaluated and revised at least every 5 years.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
28	Prepare a Recreation Plan to address recreational uses on Preserve System lands	1-5 Years	On-going	---	A Recreation Plan will be developed by the Implementing Entity and implemented for the Preserve System in accordance with Conservation Measure 1.5. The recreation plan will be prepared no more than 3 years after acquisition of the first parcel or when 25% of the Preserve System has been acquired, whichever comes first. If the preserve has pre-existing recreational use, the recreation plan must be approved within 1 year in order for the site to be considered part of the Preserve System. The recreation plan will be revised as needed as the Preserve System expands. Formal evaluations and revisions, if needed, must occur at least every 5 years.	In 2010 Staff will begin developing this Plan.
<i>Preserve Restoration/Creation</i>						
29	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"). To reflect the importance of early restoration and creation, Conservancy staff worked with ICF Jones & Stokes to perform a reconnaissance-level survey of wetland restoration opportunities. Lands surveyed included those lands already acquired by a public agency, lands to be preserved pursuant to an agreement with the wildlife agencies or known to Conservancy staff as a property in negotiation for potential acquisition by a conservation organization. Such information may inform future conservancy decisions on land acquisition opportunities and my help Conservancy staff to partner with the current and future owner of the property to develop detailed restoration plans and begin the environmental review process.	

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
30	Implement habitat restoration and habitat creation projects.	1-5 Years	On-going	As explained above, Conservancy staff has started working on a process in which to implement wetland restoration/creation projects. The process to implement a project would normally would take roughly 2 years to implement from start to finish. The general process is as follows: (a) Develop a list of suitable restoration sites after analyzing on potential sites (see above), (b) select sites and secure land/access for restoration/creation, (c) provide a conceptual restoration plan, (d) complete site-specific restoration plans, (e) secure permits, (f) initiate construction and construction monitoring, and (g) complete construction and start performance monitoring. To get the earliest start possible on such work, staff has completed two restoration projects in 2008: Lentzner and Vasco-Souza 1.	In 2009, the Souza II Wetland Restoration Project was conducted. The restored/created 8.5 acres of wetland and a 0.18 acre pond and restored about a half mile of stream. . Planting commenced December 7, 2009 and replacement of any dead plants will continue into 2010.	In 2010, riparian restoration work will occur on the Irish Canyon-Chopra property and the initial design phase of the site includes three areas of oak/buckeye riparian planting. Fencing wetland areas may also commence in 2010. Additional sites for small scale planting projects will be explored in 2010 and planting may commence. One or more larger projects will be planned in 2010 for construction in 2011.
Monitoring and Adaptive Management Program						
31	Design Monitoring and Adaptive Management Program	1-5 Years	Ongoing	---	The initial "Monitoring Design Phase" of monitoring is to occur within the first 5 years of plan implementation and will lay the foundation of the overarching monitoring program. In 2009 Conservancy Staff working on developing the framework to be a part of the comprehensive monitoring strategy.	In 2010 efforts continue to focus on the monitoring design phase with attention on compiling information and data toward the development of a comprehensive monitoring strategy as well as determining monitoring priorities within each natural community type.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
32	Initiate monitoring of restoration projects and new preserves.	1-5 Years	Ongoing	Monitoring and adaptive management commenced at Lentzner and Souza 1 restoration sites. Efforts focused on hydrological conditions, success of planting and seeding, and control of invasives	Efforts on Souza 1 and Lentzner continued and monitoring of Souza 2 got underway. Initial monitoring efforts on newly acquired preserves got underway.	With expected completion of Preserve Management Plans, and need for interim monitoring in the meantime, monitoring and adaptive management efforts will ramp up substantially in 2010.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board Meeting
FROM: Conservancy Staff
SUBJECT: Policy on Land Acquisition in Wind Turbine Areas

RECOMMENDATION

Consider APPROVING “Policy on Land Acquisition in Wind Turbine Areas” as revised since Governing Board Meeting on September 16, 2009.

DISCUSSION

At the September 16, 2009 meeting the Board approved the recommendations in the staff report regarding the Policy on Land Acquisition in Wind Turbine Areas with the following modification:

Directed staff to seek to revise the portion of Policy that encourages the Conservancy to not renew wind leases in order to provide less impression that wind turbines will be removed throughout the Preserve Area, perhaps by focusing on language that emphasizes a stronger commitment to reducing biological impacts associated with wind turbines. Such revisions will be pursued in conjunction with USFWS and CDFG staff. Conservancy staff is authorized to approve the Policy after seeking concurrence from the Vice Chair that the Policy is consistent with the intent of the Board action.

CONTINUED ON ATTACHMENT: YES

ACTION OF BOARD ON: December 16, 2009

APPROVED AS RECOMMENDED: _____

OTHER: _____

VOTE OF BOARD MEMBERS

 UNANIMOUS

AYES: _____

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

BY: _____, DEPUTY

THE PROPOSED POLICY AS REVISED:

In consultation with Board Member Stonebarger, staff developed proposed revisions to the policy. These revisions modified the ‘encourage to not renew’ provision and made removal of turbines on option of last resort if other measures fail. The wildlife agencies have indicated they concur with the changes but are still discussing with staff the manner in which the language is memorialized. Adding signature blocks is one option and is the option shown below. Staff may have an update on discussions with the wildlife agencies by the time of the meeting. Please find the revised text of the Policy inserted below:

“Policy on Land Acquisition in Wind Turbine Areas”

The purpose of this Policy is to clarify provisions of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) as they relate to land acquisition in wind turbine areas and better achieve the goals and objectives set forth in the HCP/NCCP. Regarding wind turbines, the intent of the HCP/NCCP is to reduce the overall effects of wind turbines on the covered species and raptors within the HCP/NCCP Preserve System. The East Contra Costa County Habitat Conservancy (Conservancy) and fee simple owner of a Preserve System property will retire wind leases, require turbine reconfiguring and/or take other measures to reduce the biological impacts of wind turbines on Preserve System Lands, as more specifically set forth below, unless the Conservancy and fee simple owner lack the legal authority or control to do so or unless these turbines are shown to have minimal adverse impacts with United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (DFG) concurrence. Of the various options presented herein, retiring wind leases and removal of turbines will reduce the overall effects of wind turbines on the covered species and raptors more than the other options.

The following provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

PART ONE

In order to reduce impacts from all wind turbines within the Preserve System, the following measures and conditions shall apply:

1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, other than the Vaquero Farms South and Vaquero Farms North properties.
2. The Conservancy, DFG and FWS acknowledge that non-renewal of wind leases and removal of turbines will eliminate impacts. Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for

- this decision will be provided to FWS and DFG in a letter authorized by the Conservancy Board.
3. During the term of existing wind leases, the Conservancy, DFG and FWS will cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities. The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects.
 4. If wind leases are renewed on future acquisitions, DFG, FWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species, provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County's (County) wind energy resource area. The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.
 5. If measures to reduce biological effects fail to reduce the impacts of wind turbines to a biologically sustainable level, the Conservancy, DFG and FWS will meet and confer to discuss and agree on supplementary measures that may be taken to reduce the impacts of wind turbines within the Preserve System to a biologically sustainable level, including but not limited to removal of turbines and retirement of leases at the next available opportunity.
 6. Prior to any acquisition with wind turbines, the Conservancy, FWS, DFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
 7. The Conservancy, FWS, and DFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are encouraged to pursue the range of measures outlined above.

PART TWO

The Conservancy, U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) support the following measures to

address impacts related to wind turbines on Vaquero Farms South, and when applicable, on Vaquero Farms North:

1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.
3. Improve accounting for wind turbine infrastructure impacts. The HCP/NCCP excludes a 50-foot buffered width around each wind turbine string from land acquisition credits. If re-powering projects result in substantially larger turbines, the Conservancy, FWS, and DFG will meet and agree on a larger buffer and associated reduced credit to the Preserve System.
4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other landcover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

The Policy may only be revised upon mutual agreement of the signatories set forth below.

Signatories

John Kopchik, East Contra Costa County Habitat Conservancy

Cay Goude, U.S. Fish & Wildlife Service

Scott Wilson, California Department of Fish & Game

**THE REVISED POLICY SHOWING CHANGES FROM
SEPTEMBER 16, 2009:**

Please find the revised text of the proposed policy memo showing changes made since the September 16, 2009 Governing Board Meeting below:

“Policy on Land Acquisition in Wind Turbine Areas”

The purpose of this Policy is to clarify provisions of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) as they relate to land acquisition in wind turbine areas and better achieve the goals and objectives set forth in the HCP/NCCP. Regarding wind turbines, the intent of the HCP/NCCP is to reduce the overall effects of wind turbines on the covered species and raptors within the HCP/NCCP Preserve System. The East Contra Costa County Habitat Conservancy (Conservancy) and fee simple owner of a Preserve System property will retire wind leases, require turbine reconfiguring and/or take other measures to reduce the biological impacts of wind turbines on Preserve System Lands, as more specifically set forth below, unless the Conservancy and fee simple owner lack the legal authority or control to do so or unless these turbines are shown to have minimal adverse impacts with United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (DFG) concurrence. Of the various options presented herein, retiring wind leases and removal of turbines will reduce the overall effects of wind turbines on the covered species and raptors more than the other options.

The following provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

PART ONE:

In order to reduce impacts from all wind turbines within the Preserve System, the following measures and conditions shall apply:

1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, other than the Vaquero Farms South and Vaquero Farms North properties.
2. ~~The Conservancy, DFG, and FWS acknowledge that non-renewal of~~ For all acquisitions, the Conservancy and the future fee simple owner of the subject Preserve System lands are encouraged to not renew wind leases and removal of turbines as this will eliminate impacts. ~~unless these turbines are shown to have minimal adverse impacts with FWS and DFG concurrence.~~ Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for this decision will be provided to FWS and DFG in a letter authorized by the Conservancy Board.
3. ~~During the term of existing wind leases, the Conservancy, DFG and FWS will cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.~~

The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects.

4. If wind leases are renewed on future acquisitions, DFG, FWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species, provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County's (County) wind energy resource area. The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.
5. If measures to reduce biological effects fail to reduce the impacts of wind turbines to a biologically sustainable level, the Conservancy, DFG and FWS will meet and confer to discuss and agree on supplementary measures that may be taken to reduce the impacts of wind turbines within the Preserve System to a biologically sustainable level, including but not limited to removal of turbines and retirement of leases at the next available opportunity.
6. Prior to any acquisition with wind turbines, the Conservancy, FWS, DFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
7. The Conservancy, FWS, and DFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are encouraged to pursue the range of measures outlined above.

PART TWO

The Conservancy, U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) support the following measures to address impacts related to wind turbines on Vaquero Farms South, and when applicable, on Vaquero Farms North:

1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.

3. Improve accounting for wind turbine infrastructure impacts. The HCP/NCCP excludes a 50-foot buffered width around each wind turbine string from land acquisition credits. If re-powering projects result in substantially larger turbines, the Conservancy, FWS, and DFG will meet and agree on a larger buffer and associated reduced credit to the Preserve System.
4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other landcover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will be mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

The Policy may only be revised upon mutual agreement of the signatories set forth below.

Signatories

John Kopchik, East Contra Costa County Habitat Conservancy

Cay Goude, U.S. Fish & Wildlife Service

Scott Wilson, California Department of Fish & Game

Attachments:

- Board Action from September 16, 2009

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board Meeting
FROM: Conservancy Staff
SUBJECT: Policy on Land Acquisition in Wind Turbine Areas

RECOMMENDATION

APPROVE “Policy on Land Acquisition in Wind Turbine Areas”, as recommended by staff and Public Advisory Committee (PAC).

DISCUSSION

East Contra Costa County Conservancy (Conservancy) staff, in conjunction with the United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (DFG) have developed a “Policy on Land Acquisition in Wind Turbine Areas”(Policy) in order to clarify provisions of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) as they relate to this topic and better achieve the goals and objectives set forth in the HCP/NCCP. FWS and CDFG staff suggested developing the Policy as result of issues raised during evaluation of the proposed Vaquero Farms South acquisition and they have indicated that approval of such a provision is necessary if federal HCP Land Acquisition grant funds are to be used for the purchase. The Policy provides specific clarification on the approach to land acquisition and preserve management within wind turbine areas. On August 13, 2009 the Policy was presented to the PAC for review and comment. After posing a number of questions to staff and discussing the details of the Policy, the PAC members present agreed by consensus to recommend Governing Board approval of the Policy, with the following two members abstaining from the recommendation: Laura Baker representing the California Native Plant Society and Mitch Randall representing the Contra Costa Council.

CONTINUED ON ATTACHMENT: Yes

ACTION OF BOARD ON September 16, 2009

APPROVED AS RECOMMENDED: No

OTHER: The Board approved the recommendations in the staff report with the following modification: Directed staff to seek to revise the portion of Policy that encourages the Conservancy to not renew wind leases in order to provide less impression that wind turbines will be removed throughout the Preserve Area, perhaps by focusing on language that emphasizes a stronger commitment to reducing biological impacts associated with wind turbines. Such revisions will be pursued in conjunction with USFWS and CDFG staff. Conservancy staff is authorized to approve the Policy after seeking concurrence from the Vice Chair that the Policy is consistent with the intent of the Board action.

VOTE OF BOARD MEMBERS

UNANIMOUS

AYES: Connelley, Casey, Stonebarger

NOES: _____

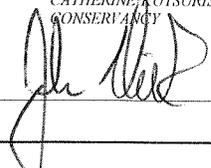
ABSENT: Glover, Stratford

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 KUTSURIIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY:  _____, DEPUTY

BACKGROUND:

The presence of wind turbines in the southeastern section (wind turbine areas) of the inventory area presents a potential challenge in acquiring and managing preserve lands for the benefit of covered species and other species. Wind turbine areas provide important breeding and foraging habitat for several covered species, including, golden eagle (a fully protected species under the California Fish and Game Code), western burrowing owl, San Joaquin kit fox, California red-legged frog, and California tiger salamander. Wind turbine areas are also a critical landscape connection between existing and proposed conserved lands. Consequently, the HCP/NCCP requires substantial conservation to occur in wind turbine areas. However, the operation of wind turbines poses a serious hazard to avian species and compromises efforts to manage habitat and enhance populations of covered species, especially avian species, without a set of policy measures that work toward achieving the biological goals, objectives, and conservation requirements of the HCP/NCCP.

HCP/NCCP AND WIND TURBINES

The presence of wind turbines in the Inventory Area is well documented in the HCP. Wind turbines were assigned their own land cover type in the land cover mapping process and the locations of turbines are shown in all maps that display land cover in the Inventory Area. The continued operation of wind turbines and the potential for “repowering” projections to replace older turbines with new turbines are discussed in Chapter 4 as one of five cumulative impacts that were considered in addition to the impacts covered by the HCP/NCCP (other potential cumulative impacts considered were development in Antioch, Los Vaqueros Reservoir expansion, ongoing and routine agriculture and use of exiting roads). Likewise, the HCP specifically excludes wind power operation or expansion as a covered activity of the HCP because of the unique and substantial impacts on raptors. However, the HCP/NCCP contains only three references to how wind turbines are to be addressed if they are incorporated into the Preserve System and one reference to leases of properties with wind turbines. These references are as follows:

Reference 1: Page 5-38 (Conservation Strategy). This reference clearly states that areas mapped as wind turbine land cover will not be credited against land acquisition requirements of the Plan:

“Wind turbines are abundant and somewhat evenly distributed within Zone 5, so they will inevitably occur in some lands acquired under the HCP/NCCP preserves. However, land mapped as wind turbines¹ cannot be credited toward any land acquisition requirement.”

¹ The wind turbine land cover type was mapped as strips of wind turbines and 50 feet on either side; see Chapter 3 for further details. This may be a good estimate of the actual footprint of turbines and associated facilities. Grassland between sets of turbines was mapped as grassland and includes most of the access roads between sets of turbines.

Reference 2: Page 5-38 (Conservation Strategy). This section contains the only detailed provisions in the Plan for addressing wind turbines in the Preserve System:

“Land acquisition in wind turbine areas can contribute to the goals and objectives of this HCP/NCCP. However, the Implementing Entity is encouraged to consider retiring wind turbine leases on land it acquires when these leases come up for renewal, or require turbine reconfiguring (e.g., replace many old turbines with fewer turbines of new design in locations better for wildlife). Either action could significantly reduce wind turbine impacts on covered species and other native wildlife. Decisions to retire wind turbine leases will be made in consultation with CDFG and USFWS. (Note that take of covered species by wind turbines or take of migratory birds by wind turbines under the Migratory Bird Treaty Act is not covered by this Plan.)”

The HCP/NCCP does not provide any criteria by which decisions will be made to retire wind turbines, but it does require that these decisions be made in consultation with CDFG and USFWS.

Reference 3: Page 4 of Table ES-3 (Summary Evaluation of Species Proposed for Coverage by the Plan), under golden eagle. This is the last sentence of the golden eagle summary, under the heading “Conditions on Covered Activities:”

“Wind turbine leases acquired within the Preserve System will be retired to reduce injury and mortality of golden eagles and other raptors.”

This sentence is part of an executive summary of all the impacts and conservation measures within the HCP/NCCP. The summary acknowledges that some wind turbine leases will be retired but it does not say how many.

Other references: The HCP/NCCP describes the land acquisition process in the Implementation chapter. This process includes the necessary step of examining all leases.

“Examine all leases that apply to the property for consistency with HCP/NCCP goals and objectives. Inconsistent leases will be terminated or modified to conform with the HCP/NCCP.”

This step applies to wind leases as well as other types of leases. The impacts of existing wind leases were considered in the HCP/NCCP, so the presence of wind turbine leases on a property does not automatically disqualify the property from consideration for the Preserve System. On the contrary, the HCP/NCCP anticipated that wind turbines would be incorporated into the Preserve System (for example, Table 5-3 cites 150 acres of wind turbines in the Acquisition Analysis Zones which were used as the basis for the Preserve System).

WIND RIGHTS

During the creation of the HCP/NCCP it was assumed that the purchaser of a fee simple interest in a property with wind turbines would take over the role of lessor in existing wind leases and have authority to approve future wind leases. Initial land acquisition within the wind turbine areas of the inventory area has revealed that this is not always true. In *Contra Costa Water District vs. Vaquero Farms, Inc.* (1997), a case in which Contra Costa Water District (CCWD) prevailed, wind rights were expressly severed from surface rights. This severance allowed Vaquero Farms, Inc. to maintain its wind power rights, including “an easement for ingress and egress and such other access rights as may be required for the maintenance and development of these wind power rights” while allowing Contra Costa Water District (CCWD) to maintain the surface rights. This case demonstrates that the owner of the wind rights holds the authority as the lessor of the wind rights, as well as, the ability to gain royalties from use of the wind resource.

PROPOSED POLICY

Conservancy staff and staff from CDFG and FWS developed the proposed Policy to address gaps and contradictions in how the matter of wind turbines in Preserve Lands is addressed. Please find the text of the proposed Policy below:

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“Policy on Land Acquisition in Wind Turbine Areas”

The following provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

Part One

In order to reduce impacts from all wind turbines within the Preserve System, the following measures and conditions shall apply:

1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, other than the Vaquero Farms South and Vaquero Farms North properties.
2. For all acquisitions, the Conservancy and the future fee simple owner of the subject Preserve System lands are encouraged to not renew wind leases and remove turbines as this will eliminate impacts, unless these turbines are shown to have minimal adverse impacts with FWS and DFG concurrence. Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for this decision will be provided to FWS and DFG in a letter authorized by the Conservancy Board.
3. If wind leases are renewed on future acquisitions, DFG, FWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species, provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County’s (County) wind energy resource area. The following measures will be considered to reduce

- the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.
4. Prior to any acquisition with wind turbines, the Conservancy, FWS, DFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
 5. The Conservancy, FWS, and DFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are encouraged to pursue the range of measures outlined above.

PART TWO

The Conservancy, U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) support the following measures to address impacts related to wind turbines on Vaquero Farms South, and when applicable, on Vaquero Farms North:

1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including repowering activities.
3. Improve accounting for wind turbine infrastructure impacts. The HCP/NCCP excludes a 50-foot buffered width around each wind turbine string from land acquisition credits. If repowering projects result in substantially larger turbines, the Conservancy, FWS, and DFG will meet and agree on a larger buffer and associated reduced credit to the Preserve System.
4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other landcover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will be mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

=====

Attachments:

- Map of Landcover (Figure 3-3) from the HCP/NCCP showing the location of wind turbine strings in black. Please note that a portion of the wind turbine strings south of Vasco Road have been removed since this map was generated as a consequence of the Buena Vista Repowering Project.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Grants from the Wildlife Conservation Board

RECOMMENDATION

Consider the following actions related to grants:

- a) AUTHORIZE Executive Director to sign all documents necessary to execute an agreement with the California Wildlife Conservation Board that would provide \$6,531,054 from the federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for land acquisition projects consistent with the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”).
- b) AUTHORIZE Executive Director to sign all documents necessary to execute an agreement with the California Wildlife Conservation Board that would provide \$555,000 from the federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for the acquisition of the Fox Ridge Property.

DISCUSSION

Item (a): At the July 16, 2009 meeting the Board approved the recommendation to execute an agreement with the California Wildlife Conservation Board that would provide \$6,531,054 from the federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for land acquisition projects, pending review and approval by the Chair of modifications to the Agreement to be pursued by staff. Since that time, the staff and attorneys for the agencies party to the Agreement have made substantial edits to the document to better reflect the Conservancy’s interests and the intent of the Board in approving this action. This work continues. The attached revised draft reflects the latest round of comments from the Conservancy and EBRPD. Staff will update the Board on

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: December 16, 2009 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 KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
BY: _____, DEPUTY

the status of the Agreement during the meeting. It must be signed on December 16 in order for a \$2,174,000 check to be cut for Vaquero Farms South in time for that property to close escrow by the end of the year deadline. WCB has not provided exhibits G or I at this time, but the Exhibits will contain the form of Notice of Unrecorded Grant Agreement that EBRPD must record on the properties and will very similar to the form provided for the Fox Ridge Grant.

Item (b): The Fox Ridge Property is not eligible for the FY06 Section 6 grant (and thus cannot be covered by the block grant agreement that is the subject of item (a)). Fox Ridge is eligible for FY07 Section 6 grant. At the November 17, 2009 meeting of the Wildlife Conservation Board, WCB staff was authorized to enter into separate agreements to expend funds within the FY07, FY08 and FY09 Section 6 grants. WCB staff preferred this approach to the block grant agreement approach that is being used for the FY06 grant. Conservancy staff were pleased that the individual agreements would not have to be separately approved at quarterly meetings of the WCB Board as is typically the case and did not object to the request of WCB staff to use individual agreements starting with 2007.

The attached Fox Ridge Agreement is the first of these individual agreements. It would convey \$555,000 for the acquisition of Fox Ridge by EBRPD. The Fox Ridge Agreement follows WCB's standard template, but has been revised in the attached version to reflect Conservancy and EBRPD comments to better match the template to the applicable sections of the Block Agreement. The Fox Ridge Agreement must also be signed by December 16. Exhibit D, the Notice of Unrecorded Grant Agreement is attached. The other exhibits are not attached as they would be virtually identical to those for the Block Grant Agreement.

Attachments:

- Draft Agreement with WCB for FY06
- Draft Agreement with WCB for Fox Ridge

CALIFORNIA WILDLIFE CONSERVATION BOARD
SUBGRANT AGREEMENT FOR ACQUISITION OF FEE INTEREST

Cooperative Endangered Species Conservation Fund
(Section 6 of the Federal Endangered Species Act) Grant Program

Subgrantee: Full, Legal Name: East Contra Costa County Habitat Conservancy
Address: 651 Pine Street, 4th Floor, North Wing
Martinez, CA 94553-0095

Attn: John Kopchik, Executive Director

Phone: (925) 335-1227

Fax: (925) 335-1299

E-mail: JKopc@cd.co.contra-costa.ca.us

Federal Employer ID No./Taxpayer ID No.: [26-2547338](#)

Successor Subgrantee: East Bay Regional Park District
P.O. Box 5381
Oakland, CA 94605-0381

Attn: Nancy Wenninger, Land Acquisition Manager

Phone: (510) 544-2607

Fax: (510) 612-5441

E-Mail: nwenninger@ebparks.org

Federal Employer ID No./Taxpayer ID No.: 94-60000-591

Project Name: San Joaquin Multi-Species Habitat Conservation and Open Space Plan (2006)

Project Location: Contra Costa and San Joaquin Counties

Section 6 Grant Agreement Number: E-20-HL-2

WCB Subgrant Agreement Number: SG-8015TM

Notices to be delivered to:

For Subgrantee: East Contra Costa County Habitat Conservancy
651 Pine Street, 4th Floor, North Wing
Martinez, CA 94553-0095
Attn: Executive Director

For Successor Subgrantee: East Bay Regional Park District
P.O. Box 5381
Oakland, CA 94605-0381
Attn: Land Acquisition Manager

For WCB: Wildlife Conservation Board
1807-13th Street, Suite 103
Sacramento, CA 95811-7137
Attn: Executive Director

With a copy to: Department of Fish and Game
Habitat Conservation Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Grant Coordinator

1. **BACKGROUND**

1.1. The U.S. Department of the Interior, Fish and Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG") have entered into a Cooperative Agreement for the benefit of endangered, threatened and rare fish, wildlife and plants which are resident in the State of California.

1.2. USFWS has approved the Application for Federal Assistance submitted by CDFG, E-20-HL-2 (the "Federal Grant Application"), for Cooperative Endangered Species Conservation Fund (Section 6 of the Federal Endangered Species Act) Grant Program funding ("Federal Grant Funds") to facilitate the acquisition of real property identified in the Federal Grant Application. The Notice of Federal Assistance Approval for E-20-HL-2 (the "Federal Approval Notice") which USFWS issued to CDFG specifies terms of acceptance of the Federal Grant Funds. CDFG and USFWS have entered into a Grant Agreement for Grant No. E-20-HL-2, Grant Title: 2006 Habitat Conservation Planning Land Acquisition (the "Federal Grant Agreement") which specifies additional terms and conditions of the grant of Federal Grant Funds. The Federal Approval Notice and Federal Grant Agreement, including the terms and conditions set forth or incorporated directly or by reference in either or both of these instruments, are referred to in this Subgrant Agreement ("Agreement") individually and collectively as the "Federal Assistance Requirements".

1.3. Subgrantee has requested a subgrant of Federal Grant Funds from CDFG, acting through the Wildlife Conservation Board ("WCB"), to facilitate Successor Subgrantee's acquisition of some or all of the real properties identified in the Federal Grant Agreement, and ~~more particularly~~ described in **Exhibit A**. Upon acquisition by Successor Subgrantee, each such real property shall be considered "Property". Each acquisition of Property by Successor Subgrantee shall be considered an "Acquisition" and all such acquisitions shall collectively be referred to as the "Acquisitions." Subgrantee will request disbursement of funds directly into escrow for each Acquisition in conformance with Article 5 of this Agreement.

1.4. USFWS will permit CDFG, acting through WCB, to subgrant Federal Grant Funds to Subgrantee for the purpose of facilitating Successor Subgrantee's Acquisitions upon and subject to the Federal Assistance Requirements and the terms and conditions set forth in this Agreement.

1.5. USFWS requires that non-federal funds equal to fifty five percent (55%) of the total estimated program costs, as set forth in the Federal Grant Application, must be provided as a match for the Federal Grant Funds.

1.6. If Subgrantee intends to use land value as a non-federal match for an Acquisition, then upon the close of escrow for that Acquisition the parcel(s) of land that provide the match (the "Match Property") shall also become subject to the Federal Assistance Requirements and the terms and conditions set forth in this Agreement. The term "Property" as used in this Agreement shall include any and all Match Property.

2. **SCOPE OF AGREEMENT**

2.1. Pursuant to Chapter 4 of Division 2 (commencing with Section 1300) of the California Fish and Game Code, WCB hereby subgrants to Subgrantee Federal Grant Funds in a sum not to exceed Six Million Five Hundred Thirty One Thousand Fifty Four Dollars (\$6,531,054.00) (the "Subgrant Funds"), upon and subject to the terms and conditions of this Agreement.

3. **PURPOSES OF SUBGRANT**

3.1. WCB is entering into this Agreement for the purpose of providing Subgrantee with a pool of funds to facilitate Successor Subgrantee's acquisition of Property (excluding Match Property) as outlined in the Federal Grant Agreement. The Subgrant Funds shall be used only for the purpose of facilitating Successor Subgrantee's purchase of fee title to Property that is not Match Property.

3.2. Subgrantee and Successor Subgrantee covenant and agree that if WCB requests disbursement of the Subgrant Funds and Successor Subgrantee acquires the Property, Subgrantee and Successor Subgrantee shall ensure that the Property so acquired and any Match Property shall be held and used for the purposes of preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSHCP") and the lands covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan ("ECC NCCP/HCP") (individually and collectively, the "Purposes of Subgrant"). A policy regarding wind rights and wind leases ("Wind Policy") is currently being developed for the ECC NCCP/HCP. The Wind Policy, when adopted, shall apply to this Agreement and all Property acquired in whole or in part with, or used as a match for, Subgrant Funds. excepting that property owned by Successor Grantee commonly known as Souza I.

WCB understands the ECC NCCP/HCP provides for low-intensity recreational uses on ECC NCCP/HCP preserve lands, subject to appropriate constraints to protect covered species and natural communities, and that Property acquired with Subgrant Funds or used as a match for Subgrant Funds will be subject to such recreational uses, to the extent consistent with the ECC NCCP/HCP. Notwithstanding the above, all parties acknowledge that nothing in this Agreement shall be deemed to impair pre-existing contracts or property rights on the real property proposed for Acquisition.

3.3. Subgrantee and Successor Subgrantee covenant and agree that if WCB requests disbursement of the Subgrant Funds and Successor Subgrantee acquires the Property, the Property so acquired and any Match Property shall be held and used for the Purposes of Subgrant and in conformance with the Wind Policy, excepting the Souza I property.

4. **CONDITIONS PRECEDENT TO SUBGRANT**

4.1. The obligation of WCB under this Agreement to request disbursement of the Subgrant Funds is conditioned upon and subject to the satisfaction of all of the following conditions precedent as to each specific real property proposed for Acquisition:

a. WCB shall have reviewed and approved all documents pertaining to the Subgrant Funds or Successor Subgrantee's acquisition of the Property, which shall include but not be limited to, written approval from CDFG and USFWS of each specific parcel of Property proposed to be acquired, any agreements by or between Subgrantee and Successor Subgrantee, appraisals, preliminary title reports and items referenced therein, options, agreements for purchase and sale, escrow instructions, closing or settlement statements, and instruments of conveyance. Such review and approval by WCB shall not be unreasonably delayed or withheld. Subgrantee shall have removed or caused to be removed, or otherwise addressed to the satisfaction of WCB, any encumbrances or defects of title that WCB determines are inconsistent or could interfere with the Purposes of Subgrant or the Wind Policy. Any outstanding security interests or monetary encumbrances affecting the Property shall have been terminated or the holder of the encumbrance shall have irrevocably committed to remove its security interest or monetary encumbrance prior to the recording of the deed(s) conveying the Property to Successor Subgrantee. If there are any outstanding security interests or monetary encumbrances which cannot be so removed, then the holder of such outstanding security interest or monetary encumbrance shall have entered into a written subordination agreement acceptable to WCB unconditionally subordinating the lien or charge of the holder to this Agreement.

b. Subgrantee shall have caused Successor Subgrantee to provide WCB with a letter or other written acknowledgment (which may be contained in the Successor Subgrantee's option or purchase agreement with the landowner) demonstrating that the landowner is a willing seller of the Property.

c. The purchase price of the Property shall not exceed its fair market value as established by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the California Business and Professions Code. The appraisal shall have been prepared pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions (“UASFLA”) and the Uniform Standards of Professional Appraisal Practice (“USPAP”), and approved by the California Department of General Services (“DGS Review”). The appraisal and DGS Review shall also have been submitted to and approved in writing by USFWS. The appraisal shall become part of the project file maintained by WCB and shall be retained for no less than three years from the date WCB requests disbursement of the Subgrant Funds from the federal Payment Management System.

d. Subgrantee and Successor Subgrantee shall have provided WCB with a written certification that the Acquisition is not intended, and shall not serve, to satisfy any local, State or federal regulatory requirement (e.g., mitigation for any local, State or federal permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended (“ESA”), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA (the “Certification”). WCB understands that any Property acquired with any Subgrant Funds will be preserved and managed by [Successor Subgrantee?] in accordance with and will fulfill certain commitments under the ECC NCCP/HCP, to the extent provided for in the Federal Grant Application and the Federal Grant Agreement. The Certification, in the form of **Exhibit B**, shall be attached to the Notice of Unrecorded Agreement to Subgrant described below in Section 6.1(h). Correspondence between the Subgrantee and the U.S. Fish and Wildlife Service describing the anticipated funding and matching sources for the Property and discussing fees and mitigation is provided in Exhibit H. (Exhibit H — letters/e-mails between the Conservancy and FWS regarding fees and mitigation expectations will be attached here.)

e. Subgrantee shall have provided WCB with a written commitment by Subgrantee and Successor Subgrantee for ~~funding and implementation of~~ management of the Property (including any Match Property) in perpetuity consistent with the Purposes of Subgrant and according to the provisions of the ECC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, including but not limited to Conservation Measure 1.2, “Prepare and Implement Preserve Management Plans for Natural Habitat Lands”. This commitment, in the form of **Exhibit C**, shall be attached to the Notices of Unrecorded Agreement to Subgrant described below in Section 6.1(h) and (k).

f. Subgrantee shall have provided WCB with assurances and certifications of compliance with federal requirements (*i.e.*, Standard Form 424-D available at <http://training.fws.gov/fedaid/toolkit/toolkit.pdf>) by Subgrantee and Successor Subgrantee. Upon execution by Subgrantee and Successor Subgrantee, these assurances and certifications shall be attached to this Agreement as **Exhibit D**.

g. WCB shall have reviewed and approved a certified resolution or other appropriate action of the governing board or governing body of each of Subgrantee and Successor Subgrantee, authorizing the execution and performance of this Agreement and the acquisition of the Property by Successor Subgrantee. Upon approval by WCB these authorizing resolutions or other actions shall be attached to this Agreement as **Exhibit E**.

h. WCB shall be ready, willing and able to request payment of the Subgrant Funds from the federal Payment Management System for deposit with the State Treasurer's Office.

i. WCB shall be ready, willing and able to request disbursement of the Subgrant Funds from the State Treasury for deposit into an escrow account designated by Subgrantee that has been established specifically for the purpose of the Acquisition by Successor Subgrantee (the "Escrow").

j. Subgrantee shall have deposited, or caused to be deposited, into the Escrow all funds beyond those granted under this Agreement that are needed for Successor Subgrantee to complete the Acquisition.

k. WCB shall have confirmed that the non-Federal share of funding or in-kind match required for the Acquisition has been provided. If Subgrantee intends to use land value as the non-federal match for an Acquisition, then WCB shall have obtained written authorization from CDFG and USFWS approving the use of the proposed Match Property as a match for the Federal Grant Funds. Such written authorization shall include approval of the location and biological merits of the proposed Match Property and acknowledgment that the portion of real property to be used to satisfy the match requirement was not originally purchased with mitigation funding, has not been used to satisfy mitigation requirements and meets the Federal requirements for in-kind match. Each proposed Match Property shall have been appraised to determine its fair market value. The appraisal must conform to the requirements of Section 4.1(c) of this Agreement.

The requirements of this Section 4.1.k may be modified from time to time to reflect any modifications to policies and requirements relating to mitigation-funded match properties adopted by USFWS.

5. DISBURSEMENT PROCEDURE

5.1. Upon satisfaction of all the Conditions Precedent to Subgrant set forth in Section 4.1 a – g, j and k, above, and subject to approval of the acceptance of the Subgrant Funds and the subgrant by the Wildlife Conservation Board at a duly noticed public meeting, Subgrantee shall send a letter to WCB (the “Disbursement Request”), asking it to request disbursement of the Subgrant Funds from (a) the federal Payment Management System for deposit with the State Treasurer’s Office and following such deposit, (b) the State Treasury for deposit into Escrow. The Disbursement Request shall be signed by an authorized representative of Subgrantee and shall contain all of the following:

- a. Name and address of Subgrantee and Successor Subgrantee;
- b. Project Name and Number of Agreement;
- c. Dollar amount and purpose of disbursement, including the Assessor Parcel Number(s) and legal description(s) of the Property being acquired and any Match Property for that Acquisition;
- d. Name, address and telephone number of the title company or escrow holder, and the account number of the Escrow to which the Subgrant Funds will be disbursed; and
- e. Certifications by Subgrantee and Successor Subgrantee that all funds (exclusive of the Subgrant Funds to be provided under this Agreement) needed to complete the Acquisition have been secured and have been or will be deposited to Escrow at or about the same date as the requested Subgrant Funds.

5.2. After receipt of a complete and proper Disbursement Request, WCB will promptly and timely (estimated to be 45 working days from the date the WCB receives the Disbursement Request) request payment of the portion of the Subgrant Funds for the Property being acquired from the federal Payment Management System to the State Treasurer’s Office for deposit into the State Treasury. After such deposit, WCB will promptly and timely request payment of the same amount from the State Treasury for deposit into Escrow.

6. SUBGRANTEE’S AND SUCCESSOR SUBGRANTEE’S COVENANTS

6.1. In consideration of the subgrant of the Subgrant Funds, Subgrantee and Successor Subgrantee hereby covenant and agree as follows with respect to each Property acquired in whole or in part with, or used as a non-Federal match for, Subgrant Funds:

- a. The Subgrant Funds shall be used as Acquisition purchase money only, which excludes escrow and title fees and any other fees and costs incurred to accomplish the transaction and the conveyance and acquisition of the Property.

b. The Property shall be held and used only in a manner that is consistent with this Agreement, including the Purposes of Subgrant set forth in Section 3.2 and the Wind Policy.

c. The Property shall be set aside in perpetuity for the purposes of conservation, including the Purposes of Subgrant.

d. Subgrantee and Successor Subgrantee shall comply with the terms and conditions of the award of Federal Grant Funds to CDFG, to the extent such terms and conditions are applicable to Subgrantee, Successor Subgrantee, the Subgrant Funds or the Property. Such terms and conditions are contained in the Federal Assistance Requirements.

e. Subgrantee and Successor Subgrantee shall recognize the cooperative nature of the Acquisition and shall provide credit to WCB, CDFG, USFWS, and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Subgrantee and/or Successor Subgrantee which reference the Acquisition. Subject to the mutual agreement of WCB and Subgrantee regarding text, design and location, Subgrantee shall, or shall cause Successor Subgrantee to, post sign(s) on the Property to indicate the participation of WCB, CDFG and USFWS in the Acquisition; *provided however*, that the sign(s) shall display the logo of WCB, as shown on **Exhibit F**.

f. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged, or otherwise conveyed without the written approval of the State of California (the "State"), acting through the Executive Director of WCB, or its successor, and USFWS (to the extent required pursuant to the Federal Assistance Requirements). The State shall not unreasonably withhold its approval as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including but not limited to Sections 6.1 (b) and (c), and each successor-interest assumes and agrees in a writing reasonably acceptable to the State to be bound by the terms, covenants and conditions of this Agreement.

g. The Property (including any portion of it or interest in it) may not be used as security for any debt without the written approval of the State, acting through the Executive Director of WCB, or its successor, and USFWS (to the extent required pursuant to the Federal Assistance Requirements).

h. Subgrantee shall cause Successor Subgrantee to cause to be recorded against the Property being acquired, concurrently with close of escrow for the purchase of the Property, a Notice of Unrecorded Agreement to Subgrant (the "Notice"), incorporating by reference this Agreement and giving public notice that, in consideration for this Agreement and the receipt of the Subgrant Funds, Subgrantee and Successor Subgrantee have agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit G**.

i. Subgrantee shall cause to be recorded against any Match Property, concurrently with close of escrow for the purchase of the Property for which the Match Property is provided as the non-Federal match, a Notice of Unrecorded Agreement to Subgrant (the "Match Property Notice"), incorporating by reference this Agreement and giving public notice that in consideration for this Agreement and the use of the Match Property as a non-Federal match for the Acquisition, Subgrantee and Successor Subgrantee have agreed that the Match Property is subject to the Federal Assistance Requirements and the terms and conditions set forth in this Agreement. The Match Property Notice shall be in the form of **Exhibit 1**. The Match Property shall be reviewed and approved pursuant to Section 4.1 (a).

j. Subgrantee shall cause Successor Subgrantee to provide to WCB, promptly following the close of escrow, a conformed copy of the recorded deed(s), Notice(s) and Match Notice(s), with all recording information set forth thereon, as well as a copy of the final Escrow closing or settlement statement and the title insurance policy insuring Successor Subgrantee as the owner of fee simple title to the Property. Subgrantee shall also cause Successor Subgrantee to provide copies of such other documents related to the closing of the Acquisition as requested by WCB. These documents shall become part of the project file maintained by WCB. Upon receipt of the above documents, WCB will provide USFWS with a copy of all documents for its files.

j. Subgrantee and Successor Subgrantee covenant that, at the request of WCB, not less than once in any period of three calendar years, Subgrantee and Successor Subgrantee shall allow designated staff or representatives of WCB, CDFG and USFWS to access the Property (including any Match Property) to assess compliance with the terms, covenants, and conditions of this Agreement. *Provided, however,* that if more frequent access is necessary to comply with applicable federal requirements (including, but not limited to, 50 C.F.R. Section 81.13) then designated staff or representatives of WCB, CDFG and USFWS shall be allowed access to the Property (including any Match Property) at such intervals as WCB, CDFG or USFWS considers appropriate to meet federal requirements to which it is subject.

7. BREACH AND DEFAULT

7.1. In the event of a breach of any of the terms, covenants or conditions of this Agreement, WCB shall give written notice to Subgrantee and Successor Subgrantee, describing the breach. Notice shall be deemed given when personally delivered or deposited in the United States Mail, postage prepaid, or with a reliable over-night courier, addressed to Subgrantee and Successor Subgrantee at the address for notices set forth at the beginning of this Agreement (or such changed address of which Subgrantee or Successor Subgrantee has notified WCB in writing pursuant to this Agreement).

7.2. If Subgrantee or Successor Subgrantee do not cure the breach within 90 days of the date a notice of breach is given or, if the breach is not curable within said 90-day period, Subgrantee or Successor Subgrantee does not commence the cure

within the 90-day period and diligently pursue it to completion, then Subgrantee and Successor Subgrantee shall be in default (“Default”) under this Agreement.

7.3. Subgrantee and Successor Subgrantee shall also be in Default under this Agreement upon the discovery that information given to WCB by or on behalf of Subgrantee or Successor Subgrantee under or in connection with obtaining this Agreement was materially false or misleading. Notice of a Default under this Section 7.3 shall be given in accordance with Section 7.1.

7.3. A breach or Default under this Agreement with respect to Property used as a non-federal match for Subgrant Funds shall also constitute a breach or Default with respect to Property acquired with Subgrant Funds, and vice-versa.

8. REMEDIES

In the event of a Default under this Agreement, in addition to any and all remedies available at law or in equity (including, without limitation, remedies under the Federal Assistance Requirements), WCB shall have the following remedies:

8.1. WCB may seek specific performance of this Agreement. Subgrantee and Successor Subgrantee agree that payment by Subgrantee or Successor Subgrantee to WCB of an amount equal to the Subgrant Funds disbursed under this Agreement would be inadequate compensation for any Default because the benefits to be derived from full compliance with the terms of this Agreement are the preservation and protection of annual grassland, vernal pool, alkali grasslands and wetland habitat as well as the protection of critical habitat connectivity between the lands covered by the SJMSHCP and the lands covered by the ECC NCCP/HCP and because such benefits exceed to an immeasurable and unascertainable extent the amount of money furnished by way of Subgrant Funds under this Agreement.

8.2. WCB may require Subgrantee to cause Successor Subgrantee to convey a conservation easement over the Property acquired with Subgrant Funds and the Match Property in favor of the State or, at the election of WCB, another entity or organization authorized by California law to acquire and hold conservation easements. Furthermore, WCB may also require Subgrantee to pay, or cause Successor Subgrantee to pay, a sum to WCB which, when combined with the fair market value of the conservation easement, equals the amount of Subgrant Funds provided by this Agreement, together with interest compounded semi-annually starting from the date of ~~disbursement default of the Subgrant Funds to the State Treasurer’s Office to and including the date of payment~~, at a rate equivalent to the higher of (a) that which is being earned at the time of Default on deposits in the State of California’s Pooled Money Investment Account or (b) the applicable rate of interest under the Federal Assistance Requirements. The conservation easement shall be for the purposes of preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the SJMSHCP and the lands covered by the ECC NCCP/HCP. The value of the conservation easement shall be determined by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of

Division 4 of the Business and Professions Code and acceptable to WCB. The appraisal shall be prepared pursuant to UASFLA and USPAP and approved by DGS.

8.3. Intentionally Left Blank.

8.4. Despite the contrary provisions of Article 7 of this Agreement, if WCB determines that circumstances require immediate action to prevent or mitigate interference with the Purposes of Subgrant or the Wind Policy, or other irreparable harm arising from a breach or threatened breach of this Agreement, then WCB may pursue its remedies without waiting for the period provided for cure to expire.

8.5. CDFG, as the grantee under the Federal Grant Agreement, shall be an express third-party beneficiary of this Agreement and shall have the same rights and remedies as WCB in the event of a breach or Default under this Agreement.

9. NONPROFIT ORGANIZATION SUBGRANTEE

9.1. If the existence of Successor Subgrantee is terminated for any reason, title to all interest in Property acquired with or used as a non-federal match for Subgrant Funds shall immediately vest in the State. However, prior to that termination, upon approval of the State, acting through the Executive Director of WCB or its successor, another public agency or nonprofit organization may receive title to all or a portion of that interest in such Property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby the Property or any interest in it is being acquired by a nonprofit organization pursuant to this Section 9.1 shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

10. TERM

10.1. This Agreement shall be deemed executed and effective when signed by an authorized representative of each party and received in the respective offices of Subgrantee, Successor Subgrantee and WCB, together with the certifications, commitments and resolutions described in Section 4.1 (d) – (g) (the “Effective Date”). Subgrantee and WCB shall each sign five original counterparts of this Agreement. Subgrantee and Successor Subgrantee shall each receive one completely executed original and WCB shall receive three completely executed originals.

10.2. The term of this Agreement will commence Effective Date and, unless previously terminated as provided in Section 10.3, will expire on June 30, 2010.

10.3. Prior to the close of escrow for the first Acquisition of Property, under this Agreement, Subgrantee or WCB may terminate this Agreement for any reason or for no reason, by providing the other parties with not less than 15 days’ written notice of such termination. Notice shall be given in the same manner as specified in Section 7.1. If this Agreement is terminated after the first deposit of Subgrant Funds into Escrow but before close of escrow for the first Acquisition of Property, Subgrantee shall (or shall

cause Successor Subgrantee to) cause the escrow holder to immediately return all Subgrant Funds to (or as instructed by) WCB and as between WCB and Subgrantee, Subgrantee shall bear all costs and expenses of such termination.

10.4. In the event this Agreement is terminated in accordance with its terms, no party shall have any rights nor remedies against any other party except as provided herein.

10.5. The provisions of this Agreement that are not fully performed as of the close of escrow for an Acquisition, including but not limited to Sections 3 (Purposes of Subgrant), 6 (Subgrantee's Covenants), 7 (Breach and Default) and 8 (Remedies), shall survive the close of escrow and remain in full force and effect. This Section 10.5 shall apply separately to each Acquisition and each Property acquired pursuant to or used as a non-federal match in accordance with this Agreement.

11. LIABILITY, MODIFICATIONS, INTERPRETATION

11.1. Subgrantee and Successor Subgrantee shall jointly and severally indemnify, protect and hold harmless WCB, CDFG, the State of California, and their respective members, directors, officers, agents, and employees (each an "Indemnified Party"), from and against any and all claims, demands, damages, liabilities, losses, costs (including attorneys' fees) and expenses (collectively, "Claims") arising out of, connected with, or incident to this Agreement or the acquisition, ownership, use, management, operation or maintenance of the Property acquired in whole or in part with or used as a non-federal match for Subgrant Funds, except that neither Subgrantee nor Successor Subgrantee shall have any obligation to indemnify or hold harmless an Indemnified Party for Claims caused by the negligent or wrongful act of that Indemnified Party.

11.2. This Agreement may be modified only by written amendment signed by WCB, Subgrantee and Successor Subgrantee. No prior or contemporaneous oral understanding or agreement not incorporated in this Agreement shall be binding on the parties.

11.3. All references herein to "Subgrantee" are intended to refer to Subgrantee or its designee, successor or assignee as may be approved by WCB (including, upon its acquisition of the Property, Successor Subgrantee).

11.4. If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, that shall not affect any other provision of this Agreement or applications of the Agreement that can be given effect without the invalid provision or application and to this end the provisions of this Agreement are severable.

11.5. Subgrantee, Successor Subgrantee, and their respective officers, directors, employees, agents and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member,

director, officer, agent, employee or representative of WCB, CDFG or the State of California.

11.6. This Agreement is not assignable or transferable by Subgrantee or Successor Subgrantee, either in whole or in part, except in connection with a transfer of the Property approved by WCB under Section 6.1 (f) of this Agreement.

11.7. ~~In any litigation alleging a default or breach of Any costs incurred by WCB or CDFG, where it is the prevailing party, in enforcing the terms of this Agreement against Subgrantee and/or Successor Subgrantee, the prevailing party shall recover any costs incurred including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Subgrantee and Successor Subgrantee.~~

11.8. Enforcement of the terms of this Agreement by WCB or CDFG shall be at its discretion, and any forbearance by WCB or CDFG to exercise its rights under this Agreement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agreement or any of the rights of WCB or CDFG under it.

11.9. WCB will notify Subgrantee and Successor Subgrantee as promptly as possible following its receipt of any request under the California Public Records Act (Government Code Section 6250 *et seq.*) for information related to the Acquisition.

12. **CONDEMNATION**

12.1. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, WCB, Subgrantee and Successor Subgrantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. WCB shall be entitled to the share of the Award (as defined below) which equals (a) for Property purchased with Subgrant Funds, the ratio of the Subgrant Funds to the total purchase price Successor Subgrantee paid to acquire the Property (e.g., if Successor Subgrantee paid a purchase price of \$2 million and the amount of Subgrant Funds was \$750,000, then WCB would be entitled to 37.5% of the Award), or (b) for Match Property, the ratio of the land value used as the non-federal match to the approved appraised fair market value of the Match Property established pursuant to Section 4.1(k). For purposes of this Agreement, the "Award" shall mean all compensation awarded, paid or received on account of the Property so taken or purchased, and all direct or incidental damages resulting from the taking or purchase, less all out-of-pocket expenses reasonably incurred by Successor Subgrantee in connection with the taking or purchase.

13. **AUDIT**

13.1. Subgrantee and Successor Subgrantee each shall maintain complete and accurate records of its actual project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least four years after the date the Subgrant Funds are deposited into Escrow. During such time, Subgrantee and Successor Subgrantee each shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by WCB shall be borne by Subgrantee and/or Successor Subgrantee. Except to the extent the Federal Assistance Requirements (including, but not limited to, 50 C.F.R. Section 81.15) provide otherwise, the audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

14. UNION ORGANIZING

14.1. Subgrantee and Successor Subgrantee each hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement and certifies that:

a. No state funds (as defined in Government Code Section 16645) disbursed by this subgrant will be used to assist, promote or deter union organizing;

b. It shall account for state funds disbursed for a specific expenditure by this subgrant, to show those funds were allocated to that expenditure;

c. It shall, where funds are not designated as described in Section 14.1(b) above, allocate, on a pro-rata basis, all disbursements that support the subgrant program; and

d. If it makes expenditures to assist, promote or deter union organizing, Subgrantee and Successor Subgrantee will maintain records sufficient to show that no state funds were used for those expenditures, and that it shall provide those records to the Attorney General upon request.

15. NON-DISCRIMINATION

15.1. During the performance of this Agreement, Subgrantee and Successor Subgrantee are subject to all Federal and State laws prohibiting discrimination including but not limited to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12131 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. Section 6101 *et seq.*), the Fair Employment and Housing Act (Government Code Section 12900 (a – f) *et seq.*), and applicable regulations (California Code of Regulations, Title 2, Section 7285 *et seq.*). Subgrantee and Successor Subgrantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race,

religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subgrantee and Successor Subgrantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subgrantee and Successor Subgrantee shall comply with the regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations), which are incorporated by reference into this Agreement. Subgrantee and Successor Subgrantee shall give written notice of its obligations under this non-discrimination clause to labor organizations with which it has a collective bargaining or other agreement, and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Subgrantee and Successor Subgrantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to any of the Acquisitions.

16. **DRUG-FREE WORKPLACE REQUIREMENTS**

16.1. Subgrantee and Successor Subgrantee each hereby certify that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*) by taking all of the following actions:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and specifying the actions to be taken against employees for violations;

b. Establishing a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace;
(ii) The organization's policy of maintaining a drug-free workplace;
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations.

c. Requiring that every employee engaged in the performance of this Agreement :

(i) Be given a copy of the organization's drug-free workplace policy statement; and

(ii) Must agree to abide by the terms of the organization's statement as a condition of employment in connection with this Agreement.

Failure to comply with the above requirements may result in suspension of payments under, or termination of, this Agreement, or both. Subgrantee and Successor Subgrantee may be ineligible for award of any future grants or subgrants from the State if the State determines that Subgrantee or Successor Subgrantee have made a false certification; or violates the certification by failing to carry out the requirements set forth above.

17. EXHIBITS

Each of the Exhibits referenced in this Agreement is incorporated by reference as though set forth in full herein. The following Exhibits are attached to this Agreement:

Exhibit A – Property Description and List of Assessor's Parcel Numbers

Exhibit B – Certification of No Regulatory Requirements

Exhibit C – Commitment to Management Funding

Exhibit D – Assurances and Certifications

Exhibit E – Certified Resolutions or Other Actions of Governing Body

Exhibit F – WCB's Logo

Exhibit G – Form of Notice of Unrecorded Agreement to Subgrant

Exhibit H – Correspondence between Subgrantee and FWS regarding [funding sources, matching sources](#), fees and mitigation.

Exhibit I – Form of Notice of Unrecorded Agreement to Subgrant for Match Property.

18. AUTHORIZATION

The signature of the Executive Director certifies that at the Board meeting held on May 28, 2009., the Wildlife Conservation Board authorized the award of a subgrant to Subgrantee as provided in this Agreement.

IN WITNESS WHEREOF, this Subgrant Agreement is made and entered into this 28th day of May 2009, in the State of California, by and between the Wildlife Conservation Board, the East Contra Costa County Habitat Conservancy, and the East Bay Regional Park District, each of which does hereby agree to the terms and conditions referenced on pages 1 through 15, along with Exhibits A – I, of this Agreement.

**STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD**

By: _____
| John P. Donnelly, Executive Director

Date: _____

**SUBGRANTEE
EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY**

By: _____
| (John KopchikName)

Title: Executive Director

Date: _____

**SUCCESSOR SUBGRANTEE
EAST BAY REGIONAL PARK DISTRICT**

By: _____
| (Pat O'BrienName)

TITLE: General Manager

Date: _____

EXHIBIT A

(Legal Property Description and List of Assessor's Parcel Numbers
Description and APNs of Property)

DRAFT

EXHIBIT B

Certificate of No Regulatory Requirement

The undersigned is the *[insert title]* of *[insert full, legal name]*, the Subgrantee under the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit B** forms a part. Subgrantee hereby certifies to the Wildlife Conservation Board (WCB) as follows:

Subgrantee's acquisition of the Property (as defined in the Agreement) located in _____ County, California, *[and commonly known as _____]* is not intended, and shall not serve, to satisfy any local, state or federal regulatory requirement (e.g., mitigation for any local, state or federal authorization or permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA.

Subgrantee makes this Certificate with the understanding that if WCB enters into the Agreement and subgrants Federal Grant Funds (as defined in the Agreement) to Subgrantee, WCB will do so in reliance on this Certificate.

Dated: _____, 20____

SUBGRANTEE

[Full, Legal Name]

By: _____

Print Name: _____

Title: _____

EXHIBIT C
Commitment for Management and Funding

The undersigned ~~are~~ the Executive Director of the East Contra Costa County Habitat Conservancy (ECCCHC) and the (INSERT TITLE) General Manager of the East Bay Regional Park District (EBRPD)(INSERT FULL, LEGAL NAME), the Subgrantee and Successor Subgrantee, respectively, under the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit C** forms a part. Subgrantee and Successor Subgrantee hereby commits to the Wildlife Conservation Board (WCB) as follows:

~~Explain the management experience and/or policies that have been adopted by your organization that qualify you to manage this property.~~

ECCCHC is the agency responsible for ensuring the preservation and management of lands acquired pursuant to the East Contra Costa County Natural Community Conservation Plan / Habitat Conservation Plan (ECC NCCP/HCP). Conservation Measure 1.2 (“Prepare and Implement Preserve Management Plans for Natural Habitat Lands”) of the ECC NCCP/HCP commits the ECCCHC to ensuring the preparation and implementation of Preserve Management Plans for acquired lands and sets forth standards for such management. Section 8.6.2 of the ECC NCCP/HCP provides the ECCCHC with the ability to cooperate with other entities such as EBRPD to acquire and manage lands pursuant to the ECC NCCP/HCP

EBRPD is a party to an agreement implementing the ECC NCCP/HCP and is anticipated to be a primary owner and manager of lands acquired pursuant to the ECC NCCP/HCP EBRPD will be the owner and manager of the Property (as defined in the Agreement). EBRPD owns and manages more than 100,000 acres of land in Alameda and Contra Costa Counties, much of which is similar in character and management need to the lands to be acquired pursuant to the Agreement. ECCCHC will provide assistance to EBRPD with management of Property, including funding assistance.

Subgrantee and Successor Subgrantee hereby commits to ~~funding for and implementation of~~ management of the Property (as defined in the Agreement) located in (COUNTY)Contra Costa County, California, ~~and commonly known as (NAME)~~, in perpetuity and according to the provisions of the ECC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, -consistent with the following Purposes of Subgrant:

“preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and the lands covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan” (PURPOSE FROM SECTION 3.2 OF THE SUBGRANT AGREEMENT)

~~Specific management actions for the Property are not known at this time. ECCCHC, with assistance from EBRPD, are in the process of developing a Preserve Management Plan for the Property. Management actions could include removal, repair and replacement of fences, inclusion of improved management conditions in the grazing lease and supervision of the grazing tenant, and control of exotic species. Anticipated costs of land management activities under the ECC NCCP/HCP are set forth in Tables 9-1 and 9-2 and supporting detail is provided in Appendix G. Specify what you anticipate will be involved in managing the property and the associated costs. For example, cost of inspections/monitoring, manpower, fencing, etc. What is your estimate of the annual management costs?~~

~~In furtherance of the commitment set forth above, and in order to manage the property consistent with the Purposes of this Subgrant, Subgrantee and Successor Subgrantee will fund management in perpetuity consistent with the funding plan established in Section 9.3 of the ECC NCCP/HCP. ECCCHC and EBRPD anticipate allocating the costs of such management among the two agencies consistent with the general principle that ECCCHC will pay for those management costs relating to management and monitoring of the species and EBRPD will pay for those management costs relating to public access and public use of the Property. ECCCHC and EBRPD anticipate entering into one or more future agreements confirming their respective obligations to pay management costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment. (SOURCE OF FUNDS) (the "Endowment"). Specify the endowment is for this project and shall be available to manage the property in perpetuity. What factors did you consider when making the determination the endowment is sufficient to manage the property?. How will the endowment be invested to ensure there will be sufficient funds in the future for management? What will you do if the endowment runs out?~~

~~Provide additional relevant information, e.g., The Subgrant Agreement anticipates that Subgrantee may transfer the Property to [specify transferee] subject to the conditions set forth in Section ___ of the Subgrant Agreement. Upon any such transfer Subgrantee shall transfer the Endowment to the transferee.~~

~~Will the endowment be transferred with the property? If not, how will the transferee provide for management?~~

Subgrantee and Successor Subgrantee makes this Commitment with the understanding that if WCB enters into the Agreement and subgrants Federal Grant Funds (as defined in the Agreement) to Successor Subgrantee, WCB will do so in reliance on this Commitment.

Dated: _____, 20_____

SUBGRANTEE

~~(INSERT FULL, LEGAL NAME)~~East Contra Costa County Habitat Conservancy

By: _____

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By: _____

Print Name: Pat O'Brien

Title: General Manager

EXHIBIT D
(Assurances and Certifications)

DRAFT

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

EXHIBIT E
(Certified Resolutions or Other Actions of Governing Body)

DRAFT

EXHIBIT F
(WCB Logo)



EXHIBIT G
(Notice of Unrecorded Agreement to Subgrant)

| [PENDING. WILL BE SIMILAR TO THAT FOR FOX RIDGE]

DRAFT

EXHIBIT H
(Letters/emails between ECC and FWS)

DRAFT



John Kopchik/CD/CCC

11/16/2009 02:21 PM

To Becky_Miller@fws.gov

cc "Debra Townsend" <DTownsend@dfg.ca.gov>, JTurrini@resourceslawgroup.com, Sheila_Larsen@fws.gov, TMuzik@dfg.ca.gov, Tracey_Vriens@fws.gov

bcc

Subject Fw: Proposed match and other financial details for Section 6 acquisitions (version #2)

Hi Becky--

Teri suggested I follow up on this email and attempt to make more clear that mitigation fee money is involved in many of the upcoming transactions, though it is not proposed as part of the non-federal match. In particular, as shown in the spreadsheet, the East Contra Costa County Habitat Conservancy has contributed \$75,000 of such fee money toward the purchase of the Fox Ridge Property and has contributed \$250,000 in fee money toward the purchase of the Vaquero Farms South Property. In neither case is the fee money proposed as part of the required non-federal match. However, we do expect that the proportion of conservation performed with mitigation dollars will count toward our mitigation obligations. I do not foresee use of fee money for the acquisition of Vaquero Farms North, Irish Canyon or the Ang Properties, though we expect to use the proportion of due diligence and start-up habitat management not funded with mitigation fees as match for Vaquero Farms North. Also, I do expect it will be frequently necessary in other acquisitions down the road to include fee money as part of the mix (though not as part of the match) (sorry for the pun).

As you aware, a request has been made to Interior/FWS by many HCPs in the state to remove the prohibition on mitigation fees as match. If Interior/FWS were to remove such prohibition and if such change were to apply to already approved grants, I expect we would seek to include fee money as part of the match for not yet completed transactions and seek to recoup in-kind match funded by mitigation from past transactions.

I hope this clarification is helpful. Your consideration and response on the entire package of financial details presented in this and the two prior emails would be appreciated. Thanks!

--John

=====

John Kopchik
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[NOTE: OUR DEPARTMENT EMAIL CONVENTION RECENTLY CHANGED. john.kopchik@dcd.cccounty.us IS THE NEW EMAIL ADDRESS. THE OLD EMAIL (jkopc@cd.cccounty.us) WILL CONTINUE TO WORK FOR THE TIME-BEING, BUT PLEASE UPDATE YOUR CONTACT DATABASE TO THE NEW EMAIL ADDRESS. SORRY FOR THE INCONVENIENCE.]

----- Forwarded by John Kopchik/CD/CCC on 11/16/2009 01:57 PM -----



John Kopchik/CD/CCC

11/03/2009 04:03 PM

To Becky_Miller@fws.gov

cc "Debra Townsend" <DTownsend@dfg.ca.gov>, JTurrini@resourceslawgroup.com, Sheila_Larsen@fws.gov, TMuzik@dfg.ca.gov, Tracey_Vriens@fws.gov



Subject Re: Proposed match and other financial details for Section 6 acquisitions (version #2) 

Hi Becky--

Yes, I wish it were simpler but I think the complexity is a sign of the times. To your questions:

- a) the Coastal Conservancy grant for acquisition of Irish Canyon was funded with bond funds (Prop 84)
- b) the funding plan does have a little bit of fluidity, but not a whole heck of a lot. We will certainly keep everyone posted if any funding identified in the spreadsheet changes.
- c) We do intend to use to due diligence costs as match when possible. But not for the first two acquisitions (Fox Ridge and Vaquero Farms South) as I anticipate documenting and receiving approval for such match may be a little time-consuming and I don't want to jam too much into those first two transactions. Before we do plan to request to use due diligence as match, I intend to submit to you and Teri a detailed accounting for your review.

Thanks for your review and let me know if you have any additional questions.

--John

=====
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ADDRESS. SORRY FOR THE INCONVENIENCE.]
=====

Becky_Miller@fws.gov



Becky_Miller@fws.gov

11/03/2009 02:39 PM

To John Kopchik <John.Kopchik@dcd.cccounty.us>
cc "Debra Townsend" <DTownsend@dfg.ca.gov>, JTurrini@resourceslawgroup.com, Sheila_Larsen@fws.gov, TMuzik@dfg.ca.gov, Tracey_Vriens@fws.gov
Subject Re: Proposed match and other financial details for Section 6 acquisitions (version #2)

Wow, John. You have one complex spending plan. But it seems pretty much in order. I just want to run through it a bit more and I will give you an official response back. A couple questions. Is the Coastal Conservancy grant bond funding or was this a pass through grant of any type? If it was a pass through grant, do you know the source of the funding? Also, I get the impression that this whole plan may be a tiny bit fluid; such as waiting on the Moore Foundation grant. So if there are any changes or adjustment,

would you be sure to let both Terri and I know right away. I will need to keep all this documented in my files. Also, your email mentioned due diligence costs and such. This may factor into your nonfederal match totals too. So as those come up be sure to get the summary information to Teri so she can factor all that in when they draw the federal funds.

But as I mentioned above, I just need to look this over a tiny bit more and I'll have something out to you.

Becky Miller
Wildlife and Sport Fish Restoration Program
US Fish and Wildlife Service, Region 8
2800 Cottage Way, Room W-1729
Sacramento, California 95825-1846
(916) 978-6185 FAX (916) 978-6155
Becky_Miller@fws.gov

John Kopchik
<John.Kopchik@dcd.cccounty.us>

11/02/2009 04:43 PM

To Becky_Miller@fws.gov
cc "Debra Townsend" <DTownsend@dfg.ca.gov>, JTurrini@resourceslawgroup.com,
Sheila_Larsen@fws.gov, "Teri Muzik" <TMuzik@dfg.ca.gov>
Subj Proposed match and other financial details for Section 6 acquisitions (version #2)
ect

(version #2: read this one rather than version #1)

Hi Becky--

Teri asked that I draft for your consideration a summary of the financing details for the first batch of properties to be acquired with Section 6 grants. I believe she intends to attach the proposal and your response to the grant agreement.

I have attached a spreadsheet that documents funding sources and other key data for the initial five acquisitions proposed to be funded with Section 6. The first three (Vaquero Farms South, Fox Ridge and Vaquero Farms North) are proposed for funding from the FY2006 grant. The last two (Irish Canyon and Ang) are proposed for funding from the FY2007 grant. The spreadsheet also includes detailed information on the four in-kind match properties we propose to use. The portions of these prior acquisitions funded with mitigation and not eligible for match are clearly demarcated as are the portions that are eligible. The match properties are listed in part 1 of the spreadsheet and the acquisition properties are listed in part 2.

I thought it would be helpful if I summarized the details provided in the spreadsheet to make clear the general types of funding sources that would be used as match. We propose the following types of match sources:

- a) Funding for the acquisition from non-federal, non-mitigation sources. These would include East Bay Regional Park District general funds or bond measure funds (e.g. funds from taxes), Moore Foundation grants and state grants (Coastal Conservancy, WCB, SWRCB, etc.)
- b) Bargain sale: the difference between the appraised value and the purchase price. I understand a letter from the seller is required acknowledging the value of the donation in order for this source to be used.
- c) In-kind match properties: Non-mitigation, non-federal funds used to acquire previously acquired properties. The amount of eligible match that may be used must be documented by a current appraisal. The properties must have a notice of unrecorded grant agreement recorded on title. I understand that if a match properties is NOT eligible for the same section 6 grant as the acquisition property, separate approval is needed from staff at FWS and CDFG indicating that the match property is a suitable match. I understand that if a match properties is eligible for the same section 6 grant as the acquisition property, no separate approval is needed from staff at FWS and CDFG.
- d) Start-up habitat management costs: Non-mitigation, non-federal funds used to perform start-up habitat management on the acquisition property or a suitable in-kind match property (see item (c) for explanation of what is required for a property to be suitable as match). Start-up habitat management funds are expected to include non-mitigation non-federal funds used to pay for habitat restoration on these properties.
- d) Due diligence costs: Non-mitigation, non-federal funds used to perform due diligence on the acquisition property or a suitable in-kind match property (see item (c) for explanation of what is required for a property to be suitable as match).

We may also use other eligible sources of match outlined in the guidance document entitled "Non-Federal Match Sources for ESA Section 6 Non-Traditional Grants" that was circulated by you and your CDFG and FWS colleagues in July of this year. Likewise, as you know, a coalition of California HCPs has requested that the Department of the Interior reconsider the practice of prohibiting mitigation funds from being used as match. If that request is granted, and if it applies retroactively to previously approved grants, we would propose to use mitigation-funded portions of acquisitions and start-up habitat management as match.

For the initial five acquisitions, the proposed sources of match are:

Vaquero Farms South: EBRPD, seller bargain sale, and in-kind match from acquisition of Souza 1 and Lentzner

Fox Ridge: EBRPD, Moore Foundation Grant, and bargain sale (there is excess match from this transaction that we propose to roll into Vaquero Farms North)

Vaquero Farms North: In-kind match from acquisition of Souza 1, Souza 2, Chaparral Spring and Fox Ridge and start-up habitat management on Souza 1, Lentzner, and Souza 2 and due diligence costs on all match and acquisition properties

Irish Canyon: EBRPD and bargain sale

Ang: EBRPD and bargain sale

Thanks for your consideration. I hope this information is helpful. Please don't hesitate to call or email if I can answer questions or be of further assistance.

--John

(See attached file: Detailed_financial_and_other_info_for_acquisitions_11-2-09.pdf)(See attached file: Detailed_financial_and_other_info_for_acquisitions_11-2-09.xls)

John Kopchik
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-----[attachment
"Detailed_financial_and_other_info_for_acquisitions_11-2-09.pdf" deleted by Becky A Miller/SAC/R1/FWS/DOI] [attachment
"Detailed_financial_and_other_info_for_acquisitions_11-2-09.xls" deleted by Becky A Miller/SAC/R1/FWS/DOI]

PART 1, SUMMARY OF MATCH PROPERTIES: Transaction Details for Recently Acquired Properties That May Serve As Non-federal Match for Section 6 Acquisitions Pursued by the East Contra Costa County Habitat Conservancy

Souza 1

Acquired by: EBRPD
 Date Acquired: 12/23/2004
 Acres: 617
 Key land cover: annual grassland, alkali grassland, seasonal wetland, alkali wetland, pond
 Land Cost¹: \$2,961,600
 Eligible for the following Section 6 grants: FY06 and FY07

<u>Funding Source</u>	<u>Funding amount</u>	<u>Current Fair Market Value⁴</u>	<u>Source of non-federal match?</u>
EBRPD (tax revenues)--loan ²	\$361,600	\$339,427	no
Moore Foundation grant	\$1,500,000	\$1,408,023	yes
EBRPD REP Program ³	<u>\$1,100,000</u>	<u>\$1,032,550</u>	no
TOTAL	\$2,961,600	\$2,780,000	

Estimate of Non-Federal Match for Section 6 Grants that may be accrued from this property: \$1,408,023

Lentzner

Acquired by: EBRPD
 Date Acquired: 3/4/2005
 Key land cover: annual grassland, oak savanna, oak woodland, chaparral, alkali grassland, seasonal wetland, alkali wetland, pond
 Acres: 320
 Land Cost¹: \$960,000
 Eligible for the following Section 6 grants: FY07 (it is also in the eligible area for FY08 and FY09 but was omitted from the parcel list because of its acquired status)

<u>Funding Source</u>	<u>Funding amount</u>	<u>Current Fair Market Value⁴</u>	<u>Source of non-federal match?</u>
EBRPD (tax revenues)	\$270,402	\$377,436	yes
Prop 40 Per capita	\$273,000	\$381,063	yes
EBRPD REP Program ³	<u>\$416,598</u>	<u>\$581,501</u>	no
TOTAL	\$960,000	\$1,340,000	

Estimate of Non-Federal Match for Section 6 Grants that may be accrued from this property: \$758,499

Chaparral Springs

Acquired by: EBRPD
 Date Acquired: 12/23/2008
 Key land cover: annual grassland, oak savanna, oak woodland, chaparral, seasonal wetland, pond
 Acres: 333 acres
 Land Cost¹: \$1,400,000
 Eligible for the following Section 6 grants: FY07 (one of the parcels), FY08 and FY09

<u>Funding Source</u>	<u>Funding amount</u>	<u>Current Fair Market Value⁴</u>	<u>Source of non-federal match?</u>
California Coastal Conservancy ²	\$1,400,000	\$1,400,000	yes
TOTAL	\$1,400,000	\$1,400,000	

Estimate of Non-Federal Match for Section 6 Grants that may be accrued from this property: \$1,400,000

Souza 2

Acquired by: EBRPD
 Date Acquired: 7/30/2009
 Acres: 191
 Key land cover: annual grassland, alkali grassland, seasonal wetland
 Land Cost: \$1,692,000
 Eligible for the following Section 6 grants: FY06 and FY07

<u>Funding Source</u>	<u>Funding amount</u>	<u>Source of non-federal match?</u>
EBRPD (tax revenues)	\$200,000	yes
ECCC Habitat Conservancy (fees)	\$730,600	no
US Bur Rec CVPCP Grant	\$550,000	no
SWRCB Grant ⁵	\$211,400	yes
TOTAL	\$1,692,000	

Estimate of Non-Federal Match for Section 6 Grants that may be accrued from this property: \$411,400

TOTAL FROM ALL FOUR PROPERTIES: \$3,977,921

Notes:

- 1) For all 4 transactions, only the purchase price is included. Transactions costs and site improvements are not included. However it may also be possible to count some of these costs as match. This can pursued later if needed.
- 2) EBRPD loaned funds from its General Fund for acquisition of Souza 1, but anticipates repaying that loan with funds from the REP Program (see below). Consequently, the loaned funds were not considered eligible for match.
- 3) The EBRPD Resource Enhancement Program (or REP Program) is a program that involves partnering with projects requiring mitigation. REP Program contributions are not considered eligible as matching funds in this analysis.
- 4) Current market value is based new appraisals. Funding source amounts have increased or decreased in proportion to the change in total value (e.g. if a source funded 50% of an acquisition, its current value is 50% of new overall value).
- 5) The SWRCB grant is the Integrated regional Water Management Plan (IRWMP) Grant made to the East Contra Costa County IRWMP pursuant to Proposition 50. Project funding under this grant is on a reimbursement basis and is pending.

PART 2, SUMMARY OF INITIAL ACQUISITION PROPERTIES: Transaction Details for Properties Proposed as Initial Section 6 Acquisitions by the East Contra Costa County Habitat Conservancy

Vaquero Farms South

To be Acquired by: EBRPD
 Escrow proposed to close on: 10/31/2009
 Acres: 1,644
 Key land cover: annual grassland, alkali grassland, seasonal wetland, alkali wetland, pond
 Appraised value: \$3,160,000
 Purchase price: \$2,924,000
 Difference: \$236,000
 Eligible for the following Section 6 grants: FY06 and FY07
 Noteworthy: Conservation easement exists on a 936-acre portion (easement was recorded as required mitigation for FWS permit for construction of Vineyards project in Brentwood). Wind turbines on about 35 acres of the property.

<u>Funding Source</u>	<u>Funding amount</u>		<u>Source of non-federal match?</u>
EBRPD (tax revenues)	\$500,000	17.10%	yes
ECCC Habitat Conservancy(fees)	\$250,000	8.55%	no
Section 6 Grant	<u>\$2,174,000</u>	<u>74.35%</u>	no
TOTAL	\$2,924,000	100.00%	

Non-Federal Match Needed: \$2,657,111.11 (amount necessary to achieve 55:45 ratio of match to Section 6)

<u>Source</u>	<u>Amount</u>	
EBRPD (tax revenues)	\$500,000.00	
Bargain sale (seller donation)	\$236,000.00	
Match from prior acquisitions*	<u>\$1,921,111.11</u>	(*Souza 1 and Lentzner)
TOTAL	\$2,657,111.11	

In-kind match remaining after VF South: \$2,056,810.20

Fox Ridge

To be Acquired by: EBRPD
 Escrow proposed to close on: by 12/31/09 (the price is reduced about \$17,000 per month for early close)
 Acres: 221
 Key land cover: annual grassland, seasonal wetland, oak savanna
 Appraised Value: \$1,960,000
 Purchase Price: \$1,760,000
 Difference: \$200,000
 Eligible for the following Section 6 grants: FY07, FY08 and FY09
 Noteworthy: Approved tentative subdivision map on the property would have allowed up to five homesites, with dedication of about 199 acres of the property to EBRPD. Proposed acquisition is for the entirety of the property and would preclude subdivision and construction of all homes.

<u>Funding Source</u>	<u>Funding amount</u>		<u>Source of non-federal match?</u>
EBRPD (tax revenues)	\$250,000	14.20%	yes
ECCC Habitat Conservancy(fees)	\$75,000	4.26%	no
Moore Foundation	\$880,000	50.00%	yes
Section 6 Grant ⁶	<u>\$555,000</u>	<u>31.53%</u>	no
TOTAL	\$1,760,000	100.00%	

(Fox Ridge continued)

Non-Federal Match Needed: **\$678,333.33** (amount necessary to achieve 55:45 ratio of match to Section 6)

Match available:

<u>Source</u>	<u>Amount</u>
Moore Foundation	\$880,000.00
Bargain sale (seller donation)	\$200,000.00
EBRPD (tax revenues)	<u>\$250,000.00</u>
TOTAL	\$1,330,000.00

Excess match: \$651,666.67

In-kind match remaining after Fox Ridge: **\$2,708,476.87**

Notes:

6) Fox Ridge is eligible for funding from the FY07, FY08 and FY09 Section 6 Grants. Funding is requested from the FY07 Grant.

Vaquero Farms North

To be Acquired by: EBRPD
Escrow proposed to close on: as close to 6/30/2009 as possible
Acres: 577
Key land cover: annual grassland, alkali grassland, seasonal wetland, alkali wetland, pond
Land Cost: \$2,770,000

Eligible for the following Section 6 grants: FY06 and FY07

<u>Funding Source</u>	<u>Funding amount</u>		<u>Source of non-federal match?</u>
Section 6 Grant7	<u>\$2,770,000</u>	100.00%	no
TOTAL	\$2,770,000	100.00%	

Non-Federal Match Needed: **\$3,385,555.56** (amount necessary to achieve 55:45 ratio of match to Section 6)

<u>Source</u>	<u>Amount</u>
Match from start-up habitat mngmnt and due diligence on this and other properties ⁷	\$677,078.68
Match from prior acquisitions**	<u>\$2,708,476.87</u>
TOTAL	\$3,385,555.56

(**Souza 1, Souza 2, Chaparral Spring and Fox Ridge)

TOTAL SECTION 6 FUNDS Remain for VF North (approx): **\$2,708,477**
IN-KIND MATCH REMAIN AFTER VF NORTH: **\$0**

Notes:

7) Vaquero Farms North transaction will require additional non-federal, non-mitigation funds as match. The proposed source is start-up habitat management expenditures and due diligence on Lentzner, Souza 1, and Souza 2 (non-mitigation only).

Irish Canyon - Chopra

To be Acquired by: EBRPD
Escrow proposed to close on: by 3/31/09
Acres: 320
Key land cover: annual grassland, oak savanna, oak woodland, pond, riparian, creek
Appraised Value: \$1,760,000
Purchase Price: \$842,000
Difference: \$918,000
Eligible for the following Section 6 grants: FY07, FY08
Noteworthy: Acquired by Save Mount Diablo in 2007

<u>Funding Source</u>	<u>Funding amount</u>		<u>Source of non-federal match?</u>
EBRPD (tax revenues)	\$50,000	2.84%	yes
Section 6 Grant ⁶	<u>\$792,000</u>	<u>45.00%</u>	no
TOTAL	\$842,000	47.84%	

Non-Federal Match Needed: \$968,000.00 (amount necessary to achieve 55:45 ratio of match to Section 6)

Match available:

<u>Source</u>	<u>Amount</u>
Bargain sale (seller donation) ⁸	\$918,000.00
EBRPD (tax revenues)	<u>\$50,000.00</u>
TOTAL	\$968,000.00

Excess match: \$0.00

In-kind match remaining after Irish Canyon - Chopra: \$0.00

Notes:

8) Save Mount Diablo received a grant from the Moore Foundation to help them acquire 50% of the proeprty initially. In addition to donating the 50% share of the property that was purchaed with Moore Foundation funding (\$880,000, considering current values), Save Mount Diablo will donate an additional \$38,000 of the current appraised value, for a total donation of \$918,000.

Ang

To be Acquired by: EBRPD
Escrow proposed to close on: by 9/1/2010
Acres: 460
Key land cover: annual grassland, oak savanna, oak woodland, pond, riparian, creek
Appraised Value: \$2,856,000
Purchase Price: \$2,763,840
Difference: \$92,160
Eligible for the following Section 6 grants: FY07, FY08
Noteworthy: The Ang property borders the urban limit line and the city of Clayton. The property links the Irish Canyon - Chopra property to Black Diamond Mines Preserve.

<u>Funding Source</u>	<u>Funding amount</u>		<u>Source of non-federal match?</u>
EBRPD (tax revenues)	\$1,520,115	55.00%	yes
Section 6 Grant ⁶	<u>\$1,243,725</u>	<u>45.00%</u>	no
TOTAL	\$2,763,840	100.00%	

Non-Federal Match Needed: \$1,520,108.33 (amount necessary to achieve 55:45 ratio of match to Section 6)

Match available:

<u>Source</u>	<u>Amount</u>
Bargain sale (seller donation)	\$92,160.00
EBRPD (tax revenues)	<u>\$1,520,115.00</u>
TOTAL	\$1,612,275.00

Excess match: \$92,166.67

In-kind match remaining after Ang: \$92,166.67

EXHIBIT I
(Notice of Unrecorded Agreement to Subgrant for Match Property)

| [PENDING. WILL BE SIMILAR TO THAT FOR FOX RIDGE]

DRAFT

**CALIFORNIA WILDLIFE CONSERVATION BOARD
SUBGRANT AGREEMENT FOR ACQUISITION OF FEE INTEREST**

**Cooperative Endangered Species Conservation Fund
(Section 6 of the Federal Endangered Species Act) Grant Program**

Subgrantee: Full, Legal Name: East Contra Costa County Habitat Conservancy
Address: 651 Pine Street, 4th Floor, North Wing
Martinez, CA 94553-0095

Attn: John Kopchik, Executive Director

Phone: (925) 335-1227
Fax: (925) 335-1299
E-mail: JKopc@cd.co.contra-costa.ca.us

Federal Employer ID No./Taxpayer ID No.: _____

Successor Subgrantee: East Bay Regional Park District
P.O. Box 5381
Oakland, CA 94605-0381

Attn: Nancy Wenninger, Land Acquisition Manager

Phone: (510) 544-2607
Fax: (510) 612-5441
E-Mail:

Federal Employer ID No./Taxpayer ID No.: 94-60000-591

Project Name: Fox Ridge Manor

Project Location: Contra Costa County

Section 6 Grant Agreement Number: E-21-HL-3

WCB Subgrant Agreement Number: SG-9001JW

Notices to be delivered to:

For Subgrantee: East Contra Costa County Habitat Conservancy
651 Pine Street, 4th Floor, North Wing
Martinez, CA 94553-0095

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Section 3.2.

c. The Property shall be set aside in perpetuity for the purposes of conservation, including the Purposes of Subgrant.

d. Subgrantee and Successor Subgrantee shall comply with the terms and conditions of the award of Federal Grant Funds to CDFG, to the extent such terms and conditions are applicable to Subgrantee, Successor Subgrantee, the Subgrant Funds or the Property. Such terms and conditions are contained in the Federal Assistance Requirements.

e. Subgrantee and Successor Subgrantee shall recognize the cooperative nature of the Acquisition and shall provide credit to WCB, CDFG, USFWS, and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Subgrantee and/or Successor Subgrantee which reference the Acquisition. Subject to the mutual agreement of WCB and Subgrantee regarding text, design and location, Subgrantee shall or shall cause Successor Subgrantee to, post sign(s) on the Property to indicate the participation of WCB, CDFG and USFWS in Successor Subgrantee's purchase of the Property; *provided however*, that the sign(s) shall display the logo of WCB, as shown on **Exhibit F**.

f. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged, or otherwise conveyed without the written approval of the State of California (the "State"), acting through the Executive Director of WCB, or its successor, and USFWS (to the extent required pursuant to the Federal Assistance Requirements). The State shall not unreasonably withhold its approval as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including but not limited to Sections 6.1 (b) and (c), and each successor-in-interest assumes and agrees in a writing reasonably acceptable to the State to be bound by the terms, covenants and conditions of this Agreement.

g. The Property (including any portion of it or interest in it) may not be used as security for any debt without the written approval of the State, acting through the Executive Director of WCB, or its successor, and USFWS (to the extent required pursuant to the Federal Assistance Requirements).

h. Subgrantee shall record or cause to be recorded, concurrently with close of escrow for the purchase of the Property, a Notice of Unrecorded Agreement to Subgrant (the "Notice"), incorporating by reference this Agreement and giving public notice that Subgrantee received funds under this Agreement in order to assist Successor Subgrantee in acquiring the Property and that, in consideration for the receipt of the Subgrant Funds, Subgrantee and Successor Subgrantee have ~~has~~ agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit G**.

i. Subgrantee ~~shall cause Successor Subgrantee to~~ ~~shall~~ provide to

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Agreement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agreement or any of the rights of WCB or CDFG under it.

11.9. WCB will notify Subgrantee and Successor Subgrantee as promptly as possible following its receipt of any request under the California Public Records Act (Government Code Section 6250 *et seq.*) for information related to the Acquisition.

12. CONDEMNATION

12.1. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, WCB, ~~and~~ Subgrantee and Successor Subgrantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. WCB shall be entitled to the share of the Award (as defined below) which equals the ratio of the Subgrant Funds to the total purchase price Successor Subgrantee paid to acquire the Property (e.g., if Successor Subgrantee paid a purchase price of \$2 million and the amount of Subgrant Funds was \$750,000, then WCB would be entitled to 37.5% of the Award). For purposes of this Agreement, the "Award" shall mean all compensation awarded, paid or received on account of the Property so taken or purchased, and all direct or incidental damages resulting from the taking or purchase, less all out-of-pocket expenses reasonably incurred by Successor Subgrantee in connection with the taking or purchase.

13. AUDIT

13.1. Subgrantee and Successor Subgrantor shall each maintain complete and accurate records of its actual project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least four years after the date the Subgrant Funds are deposited into Escrow. During such time, Subgrantee shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by WCB shall be borne by Subgrantee. Except to the extent the Federal Assistance Requirements (including, but not limited to, 50 C.F.R. Section 81.15) provide otherwise, the audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

14. UNION ORGANIZING

14.1. Subgrantee and Successor Subgrantee hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement and certifies that:

- a. No state funds (as defined in Government Code Section 16645) disbursed by this subgrant will be used to assist, promote or deter union organizing;

b. Subgrantee and Successor Subgrantee shall account for state funds disbursed for a specific expenditure by this subgrant, to show those funds were allocated to that expenditure;

c. Subgrantee and Successor Subgrantee shall, where funds are not designated as described in Section 14.1(b) above, allocate, on a pro-rata basis, all disbursements that support the subgrant program; and

d. If Subgrantee or Successor Subgrantee makes expenditures to assist, promote or deter union organizing, ~~Subgrantee such party will~~ maintain records sufficient to show that no state funds were used for those expenditures, and that ~~Subgrantee such party~~ shall provide those records to the Attorney General upon request.

15. NON-DISCRIMINATION

15.1. During the performance of this Agreement, Subgrantee and Successor Subgrantee ~~are~~ is subject to all Federal and State laws prohibiting discrimination including but not limited to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12131 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. Section 6101 *et seq.*), the Fair Employment and Housing Act (Government Code Section 12900 (a – f) *et seq.*), and applicable regulations (California Code of Regulations, Title 2, Section 7285 *et seq.*). Subgrantee and Successor Subgrantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subgrantee and Successor Subgrantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subgrantee and Successor Subgrantee shall comply with the regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations), which are incorporated by reference into this Agreement. Subgrantee and Successor Subgrantee shall each give written notice of its obligations under this non-discrimination clause to labor organizations with which Subgrantee or Successor Subgrantee has a collective bargaining or other agreement, and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Subgrantee and Successor Subgrantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Acquisition.

Exhibit G – Form of Notice of Unrecorded Agreement to Subgrant

DRAFT

18. AUTHORIZATION

The signature of the Executive Director certifies that at the Board meeting held on November 17, 2009, the Wildlife Conservation Board authorized the award of a subgrant to Subgrantee as provided in this Agreement.

IN WITNESS WHEREOF, this Subgrant Agreement is made and entered into this ____ day of _____, 20 ____, in the State of California, by and between the Wildlife Conservation Board and the East Contra Costa County Habitat Conservancy, and the East Bay Regional Park District, each of which does hereby agree to the terms and conditions referenced on pages 1 through 14, along with Exhibits A – G, of this Agreement.

**STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD**

**SUBGRANTEE
EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY**

By: _____
John P. Donnelly, Executive Director

By: _____
(Name)

Title: _____

Date: _____

Date: _____

**SUCCESSOR SUBGRANTEE
EAST BAY REGIONAL PARK DISTRICT**

By: _____
(Name)

TITLE: _____

Date: _____

EXHIBIT D

(Notice of Unrecorded Subgrant Agreement)

RECORDING REQUESTED BY:

East Contra Costa County Habitat Conservancy)
651 Pine Street, 4th Floor, North Wing)
Martinez, CA 94553-0095)
Attn: Executive Director)

WHEN RECORDED, RETURN TO:

State of California)
Wildlife Conservation Board)
Attn: Executive Director)
1807 13th Street, Suite 103)
Sacramento, CA 95811-7137)

Project Name: Fox Ridge Manor
County: Contra Costa

Space above line for Recorder's use

**NOTICE OF UNRECORDED SUBGRANT AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)**

This Notice of Unrecorded Subgrant Agreement ("Notice"), dated as of _____, 20____, is made by the East Contra Costa County Habitat Conservancy ("Subgrantee"), and the East Bay Regional Park District ("Successor Subgrantee") and recorded concurrently with the Deed described below, to provide notice of an agreement between Subgrantee, Successor Subgrantee and the Wildlife Conservation Board ("WCB"), a subdivision of the State of California, affecting the real property described below.

1. WCB, ~~and Subgrantee~~ and Successor Subgrantee have entered into the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest, WCB Subgrant Agreement No. SG-9001JW (Section 6 Grant Agreement No. E-21-HL-3 ("Subgrant" or "Agreement"), pursuant to which WCB subgrants to Subgrantee certain Federal Grant Funds for Successor Subgrantee's acquisition of fee title to approximately 221.63 acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from Stephen C. Herrick and Venancia Herrick, husband and wife as joint tenants; Weston Cook and Christine L. Cook, husband and wife; and Bradley L. Warren and Luann Warren, Co-trustees of the Warren Living Trust dated 7-29-94. The Property is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Subgrant.

2. Subgrantee and Successor Subgrantee agrees under the terms of the Subgrant to execute this Notice to give notice that Subgrantee received funds under the Agreement to assist Successor Subgrantee in acquiring the Property and that, in

consideration of the Subgrant Funds, Subgrantee and Successor Subgrantee ~~has have~~ agreed to the terms of the Subgrant. The Subgrant is incorporated by reference into this Notice.

3. Subgrantee and Successor Subgrantee covenants and agrees in Section 6.1 b. of the Agreement as follows:

3.1. The Property shall be held and used only in a manner that is consistent with the Agreement, including the following "Purposes of Subgrant" set forth in Section 3.2 of the Agreement:

The Property shall be held and used for the purposes of preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSHCP") and the lands covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan ("ECC NCCP/HCP").(individually and collectively, the "Purposes of Subgrant").

3.2. The Property shall be set aside in perpetuity for the purposes of conservation, including the Purposes of Subgrant.

3.3. Subgrantee and Successor Subgrantee shall comply with the terms and conditions of the award of Federal Grant Funds to the California Department of Fish and Game ("CDFG"), to the extent such terms and conditions are applicable to Subgrantee, Successor Subgrantee, the Subgrant Funds or the Property.

3.4. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California (the "State"), acting through the Executive Director of WCB, or its successor, and the U.S. Department of the Interior, Fish and Wildlife Service ("USFWS") (to the extent required pursuant to the Federal Assistance Requirements).

3.5. The Property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State, acting through the Executive Director of WCB, or its successor, except to the extent the use of the Property as security is prohibited or limited by the Federal Assistance Requirements.

3.6. At the request of WCB, not less than once in any period of three calendar years, Subgrantee and Successor Subgrantee shall allow designated staff or representatives of WCB, CDFG and USFWS to access the Property to assess compliance with the terms, covenants and conditions of this Agreement. Provided, however, that if more frequent access is necessary to comply with applicable federal requirements (including, but not limited to, 50 C.F.R. Section 81.13) then Subgrantee and Successor Subgrantee shall allow designated staff or representatives of WCB, CDFG and USFWS access to the Property at such intervals as WCB, CDFG or

USFWS considers appropriate to meet federal requirements to which it is subject.

4. Pursuant to Section 8 of the Agreement, in the event of a Default under the Agreement, in addition to any and all remedies available at law or in equity, WCB may seek specific performance of the Subgrant and may require Successor Subgrantee to convey a conservation easement over the Property in favor of the State (or, at the election of WCB, another entity or organization authorized by California law to acquire and hold conservation easements), and to pay a sum to WCB which, when combined with the fair market value of the conservation easement, equals the amount of Subgrant Funds provided by the Agreement, together with interest thereon as provided in the Agreement. CDFG, as the Grantee under the Federal Grant Agreement, shall be an express third-party beneficiary of the Agreement and shall have the same rights and remedies as WCB in the event of a breach or Default by Subgrantee or Successor Subgrantee.

5. Pursuant to Section 9 of the Agreement, if ~~Subgrantee is a nonprofit organization and~~ the existence of Successor Subgrantee is terminated for any reason, title to all interest in the Property acquired with Subgrant funds shall immediately vest in the State. However, prior to that termination, upon approval of the State, acting through the Executive Director of WCB or its successor, another public agency or nonprofit organization may receive title to all or a portion of that interest in the Property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby the Property or any interest in it is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

6. Pursuant to Section 10 of the Agreement, the provisions of the Subgrant that are not fully performed as of the close of escrow shall survive the close of escrow for Successor Subgrantee's acquisition of the Property and shall remain in full force and effect.

7. Pursuant to Section 11 of the Agreement, the Subgrant shall be binding upon Subgrantee and Successor Subgrantee and all designees, successors and assigns of Subgrantee and Successor Subgrantee.

8. Pursuant to Section 12 of the Agreement, if all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, WCB and Successor Subgrantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. WCB shall be entitled to the share of the Award which equals the ratio of the Subgrant Funds provided by WCB to the total purchase price Successor Subgrantee paid to acquire the Property.

9. This Notice is solely for the purpose of recording and in no way modifies the provisions of the Agreement. Subgrantee, Successor Subgrantee and WCB each has rights, duties and obligations under the Agreement which are not set forth in this Notice. To the extent the terms of this Notice conflict with the Agreement, the terms of the Agreement shall govern and control.

10. For additional terms and conditions of the Agreement, reference should be made to the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest by and between WCB, ~~and Subgrantee~~ and Successor Subgrantee that commenced _____, 20____, and is on file with the Wildlife Conservation Board, 1807 13th Street, Suite 103, Sacramento, California 95811-7137; *mailing address*: Wildlife Conservation Board, c/o Department of Fish and Game, P. O. Box 944209, Sacramento, CA 94244-2090.

SUBGRANTEE:

By: _____
Print Name: _____
Title: _____

SUCCESSOR SUBGRANTEE:

By: _____
Print Name: _____
Title: _____

[Notary Acknowledgment]

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Legislative Issues

RECOMMENDATION

- a) ADOPT the 2010 Legislative Platform;
- b) ADOPT Resolution 2009-03 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 by approximately \$40 million in the Fiscal Year 2011 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; and
- d) AUTHORIZE a \$5,000 contribution toward the California Habitat Conservation Planning Coalition membership in 2010.

DISCUSSION

Item (a): The Legislative Platform contains specific policy statements pertaining to six major 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 participated in a statewide meeting of representatives of and advocates for HCPs and NCCPs in northern and southern California, and as a result it is expected that the first three items on the Platform will continue to be jointly pursued by the newly formed statewide HCP coalition. The Governing Board has previously approved supporting positions on Items 1-4 on the proposed Platform and Items 5-6 are new for 2010. Conservancy staff recommends approval of the Platform to reaffirm those policy positions and provide clear documentation of them.

Item (b): Conservancy staff is also recommending approval of Resolution 2009-03. It is

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>December 16, 2009</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 KUTSUIRS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
BY: _____, DEPUTY	

virtually identical to resolution 2008-01 and 2009-01 approved in the last two years and also is a more formal expression of Item 1 on the 2010 Legislative Platform. During 2009, the statewide HCP coalition successfully worked through a coordinated effort to advocate for an increase in Section 6 grant funding, using the approved 2009 resolutions from each jurisdictional member to make clear their stance on supporting increased Section 6 grant funding. Resolution 2010-01 will solidify our efforts to continue supporting and lobbying for an increase in Section 6 funding during 2010.

Item (c): If the Governing Board approves the 2010 Platform and Resolution 2009-03, 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 2010 as part of continued California Habitat Conservation Planning Coalition (CHCPC) efforts to advocate for Platform issues, Items 1-3 and 5, and Conservancy staff would propose to attend as occurred during 2009. The CHCPC has also been aggressively pursuing the issue of mitigation as match for Section 6 grants (item 3 on the Platform) and representatives have been meeting with Department of Interior in Washington. If it appears critical for a Conservancy representative to attend a future such meeting and the meeting cannot be coordinated with the broader trip in March, Conservancy staff proposes to make a second trip. The costs of such trips would be covered within the proposed 2010 Conservancy Budget.

Item (d): During 2009, the California Habitat Conservation Planning Coalition's first year, the Coalition obtained support for an increase in HCP land acquisition grant funding (about \$10 million), engaged the U.S. Fish and Wildlife Service and the U.S. Department of the Interior on problems regarding local matches for these grants (see attached letter from Senators Boxer and Feinstein sent at the Coalition's request), and begun work on resolving delays in spending land acquisition grants. These activities were carried 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. In order to sustain and build upon the Coalition's work in 2010 a source of funding is needed to support a coordinator. Funding will go towards covering some staff time and expenses (see attached document). The Coalition has initiated a way to obtain base funding through a system of voluntary membership contributions. Contributions are tiered based on the level of funding capacities amongst the members, and the requested contribution from the Conservancy in 2010 will be \$5,000. At an October 20 meeting of the Coalition, the approximately 15 Coalition participants present expressed support at the staff level for the voluntary contributions and agreed to recommend the contribution to their Boards for 2010. So far, the Nature Conservancy and PG&E have each contributed \$5,000.

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.

Attachments:

- Proposed 2010 Conservancy Legislative Platform
- Resolution 2009-03
- November 19, 2009 letter from Senators Boxer and Feinstein to Interior Secretary Salazar
- Document explaining CHCPC Voluntary 2010 Membership Contributions



EAST CONTRA COSTA
COUNTY HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

2010

Federal & State Legislative Platform

The Legislative Platform contains specific policy statements pertaining to five major issues affecting the ongoing progress of the East Contra Costa County Habitat Conservancy to implement the East Contra Costa County Habitat Conservation Plan (HCP) / Natural Community Conservation Plan (NCCP).

SUMMARY

In 2010, 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* increasing funding for the Cooperative Endangered Species Conservation Fund from the \$85.0 million current-year level to \$125 million in FY2011.
- Item 2:** *Request* recognition of Habitat Conversation Plans as the most reliable way of streamlining critical infrastructure, economic stimulus, and alternative energy project permitting in a manner that is consistent with federal environmental regulations and in the process creating many “green” jobs.
- Item 3:** *Advocate* amendment of the grant guidelines for the U.S. Fish and Wildlife Service (USFWS) Section 6 Grant Program to once again allow the use of local fee funds as match.
- Item 4:** *Request* the State to provide a substantial contribution of approximately \$20 million toward the required non-federal match for the Conservancy’s four approved Section 6 grants. State funding has already been earmarked in approved Proposition 84 Water Quality Grants & Proposition 50 River Parkways Grant Program.
- 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.

2010 LEGISLATIVE PLATFORM ITEMS

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

LEGISLATIVE POSTION:

In partnership with approximately a dozen counties in northern and southern California, we request that funding for the U.S. Fish and Wildlife Service's Cooperative Endangered Species Conservation Fund (the "Fund") increase from \$85.0 million current-year level to \$125 million in FY2011. This will continue to restore the Fund to approximately that of the fiscal 2001 level, adjusted for inflation, and provide much needed support to regional Habitat Conservation Plans (HCP's) in California and nationally. Given the prolific growth in the number of regional HCP's, the Fund needs to be increased even more substantially in subsequent years. We urge the California State Association of Counties (CSAC) to include this Fund increase request as a priority on CSAC's current and future federal platforms.

BACKGROUND:

The Fund provides funding for grants toward approved HCPs in order to meet land acquisition goals, planning grants for HCPs in preparation, and land acquisition grants for species that have Recovery Plans. These grants, also called Section 6 grants, are the main source of federal funding to aid the preparation and implementation of HCPs. In the years ahead, the land acquisition grants will be an essential component for meeting the biological conservation and permit streamlining benefits of HCPs. However, the program is currently funded at a substantially lower level than in Fiscal 2001, in terms of actual dollars. Fiscal 2001 appropriations were \$104.7 million. The current funding level is only \$85.0 million. The decrease is far more severe when inflation of land prices and the increase in approved HCPs are taken into account. To meet the growing need, the Fund will have to increase significantly over the next several years in order to ensure that HCPs continue to be initiated and implemented successfully.

In California alone, the number of regional HCPs has doubled while the Fund has failed to keep pace with inflation. Despite the recent economic downturn, costs to fully implement and manage regional HCP reserve systems remain high. Demand is particularly high for planning and land acquisition funding, given the large number of completed HCPs and Recovery Plans. For example, fiscal year 2008 requests from California for HCP Land Acquisition grants from the Fund totaled \$74.5 million, but total nationwide funding of the Land Acquisition component of the Fund was only \$35 million.

A 2008 study of the Western Riverside MSHCP (the "Riverside Plan") by the RAND Corporation (the "RAND Report") concluded that \$3.8-\$5 billion in land acquisitions are needed to simply finish the reserve system of the Riverside Plan and up to an additional \$690 million will be needed to operate and manage the reserve system through the plan's permit term. Given these costs and the significant additional financial needs of other regional HCP plans, a large increase of the Fund over the next several years is justifiable and necessary.

Item 2: Streamlining Permitting for Critical Infrastructure, Economic Stimulus, and Alternative Energy Projects –“Green” Job Creation.

LEGISLATIVE POSITION:

Request recognition of Habitat Conversation Plans (HCPs) as the most reliable way of streamlining critical infrastructure, economic stimulus, and alternative energy project permitting in a manner that is consistent with federal environmental regulations. HCPs not only facilitates 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 and alternative energy projects associated with state and federal alternative energy, infrastructure, and economic stimulus legislation. Regional HCPs are the best tool currently available 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 amendment of the grant guidelines for the U.S. Fish and Wildlife Service (USFWS) Section 6 Grant Program to once again allow the use of local fee funds as match when such funds are the collected as part of a local government-led regional HCP/NCCP.

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 new policy has 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.

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

LEGISLATIVE POSITION:

Request the State to provide a substantial contribution of approximately \$20 million toward the required non-federal match for the Conservancy's four approved Section 6 grants, which is just under \$27 million. State funding has already been earmarked in approved Proposition 84 Water Quality Grants & Proposition 50 River Parkways Grant Program.

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 four approved Section 6 grants have a combined value of \$22,031,054. The required non-federal match is \$26,926,888. Given the USFWS policy of not allowing local fee funds to count as match, the Conservancy has no funds of its own that can count as match and must rely on partners and other non-federal grants. The HCP includes state and federal funding contributions and a substantial state contribution at this time would help resolve the non-federal match requirement problem with the current Section 6 grants.

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. Of this amount, approximately \$20 million has been appropriated to WCB so far. WCB staff has proposed granting the Conservancy \$5 million as a first contribution. Conservancy staff plans to work with WCB staff to see if this amount can be increased and matched in future appropriation cycles such that the bulk of the non-federal match requirements of the Section 6 grants can be covered with Proposition 84 funds. Other potential state sources of funds that would be pursued include funds administered by the Coastal Conservancy and the Department of Water Resources. It should be noted that State bond funds remain frozen at this time which will delay the State's ability to contribute funds.

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 are under discussion. 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.

Resolution No: 2009-03

RESOLUTION OF THE

East Contra Costa County Habitat Conservancy Governing Board

TO SUPPORT A REQUEST TO CONGRESS TO INCREASE FUNDING FOR THE
U.S. FISH AND WILDLIFE SERVICE COOPERATIVE ENDANGERED SPECIES
CONSERVATION FUND

WHEREAS, jurisdictions in Contra Costa, Placer, Riverside, Sacramento, San Diego, Santa Clara, Solano, Yolo, and other Counties are preparing or implementing Habitat Conservation Plans (HCPs) or Natural Community Conservation Plans (NCCPs) to conserve species and their habitats and aid our economies through efficient permitting; 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, multi-county applications have multiple benefits including better likelihood of success, improved coordination and better integration of planning efforts; and,

WHEREAS, these HCP/NCCP planning efforts will 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 planning efforts will offer opportunities for landowners to voluntarily participate in the selling of conservation easements, transfer of development rights or sale of land; and,

WHEREAS, these planning efforts will 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, HCPs provide regulatory efficiency that can jump-start economic growth, provides jobs and a prosperous economy; 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.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy Governing Board does hereby support working together with local jurisdictions in the Counties of Placer, Riverside, Sacramento, San Diego, Santa Clara, Solano, and Yolo, Nature Conservancy, Institute for Ecological Health, Defenders of Wildlife and other organizations that may join the California Habitat Conservation Planning Coalition to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Conservation Fund by approximately \$40 million, from the \$85.0 million current-year level to \$125 million, in the Fiscal Year 2011 Interior and Related Agencies Appropriations bill.

Approved by the following vote on: December 16, 2009.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director

United States Senate

WASHINGTON, DC 20510

November 19, 2009

The Honorable Ken Salazar
U. S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Dear Secretary Salazar:

We are writing to express our concern regarding the local funding match criteria the United States Fish and Wildlife Service (the Service) uses for the Cooperative Endangered Species Conservation Fund (Fund) authorized by Section 6 of the federal Endangered Species Act. We ask you to revisit this policy because we believe it prevents many worthy local conservation plans from accessing this Fund and creates a disadvantage for the communities that make the greatest commitments to conservation.

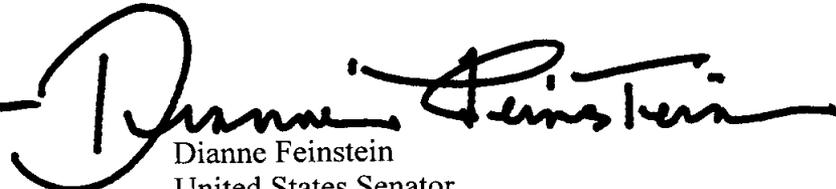
The Service's most recent request for proposals for this fund indicates that any local fees used to implement a regional Habitat Conservation Plan (HCP) — including fees levied on developers and city or county general funds — cannot be used as a match for grants from the Fund. We understand that this policy arose out of concern that federal funds will be used for mitigation required by federal law. However, the current policy goes well beyond preventing such an outcome. Due to California's Natural Communities Conservation Plan statute and collaborative voluntary agreements, land use plans in our state have the potential to secure far more conservation than would be required as mitigation under federal law alone. Prohibiting local funds and fees associated with HCPs from being used to match federal dollars greatly reduces the ability of communities to implement these more robust conservation plans.

Unfortunately, the Service's current restrictions have the perverse effect of severely restricting federal contributions toward the best conservation plans in our State. The promise of federal funding has been a key incentive for local governments to take on the burden and challenge of regional land use HCPs. But under the Service's present policy, local governments that have voluntarily entered into the most significant long-term partnerships with the federal government to conserve habitat for federally-listed species are the least able to access grants from the Fund. The Service's current policy could prevent the use of as much as \$45 million in grants already awarded to advance on-the-ground conservation in several California counties.

The Service's current policy should be revised to allow localities with robust HCPs to compete for federal funding, and to strengthen, rather than eliminate, incentives for local governments to prepare and implement regional land use HCPs. Local funds and fees used to implement HCPs should qualify for the match, and the most comprehensive conservation plans should be prioritized for funding. We appreciate your attention to this issue and look forward to working with you on a prompt resolution.

Sincerely,


Barbara Boxer
United States Senator


Dianne Feinstein
United States Senator

California Habitat Conservation Planning Coalition

Voluntary 2010 Membership Contributions

Background

This new 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's goals are:

- 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.

During 2009, the Coalition's first year, we have obtained Senator Feinstein's 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, begun work on resolving delays in spending land acquisition grants and worked to build the Coalition. The Coalition also began work on a metric for HCP success in conserving species, in response to a request from the White House Office of Management and Budget. These activities were carried through 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.

Voluntary 2010 Membership Contributions

In order to sustain and build the coalition's work in 2010 we need a source of funding. This will provide for some staff time and expenses, as well as other costs. We will 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 voluntary membership contributions for 2010 to reflect the varying funding capacities of Coalition members:

Approved regional NCCPs:	\$ 5,000
Approved HCPs and small* NCCPs:	\$ 1,000
HCP/NCCPs in preparation:	\$ 1,000
Businesses:	\$ 5,000
Small businesses (<20 employees):	\$ 1,000
International NGOs :	\$ 5,000

Smaller NGOs

\$ 1,000

* Small approved NCCPs have a Planning Area less than 50,000 acres and an annual budget of less than \$1 million.

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.

The 2010 Program and Use of Membership Contributions

Contributions will pay for staff time provided by IEH, as well as other expenses. Staff will provide major support for our calendar 2010 campaign to increase funding for the Cooperative Endangered Species Conservation Fund (Section 6 of the federal Endangered Species Act), with a particular focus on increasing funding for HCP land acquisition grants. Staff will also assist other Work Groups and the Steering Committee, organize Coalition business meetings and other events and begin preparation for a major Coalition summit to take place in Sacramento in the spring of 2011. IEH's rate is \$45 an hour. In addition, IEH will continue to provide some pro bono time.

In addition to supporting efforts to increase federal funding, Membership contributions will help the Coalition address the following issues:

- Resolving the Section 6 local match
- Speeding up spending of Section 6 land acquisition grants
- HCP success metric
- Climate change adaptation funding for habitat conservation
- Regional Greenprints and Blueprints

Management and Reporting

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

Contact Information

California Habitat Conservation Planning Coalition, 409 Jardin Place, Davis CA 95616
ieh@cal.net (530) 756-6455. Contact. John Hopkins

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2010
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2010 Budget and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) APPROVE the 2010 Conservancy Budget.
- b) AUTHORIZE staff to execute an agreement with the East Bay Regional Park District for the provision of specific land acquisition services during 2010.
- c) AUTHORIZE staff to amend existing contracts for on-going biological and conservation planning services with:
 - ICF Jones and Stokes: increase the payment limit by \$147,000 from \$220,000 to \$367,000 and extend the term through June 30, 2010;
 - H.T. Harvey and Associates: increase the payment limit by \$25,000 from \$43,000 to \$68,000 and extend the term through June 30, 2010; and
 - Monk and Associates: increase the payment limit by \$11,500 from \$20,000 to \$31,500 and extend the term through December 31, 2010.
- d) AUTHORIZE staff to amend an existing a contract for legal services with Resources Law Group to increase the payment limit by \$30,000, from \$90,000 to \$120,000, and extend the term to June 30, 2010.
- e) AUTHORIZE setting the calendar year as the Conservancy fiscal year.

DISCUSSION

Item (a): Please find attached a proposed 2010 Conservancy Budget (Table I-1) and supporting tables prepared by staff for discussion by the Board.

Table I-1: The 2010 Conservancy Budget, Table I-1, includes summary cost estimate

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: December 16, 2009 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

__ UNANIMOUS
A YES: _____
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

information from the HCP as well as recommended expenditures from the various funding sources controlled by the Conservancy or related to the HCP, including the Development Fee Account, the Wetland Mitigation Fee Account, 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), and the various grant funds awarded to support implementation of various tasks associated with the HCP.

The 2010 Budget also presents recommendations on how future revenues received in 2010 should be spent (or not) in 2010. For example if \$1,000,000 in new revenues were collected in the Development Fee account after January 1, 2010, the expenditure limit for land acquisition would increase by \$200,000, the limit for preserve management would increase by \$200,000 and \$600,000 would be reserved for next year since the budget provides that 20% of new development fee revenues will be allocated to land acquisition, 20% to preserve management and 60% will reserved for the future. Depending upon the timing of the new funds, it may not be possible to actually spend them in 2010. But the intent of this provision is to ensure that new funds are spent promptly and prudently

Tables I-2 though I-10: Tables I-2 though 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 2010 Budget. The 2010 estimates that form the basis for the 2010 Budget are shaded light blue. The 2008 and 2009 Budget Amounts are also provided for comparison purposes. Table I-2 summarizes 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 the 2008 and 2009 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 2010 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 2010 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, III and IV: Table II provides an overview of the current balance for the California Wildlife Foundation account explained above. Table III presents updated information on approved grants. Table IV is an update of the Budget Status Table presented in July. It compares the approved 2009 Budget with actual expenditures to date and also takes into account

expenditures projected to occur before the end of the year but not yet reflected in the Conservancy's accounting.

Considerations in developing the 2010 Budget: The proposed 2010 Budget has been adapted from the 2009 Budget approved last year. Key changes include the following:

- Projected expenditures have been revised to reflect both a better understanding of actual costs (for example, the comparison of projected and actual costs presented in Table IV) and knowledge about program opportunities available to the Conservancy in 2010. Noteworthy allocations:
 - 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.
 - Excluding land acquisition, Budget allocations have been reduced 28% since last year. This is partly a reflection of the need to cut costs due to the slow economy and slow pace of fee revenues and partly a reflection of an improved understanding of what tasks cost and how tasks can be performed cost-effectively.
 - The restoration budget is down 66%. No big project is planned for construction next summer. Uncertain fee revenues, the comfortable stay ahead margin and the lack of easy to design big projects on the properties currently available explain this recommendation.
 - Management and monitoring tasks are up slightly from the 2009 Budget despite the fact that substantial budget for these tasks went unspent this year. Management Plans will be completed in 2010 for the four new acquisitions completed this year, and management and monitoring expenditures will be necessary.
- It is worth noting that a significant portion of the CWF Account has been used as bridge financing for an early land acquisition payment, leaving cash reserves lower than last year until Section 6 Finds can be liquidated to complete the purchase and replenish the CWF Account. The CWF account will be replenished with \$2,770,000 of grant funds when Vaquero Farms North is purchased by EBRPD with Section 6 funds.

Recommendation on 2010 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 cost of County staff support, \$528,999, 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): In 2007, the Governing Board authorized staff to execute a cost-sharing agreement with EBRPD for land acquisition services that provided EBRPD with \$120,000 for land acquisition services in 2008 and part of 2007. The 2009 agreement provided EBRPD with \$100,000 for services that year. Staff has prepared another such agreement for 2010 to cover land acquisition services (see attachment). The proposed 2010 Agreement would provide EBRPD with \$100,000 for land acquisition services (commissioning and reviewing appraisals, preliminary title reports, and phase 1 environmental assessments, crafting purchase and sale agreements, performing due diligence on the property's and negotiating with property owners).

The 2010 Agreement is similar to the 2008 and 2009 agreements. The Draft Agreement reflects the following general parameters: (1) land acquisition due diligence would be shared approximately evenly overall, though the specific arrangements would vary case by case depending upon the extent of the park and open space value presented by the property, (2) costs to both parties to administer the reimbursements terms of the agreement would be kept to a bare minimum. The prior agreements called for one lump sum payment to EBRPD at the outset. The 2010 Agreement with EBRPD would allow the Conservancy to pay \$50,000 at the start of 2010 and \$50,000 mid way through the year. This measure reflects a desire to spread payments out throughout the year so cash flow does not become a problem.

Item (c): Staff recommends the actions set forth below with respect to three firms providing on-going biological services to the Conservancy. All contracts are consistent with the recommended 2010 Budget. The larger contracts are recommended for extension in six month increments to enable the Conservancy to re-evaluate expenditure levels mid-year as occurred in 2009.

ICF Jones and Stokes Contract Amendment: The recommendation is to increase the payment limit by \$147,000 from \$220,000 to \$367,000 and extend the term through June 31, 2010. ICF Jones and Stokes has an existing, six-month contract with the Conservancy that will expire on December 31, 2009. ICF Jones and Stokes has provided a range of services to the Conservancy in 2009 and a continuation of that support is vital in 2010. Staff worked with Jones and Stokes to develop cost projections for key tasks that will continue in 2010 and used this information as background in crafting the Proposed 2010 Conservancy Budget. As a result of the slow pace of fee revenues and the Conservancy's relatively shortage of cash, the pace of expenditure has been intentionally slowed from the pace envisioned in the original contract. Key tasks for ICF Jones and Stokes in 2010 include:

- Preparation of preserve management plans and system-wide management plans required by the HCP;
- Provision of a consulting planner to assist the Conservancy 3 days a week for 6 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 for considerably more expense);

- Assistance with completing the regional wetlands permitting programs initiated during development of the HCP;
- Provision of biological expertise to assist with answering questions and assist with day to day operation of the Plan;
- Continued assistance with monitoring the Lentzner Springs and Souza II Wetland project; and
- Assistance with planning one or smaller restoration projects for 2010 (planting projects) and with selecting and planning a larger project for 2011.

The proposed contract is consistent with the Proposed 2010 Conservancy Budget. In fact, the Budget was based on and could accommodate a larger, full-year contract. However, given the general desirability of maintaining flexibility with this critical contract, staff proposes a 6-month contract and scheduling consideration of an amendment for the Board's June meeting. If funding allows, staff may recommend a more aggressive scope for the second half of the year.

H.T. Harvey & Associates: The recommendation is to increase the payment limit of this time and materials contract by \$25,000 from \$43,000 to \$68,000 and extend the term through June 31, 2010. H.T. Harvey & Associates has an existing contract that will expire December 31, 2009. H.T. Harvey & Associates has been preparing a 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. H.T. Harvey has provided staff with a high-quality and comprehensive preliminary work product, but additional support is needed to compile a public draft report and integrate changes that result from wider review. H.T. Harvey also provided significant technical support for the restoration planning for Irish Canyon. Additional support with wetlands restoration design is needed. The contract amendment is recommended for these reasons.

Monk and Associates: The recommendation is to increase the payment limit on the existing contract by \$11,500 from \$20,000 to \$31,500 and extend the term through December 31, 2010. Monk and Associates designed the pond creation project that was construction in 2008 on Souza 1. Since then they have been providing on-going monitoring of that project. Monitoring of that project needs to continue in 2010 consistent with HCP requirements.

Item (d): The recommendation is to authorize staff to amend an existing one-year contract for legal services with Resources Law Group to increase the payment limit by \$30,000, from \$90,000 to \$120,000, and extend the term to June 30, 2010. 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 complete, 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, such as development of an agreement with the wetlands regulatory agencies, development of master agreements with EBRPD for land acquisition, restoration and management, due diligence on land

acquisition prospects, assistance with interacting with granting agencies and general legal support services to implementation of the Plan and operation of the Conservancy. The recommended contract amount is consistent with the recommended 2010 Conservancy Budget. A six month amendment is recommended to enable the Conservancy to re-evaluate expenditure levels mid-year as occurred in 2009 with other contracts.

Item (e): Since the inception of the Conservancy, the operating budget has been proposed and approved on the basis of the calendar year. Conservancy staff is in the process of commissioning an independent audit of the accounts and records of the Conservancy. An action of the Board is recommended to establish the fiscal year basis the auditor should use. The Joint Exercise of Powers Agreement that formed the Conservancy provides that the fiscal year of the Conservancy shall be the period from July 1 of each year to and including the following June 30, unless changed by formal action of the Board. Establishing the calendar year as the fiscal year will make the auditing process more efficient and make the results of the audit easier to understand because it will conform to the Budget cycle. Most firms that specialize in public agency audits have fewer clients with a calendar year fiscal year, and several have indicated to staff that the calendar year schedule will help keep prices down and level of service up.

Attachments:

- Proposed 2010 Conservancy Budget and supporting tables
- Draft Cost Sharing Agreement with EBRPD

Proposed 2010 Conservancy Budget: Recommended Expenditures and Comparison to 2008 and 2009 Budgets

Table I-1

Cost Category	Proposed 2010 Expenditures									Approved 2009 Conservancy Budget		Approved 2008 Conservancy Budget	
	Development Fee Account	Dev. Fee Revenues Accrued in 2010 ¹	Wetland Mitigation Fee Account ²	Wetland Mitigation Fee Revenues Accrued in 2010 ²	CDFG's California Wildlife Foundation Account ³	Grant Funding ⁴	TOTAL (2010)	% of Total	% Change from 2009	TOTAL (2009)	% of Total	TOTAL (2008)	% of Total
Program Administration	\$257,094	0%	\$0	0%	\$257,094	\$0	\$514,189	3%	4%	\$493,665	3%	\$494,575	4%
Land Acquisition	\$0	20%	\$0	0%	\$100,000	\$13,946,303	\$14,046,303	89%	0%	\$14,046,495	85%	\$9,900,667	84%
Management, Restoration & Recreation Planning & Design	\$52,856	0%	\$0	20%	\$79,283	\$100,000	\$232,139	1%	-29%	\$328,170	2%	\$338,322	3%
Habitat Restoration/Creation	\$0	0%	\$40,960	20%	\$40,960	\$250,000	\$331,920	2%	-66%	\$980,239	6%	\$407,326	3%
Environmental Compliance	\$75,000	0%	\$10,000	0%	\$10,000	\$56,303	\$151,303	1%	-9%	\$166,495	1%	\$109,000	1%
HCP/NCCP Preserve Management and Maintenance	\$99,384	20%	\$0	0%	\$198,768	\$0	\$298,151	2%	2%	\$293,247	2%	\$404,100	3%
Monitoring, Research, and Adaptive Management	\$20,000	0%	\$20,000	0%	\$129,565	\$0	\$169,565	1%	80%	\$94,345	1%	\$66,500	1%
Remedial Measures	\$6,000	0%	\$0	0%	\$0	\$0	\$6,000	0%	0%	\$6,000	0%	\$6,000	0%
Contingency Fund (5% of non-land acquisition costs)	\$84,863	0%	\$0	0%	\$0	\$0	\$84,863	1%	-28%	\$117,808	1%	\$90,141	1%
TOTAL 2010 EXPENDITURES	\$595,197	40%	\$70,960	40%	\$815,670	\$14,352,606	\$15,834,433	100%	-4%	\$16,526,464	100%	\$11,816,631	100%
PROJECTED BALANCE ON JANUARY 1, 2010	\$940,000		\$280,000		\$850,000	\$20,247,054	\$22,317,054						
Amount of Projected January 1, 2010 Balance To Be Reserved For Future	\$344,803	60%	\$209,040	60%	\$34,330	\$5,894,448	\$6,482,621						

Notes:

- (1) Percentages reflect the recommended porportion of new revenues accrued in 2010 to be spent on each cost category.
- (2) Projected Wetland Mitigation Fee balance on 1-1-08 reflects projected expenditures for remainder of 2009 as well as pending \$549K transfer from CWF Account.
- (3) This account was set up specifically for the HCP. Wildlife agencies must approve disbursements. Projected balance reflects pending \$549k transfer to Wetland account. Upon anticipated closing of Vaquero Farms North in early 2010, available funds in the CWF account will increase by \$2,770,000. See Table II for more information.
- (4) Grant funding total refelcts funding that remains from approved grants. Does not include \$5M grant that has been offered by WCB staff. See Table III for grant funding details.

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 (50% 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 (70% FTE)
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 (50% FTE) and consultants
Technical Support	\$64,320	1	\$64,320	County associate planner (25% 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	

Conservancy Staff Cost Estimates for the 2010 Conservancy Budget

	Current billing rate per hour (fully burdened incl. support staff)	Projected average billing rate 2010 ³	Projected average billing rate 2009	Projected average billing rate 2008	Estimated FTE	Estimated Annual Cost
Principal Planner	\$193	\$193	\$194	\$187	0.70	\$254,120
Senior Planner	\$157	\$161	\$158	\$149	0.70	\$211,534
Associate Planner	\$131	\$135	\$135	\$132	0.25	\$63,345
IT staff			costs included in planner rates		0.10	\$0
GIS staff			costs included in planner rates		0.30	\$0
Accounting staff			costs included in planner rates		0.30	\$0
Secretarial staff			costs included in planner rates		0.70	\$0
Senior management staff			costs included in planner rates		0.10	\$0
TOTAL CONSERVANCY PERSONNEL						\$528,999

Basis for Planner Billing Rates

	Principal Planner		Senior Planner		Associate Planner	
	Portion of billing rate	\$ per hour	Portion of billing rate	\$ per hour	Portion of billing rate	\$ per hour
Salary, retirement and all benefits	41%	\$79	41%	\$66	41%	\$56
Increment to reflect paid time off	11%	\$21	11%	\$18	11%	\$15
Increment for secretarial support	10%	\$19	10%	\$16	10%	\$13
Increment for Department IT, GIS, accounting, management, computers, software, supplies and equipment	26%	\$49	26%	\$41	26%	\$35
Increment for building, power, phones, network, HR, County management	13%	\$24	13%	\$20	13%	\$17
TOTAL	100%	\$193	100%	\$161	100%	\$135

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 Administration¹

Table I-3

	Estimated Costs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for 2010 Conservancy Budget	Cost Estimate Used for 2009 Conservancy Budget	Cost Estimate Used for 2008 Conservancy Budget	Notes
Office Space	\$28,500	\$5,700	\$0	\$0	\$0	costs included in planner rates
Office Equipment by Employee	\$21,750	\$4,350	\$0	\$0	\$0	costs included in planner rates
General Office Equipment	\$38,600	\$7,720	\$0	\$0	\$0	costs included in planner rates
GIS/Database Equipment	\$17,500	\$3,500	\$0	\$0	\$0	costs included in planner rates
Maintenance of General Office Equipment	\$2,275	\$455	\$0	\$0	\$455	costs included in planner rates
Maintenance of GIS Database equipment	\$3,250	\$650	\$0	\$0	\$650	costs included in planner rates
Employees						
Executive Director	\$673,200	\$134,640	\$0	\$0	\$0	Principal planner performs these functions
IT- Database / GIS Manager	\$218,790	\$43,758	\$0	\$0	\$0	Contract planner (below) has some database responsibilities; IT/GIS staff costs included in planner rates
Budget Analyst	\$370,260	\$74,052	\$0	\$0	\$0	Principal planner performs many functions / accountants perform others and their costs are included in planner rates
Acquisition Specialist	\$504,900	\$100,980	\$0	\$0	\$0	Outsourced to EBRPD/others
Grant Specialist / Conservation Planner	\$471,240	\$94,248	\$0	\$0	\$0	Senior planners perform these functions
Admin - Secretary	\$151,470	\$30,294	\$0	\$0	\$0	Secretary costs included in planner rates
Principal Planner	n/a	n/a	\$145,211	\$145,978	\$102,666	Principal planner 40% FTE (position also has budget increments in other categories)
Senior planner	n/a	n/a	\$90,658	\$59,367	\$24,448	Senior planner 30% FTE (position also has budget increments in other categories)
Senior Planner (new)	n/a	n/a	\$0	\$0	\$184,356	Propose not hiring 2nd senior planner for cost-efficiency and flexibility purposes
Employees Subtotal	\$2,389,860	\$477,972	\$235,869	\$205,345	\$311,470	
Travel	\$33,250	\$6,650	\$3,000	\$3,000	\$6,000	
Vehicle / Mileage Allowance	\$5,063	\$1,013	\$3,000	\$3,000	\$1,000	
Insurance	\$187,000	\$37,400	\$20,000	\$25,000	\$35,000	
Legal Assistance	\$150,000	\$30,000	\$45,000	\$50,000	\$50,000	additional legal in land acquisition
Financial Analysis Assistance	\$15,500	\$3,100	\$20,000	\$10,000	\$3,000	including outside audit
JPA Member Meeting Stipend	\$30,000	\$6,000	\$0	\$0	\$0	
In-Lieu funding for Law Enforcement and Firefight	\$17,938	\$3,588	\$0	\$0	\$2,000	
Contractor assistance with program admin.	\$0	\$0	\$60,000	\$60,000	\$60,000	Tech review of permit apps; agency coord & training; general tech support
Contract planner (entry level)	\$0	\$0	\$112,320	\$112,320	\$0	Coordinates take auth. process; manages databases; general supporting role(estimate assumes 60% FTE at \$90 per hour)
Public Relations and Outreach	\$125,000	\$25,000	\$15,000	\$25,000	\$25,000	includes web design and maintenance, publications, document reproduction
TOTAL	\$3,065,486	\$613,097	\$514,189	\$493,665	\$494,575	

Notes:

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

Land Acquisition

Table I-4

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

Land Cost Estimates and Assumptions

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

Due Diligence

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Estimates Used for 2010 Conservancy</i>	<i>Estimates Used for 2009 Conservancy</i>	<i>Estimates Used for 2008 Conservancy</i>
Number of Parcels to be Purchased	42	8.4	12	12	10
Number of Parcels Investigated	53	10.6	14	14	12
Appraisals	\$216,240	\$43,248	n/a	n/a	n/a
Preliminary Title Report	\$27,030	\$5,406	n/a	n/a	n/a
Phase I Site Assessment	\$324,360	\$64,872	n/a	n/a	n/a
Boundary Survey	\$331,197	\$66,239	n/a	n/a	n/a
Legal Description	\$216,240	\$43,248	n/a	n/a	n/a
Monumentation	\$248,146	\$49,629	n/a	n/a	n/a
Land acquisition specialist	\$504,900	\$100,980	n/a	n/a	n/a
Principal planner (0.1 FTE)	n/a	n/a	\$36,303	\$36,495	\$30,667
Proposed Agreement with EBRPD	n/a	n/a	\$100,000	\$100,000	\$90,000
Legal support to land acquisition	n/a	n/a	\$40,000	\$40,000	\$0
Due diligence contingency	n/a	n/a	\$25,000	\$25,000	\$50,000
Due diligence costs with other partners	n/a	n/a	\$25,000	\$25,000	\$45,000
TOTAL	\$1,868,113	\$373,623	\$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>Estimates Used for 2010 Conservancy</i>	<i>Estimates Used for 2009 Conservancy</i>	<i>Estimates Used for 2008 Conservancy</i>
Land cover type surveys	\$166,412.00	\$33,282	\$10,000	\$15,000	\$30,000
Covered Species	\$83,206.00	\$16,641	\$10,000	\$10,000	\$10,000
Covered Plant Surveys	\$665,649.00	\$133,130	\$20,000	\$20,000	\$100,000
Covered Wildlife Surveys	\$194,148.00	\$38,830	\$20,000	\$10,000	\$30,000
Assess & document conservation value	\$0.00	\$0	\$10,000	\$15,000	\$0
Planning Survey Subtotal	\$1,109,415.00	\$221,883	\$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>Estimates Used for 2010 Conservancy Budget</i>	<i>Estimates Used for 2009 Conservancy Budget</i>	<i>Estimates Used for 2008 Conservancy Budget</i>
Number of Parcels Purchased	42	8	12	12	10
Demolition of Old Facilities	\$212,500	\$42,500	\$30,000	\$30,000	\$30,000
Repair of Boundary Fence	\$390,166	\$78,033	\$60,000	\$60,000	\$60,000
Repair and Replacement of Gates	\$170,000	\$34,000	\$30,000	\$30,000	\$30,000
Signs (Boundary, Landmark, ect.)	\$106,250	\$21,250	\$20,000	\$20,000	\$20,000
Other Security (e.g., Boarding up barns)	\$85,000	\$17,000	\$25,000	\$25,000	\$25,000
TOTAL	\$963,915	\$192,783	\$165,000	\$165,000	\$165,000

Management, Restoration, and Recreation Planning and Design

Table I-5

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

Staff

<i>Position</i>	<i>Estimate from HCP</i>	<i>Cost Estimate Used for 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Senior Scientist (HCP estimate)	\$35,904	\$0	\$0		HCP assumed 33% FTE
Project Manager (HCP estimate)	\$33,018	\$0	\$0		HCP assumed 33% FTE
Technical Support (HCP estimate)	\$22,440	\$0	\$0		HCP assumed 33% FTE
Senior planner	\$0	\$60,438	\$89,050	\$48,897	20% FTE
Principal planner	\$0	\$9,076	\$36,495	\$36,800	2.5% FTE
TOTAL FOR CONSERVANCY 2010	\$91,362	\$69,514	\$125,545	\$85,697	

Contractors

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 20089 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Management and Recreation planning	\$750,000	\$150,000	\$80,000	\$60,000	\$100,000	2 preserve mngmnt plans, 2 systemwide plans
Restoration Planning	\$500,000	\$100,000	\$80,000	\$140,000	\$75,000	plan project for 2011
Restoration Design	\$47,013	\$9,403	\$0	\$0	\$75,000	lumped with planning
TOTAL	\$1,297,013	\$259,403	\$160,000	\$200,000	\$250,000	

Habitat Restoration/Creation

Table I-6

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Creation/Restoration Construction	\$2,291,709	\$458,342	\$150,000	\$650,000	\$200,804	see detail below
Office Equipment	\$11,350	\$2,270	\$0	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	factored into contractor rates
Staff	\$456,810	\$91,362	\$39,295	\$77,614	\$53,897	senior planner (10% FTE) & principal planner (2.5% FTE)
Travel	\$13,125	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	\$0	factored into contractor rates
Contractors	\$769,830	\$153,966	\$140,000	\$250,000	\$150,000	see detail below
TOTAL	\$3,625,657	\$725,131	\$331,920	\$980,239	\$407,326	

Cost of Restoration/Creation Construction

	<i>Approximate Acres Restored</i>	<i>Assumed cost per acre</i>	<i>Cost Estimate Used for 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes/Location</i>
Project Type						
Large project (stream, vernal pool, pond, wetland)	5	\$90,000	\$0	\$450,000	n/a	none this year
Small project (riparian / wetland)	1 or 2	\$100,000	\$150,000	\$200,000	n/a	location TBD
TOTAL			\$150,000	\$650,000	\$200,804	

Contractors

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

Environmental Compliance

Table I-7

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
NEPA/CEQA	\$380,000	\$76,000	\$3,000	\$3,000	\$10,000	existing EIS and categorical exemptions keep costs down
CWA 404/401	\$0	\$0	\$10,000	\$20,000	\$10,000	Army Corps permitting
NHPA	\$41,000	\$8,200	\$12,000	\$12,000	\$10,000	
CDFG 1600-1607	\$8,000	\$1,600	\$10,000	\$20,000	\$1,000	streambed alteration agreements
Report on non-covered species	\$0	\$0	\$25,000	\$40,000	\$50,000	streamlines CEQA for HCP users
Staff support to project permits	n/a	n/a	\$0	\$18,247	\$5,000	Principal Planner (0% FTE)
Develop regional wetlands permits	n/a	n/a	\$55,000	\$35,000	\$0	Contractor technical support
Develop regional wetlands permits	n/a	n/a	\$36,303	\$18,247	\$0	Principal Planner (10% FTE)
Mid year budget correction	n/a	n/a	\$0	\$0	\$23,000	
TOTAL	\$429,000	\$85,800	\$151,303	\$166,495	\$109,000	

HCP/NCCP Preserve Management and Maintenance

Table I-8

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Office Equipment	\$31,050	\$6,210	\$0	\$0	\$1,000	too early in the program
Vehicle Purchase	\$221,000	\$44,200	\$0	\$0	\$8,000	too early in the program
Equipment - capital	\$75,000	\$15,000	\$0	\$0	\$3,000	too early in the program
Field Facilities	\$750,000	\$150,000	\$0	\$0	\$70,000	too early in the program
Contractors - Capital	\$225,000	\$45,000	\$40,000	\$45,000	\$45,000	construction, fencing, etc.
Recreation Facilities	\$0	\$0	\$0	\$0	\$0	partners
Preserve Staff	\$1,194,930	\$238,986	\$200,000	\$180,000	\$180,000	cost share with partners
Conservancy staff coordination/oversight	\$0	\$0	\$18,151	\$0	\$0	principal planner (5% FTE)
Maintenance of Office Equipment	\$0	\$0	\$0	\$0	\$0	too early in the program
Travel	\$875	\$175	\$0	\$0	\$100	too early in the program
Vehicle Fuel and Maintenance	\$62,750	\$12,550	\$0	\$0	\$10,000	too early in the program
Equipment - Operational	\$162,500	\$32,500	\$0	\$0	\$25,000	too early in the program
Facilities Maintenance and utilities	\$57,500	\$11,500	\$0	\$0	\$10,000	too early in the program
Water Pumping	\$9,375	\$1,875	\$0	\$0	\$2,000	too early in the program
Contractors- operational	\$402,000	\$80,400	\$40,000	\$50,000	\$50,000	road, pond maintenance, etc.
Recreation - operational	\$0	\$0	\$0	\$0	\$0	partners
TOTAL	\$3,191,980	\$638,396	\$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 2010 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Office Equipment	\$11,350	\$2,270	\$0	\$0	\$0	Factored in contractor rates
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	Factored in contractor rates
Monitoring staff	\$456,810	\$91,362	\$93,565	\$63,345	\$5,000	Associate planner (25% FTE) and senior planner (10% FTE)
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	\$0	Factored in contractor rates
Travel	\$13,125	\$2,625	\$1,000	\$1,000	\$500	
Field Data Collection (Contractors)	\$1,070,700	\$214,140	\$60,000	\$30,000	\$50,000	Specialized monitoring
Directed Research	\$375,000	\$75,000	\$0	\$0	\$1,000	Too early in program
Adaptive Management	\$150,000	\$30,000	\$15,000	\$0	\$10,000	Based on monitoring results
TOTAL	\$2,159,818	\$431,964	\$169,565	\$94,345	\$66,500	

Remedial Measures

Table I-10

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

Contingency Fund

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>
Total cost of program excluding land acquisition	\$14,393,072	\$2,878,614	\$1,697,267	\$2,356,160	\$1,802,823
Contingency Fund	\$719,654	\$143,931	\$84,863	\$117,808	\$90,141
TOTAL		\$143,931	\$84,863	\$117,808	\$90,141

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

CALIFORNIA WILDLIFE FOUNDATION ACCOUNT¹: CURRENT BALANCE AND PROJECTED DEPOSITS AND WITHDRAWALS

Table II

DESCRIPTION	AMOUNT	NOTES
Estimated account balance as of December 31, 2009	\$1,400,000	
Anticipated transfer to Conservancy for wetland expenses	<u>-\$549,457</u>	anticipated early 2010
Anticipated account balance after transfer	\$850,000	
Revenues to be received upon sale of Vaquero Farms North to EBRPD	<u>\$2,770,000</u>	anticipated by about March 2010
Anticipated account balance after sale	\$3,620,000	

Notes:

(1) Fund is managed by the California Wildlife Foundation for the California Department of Fish and Game in order to receive contributions from pre-plan and non-covered activities and disburse funds to the HCP. Fish and Game and U.S. Fish and Wildlife Service must approve disbursements from the Fund.

Grants Awarded for ECC HCP/NCCP Implementation

Table III

<i>Funding Source</i>	<i>Agency</i>	<i>Purpose</i>	<i>Amount</i>	<i>Match</i>	<i>Amount Expended (12/31/09)</i>	<i>Remain (12/31/09)</i>	<i>Match non-federal?</i>	<i>Date Funds Available to Spend</i>	<i>Need to be used by...</i>
Section 6 (2006)	USFW	Acquisition	\$6,531,054	\$7,982,399	\$2,174,000	\$4,357,054	yes	August 2008	January 2010
Section 6 (2007)	USFW	Acquisition	\$7,000,000	\$8,555,600	\$555,000	\$6,445,000	yes	August 2008	June 30, 2010
Section 6 (2008)	USFW	Acquisition	\$6,000,000	\$7,333,333	\$0	\$6,000,000	yes	Aug 2008?	after July 2011
Section 6 (2009)	USFW	Acquisition	\$2,500,000	\$3,055,556	\$0	\$2,500,000	yes	?	after July 2012
CVPIA - HRP	USBR	Acquisition	\$1,241,631	\$500,000	\$1,241,631	\$0	yes	September 2006	September 2010
IRWMP - Prop 50	DWR	Acquisition or restoration	\$750,000	\$500,000	\$0	\$750,000	no	====	June 2012
NCCP Local Assistance Funds (2006)	CDFG	Start-up staffing	\$40,000	\$0	\$40,000	\$0	no	now	June 2008 (has been invoiced)
NCCP Local Assistance Funds (2007)	CDFG	Start-up wetlands restoration	\$60,000	\$120,000	\$45,000	\$15,000	no	now	Dec 2008 (has been invoiced)
NCCP Local Assistance Funds (2008)	CDFG	Wetlands restoration at Souza 2	\$150,000	====	\$120,000	\$30,000	no	spring 09	====
NCCP Local Assistance Funds (2009)	CDFG	Riparian restoraion	\$150,000	====	\$0	\$150,000	no	summer 09	====
Moore Foundation		Acquisition	\$880,000	50% match desired	\$880,000	\$0	no	now	12/31/09
Prop 84 NCCP account	WCB	Acquisition	\$5,000,000	====	\$0	\$5,000,000	no	pledged but frozen	====
TOTAL			\$30,302,685	\$28,046,888	\$5,055,631	\$25,247,054			

Table IV: End of Year Budget Status: Conservancy's 2009 Budget

(includes Conservancy's own accounts, as well as the CWF ECCCHCP/NCCP account, and grant funds disbursed on behalf of the ECCCHC)

	<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 2009 Conservancy Budget¹</i>	<i>Actual Expenditures as of 12/10/09²</i>	<i>Projected Expenditures Remainder 2009</i>	<i>All 2009 Expenditures (Actual plus Projected Expenditures)</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration	\$493,665	\$416,822	\$76,000	\$492,822	\$843	0%
Land Acquisition	\$14,046,495	\$1,862,438	\$3,655,000	\$5,517,438	\$8,529,057	61%
Management, Restoration and Recreation Planning and Design	\$328,170	\$160,562	\$7,500	\$168,062	\$160,108	49%
Habitat Restoration/Creation	\$980,239	\$452,318	\$59,388	\$511,706	\$468,533	48%
Environmental Compliance	\$166,495	\$117,741	\$19,500	\$137,241	\$29,254	18%
HCP/NCCP Preserve Management and Maintenance	\$293,247	\$11,492	\$0	\$11,492	\$281,755	96%
Monitoring, Research, and Adaptive Management	\$94,345	\$33,905	\$12,666	\$46,571	\$47,774	51%
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$117,808	\$0	\$0	\$0	\$117,808	100%
TOTAL EXPENDITURES	\$16,526,464	\$3,055,277	\$3,830,054	\$6,885,331	\$9,641,133	58%
FEE REVENUES IN 2009 (projected through 12/31/09)³				\$1,487,993		
GRANT REVENUES IN 2009 (projected through 12/31/09)				\$5,114,992		
TOTAL REVENUES IN 2009 (projected through 12/31/09)				\$6,602,985		
DIFFERENCE BETWEEN 2009 REVENUES & EXPENDITURES (projected)				-\$282,346		
ESTIMATED FUNDS IN ALL ACCOUNTS, JANUARY 1, 2009⁴				\$2,350,000		
ESTIMATED FUNDS IN ALL ACCOUNTS, DECEMBER 31, 2009⁴				\$2,070,000		

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. Staff costs through the end of October are included. Projections in Column C include these amounts. CWF's expenditure of \$2,770,000 to pay the Vauqero Farms North purchase price is not included because this expenditure was intended to provide bridge financing until the Conservancy's grants could be used to assist EBRPD's purchase of the property from CWF. The expenditure will be reflected in the Conservancy's accounting when this second transaction occurs.

(3) Includes \$49,131 in fees collected for contribution to recovery.

(4) Includes CWF account which is held in trust for the Conservancy but is controlled by the wildlife agencies. Upon anticipated closing of Vaquero Farms North in early 2010, available funds in the CWF account will increase by \$2,770,000.

COST SHARING AGREEMENT

This **COST SHARING AGREEMENT** (the “**Agreement**”), dated January 1, 2010 for reference purposes only, is by and between **EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**, a joint exercise of powers authority (“**Conservancy**”), and **EAST BAY REGIONAL PARK DISTRICT**, a California special district (“**District**”). Hereafter, Conservancy and District are sometimes individually referred to herein as a “**Party**” and are sometimes collectively referred to herein as the “**Parties.**”

Recitals

A. The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, dated October 2006 (“**HCP/NCCP,**” or “**Plan**”), prepared by the East Contra Costa Habitat Conservation Planning Association and approved by United States Fish and Wildlife Service (“**USFWS**”) and by California Department of Fish and Game (“**DFG**”) 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 eastern 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 those species covered by the Plan and their habitats while allowing for the urban development in selected regions of Contra Costa County (“**County**”) and the cities of Pittsburg, Clayton, Oakley, and Brentwood (“**Cities**”).

B. Conservancy is a joint powers authority formed by its members, the County and the Cities, to implement the Plan.

C. District manages more than 98,000 acres of parkland, wilderness, shorelines, preserves and land banks in Alameda and Contra Costa Counties.

D. Conservancy, District, County, Cities, Contra Costa County Flood Control and Water Conservation District, USFWS and DFG have entered into that certain Implementing Agreement, dated January 22, 2007 (the “**Implementing Agreement**”), which defines the roles and responsibilities of the parties to such agreement with regards to implementation of the Plan.

E. The Implementing Agreement contemplates, among other things, Conservancy’s creation of a preserve system through acquisition and dedication in perpetuity of fee and conservation easement interests in lands intended to meet the preservation, conservation, enhancement, and restoration objectives of the “**Conservation Strategy**” of the Plan.

F. Conservancy and District desire to work together to identify, negotiate and execute fee and/or conservation easement acquisitions consistent with the Implementing Agreement, and to share costs and expenses incurred in connection with such joint acquisition activities and efforts, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

1. Joint Projects. Conservancy and District shall cooperate and collaborate in identifying land acquisition opportunities to jointly pursue that are consistent with the Plan and the Implementing Agreement (“**Joint Acquisition Projects**”). The Parties expect that they will identify and pursue five to ten separate Joint Acquisition Projects during the term of this Agreement. The Parties intend and expect that District will take the lead in performing customary pre-acquisition and property due diligence activities reasonably advisable for any Joint Acquisition Project, including, without limitation, preliminary discussions and negotiations with landowners; obtaining and reviewing appraisals, environmental reports, and engineering reports; and obtaining and reviewing preliminary title reports and title documents and identifying and clearing title issues.

2. Shared Costs. Subject to the terms, conditions and procedures set forth below, Conservancy and District shall each share out-of-pocket pre-acquisition and due diligence costs and expenses incurred or to be incurred in connection with the Joint Acquisition Projects and out-of-pocket planning costs and expenses incurred including, without limitation, the following costs and expenses (collectively, the “**Shared Costs**”):

- (a) Appraisal costs and District’s staff expenses related directly to commissioning the appraisal;
- (b) Title costs, including preparation of preliminary title reports, title searches, and clearing title exceptions;
- (c) Phase one environmental site assessments for hazardous materials, and any recommended follow-up environmental testing or clean-up work;
- (d) Engineering and structural integrity studies;
- (e) Water rights searches and assessments, and water quality testing;
- (f) Baseline documentation of natural and cultural resources, as necessary, to support land acquisition;;
- (g) Deposits, earnest money, option consideration and/or extension fees due sellers, to the extent such amounts are approved in advance by the Parties (collectively, “**Approved Deposits**”);
- (h) District’s staff expenses related directly to performing other technical land acquisition duties agreed upon by the Parties;
- (i) Closing costs and escrow fees; and
- (j) Other non-reimbursable, out-of-pocket costs reasonably agreed to by the Parties.

Notwithstanding anything to the contrary in this Agreement, the Shared Costs shall specifically *not* include the Parties’ soft costs consisting of staff time not expressly

described above, any post-acquisition costs or expenses associated with the ownership, operation, management, or maintenance of any property interest acquired by District or Conservancy, as such expenses are anticipated to be the subject of future agreements, except that costs to secure the property may be considered shared costs if reasonably agreed to by the Parties. The Shared Costs shall also not include any pre-acquisition biological surveys required under the Plan, which shall be paid fully by Conservancy.

3. Conservancy's Shared Costs Amount. Conservancy and District estimate that Conservancy's portion of the Shared Costs for the Joint Land Acquisition Projects from the period commencing January 1, 2010 through December 31, 2010 is One Hundred Thousand Dollars (\$100,000) ("**Conservancy's Total Shared Costs**").

4. Payment of Conservancy's Total Shared Costs. Within twenty-five business days of the Effective Date, Conservancy shall forward to District cash in the amount equal to [*Fifty Thousand Dollars (\$50,000)*] and by July 1, 2010, Conservancy shall forward to District cash in the amount equal to [*Fifty Thousand Dollars (\$50,000)*], which payments ("**Conservancy's Estimated Funds**") shall represent Conservancy's advance payment of Conservancy's Estimated 2010 Shared Costs for the 2010 calendar year. District shall be entitled to use Conservancy's Estimated 2009 Funds to pay Conservancy's Estimated Shared Costs during the term of this Agreement.

District shall directly fund District's portion of the Shared Costs incurred by District for the Joint Acquisition Projects from the period commencing January 1, 2010 through December 31, 2010. If the number of Joint Acquisition Projects far exceeds the number expected, as detailed above, the Parties shall meet and confer to discuss increasing the amount of the Conservancy's Total Shared Costs; provided, however, Conservancy will not be required to fund any Shared Costs in excess of the Conservancy's Total Shared Costs identified herein unless and until Conservancy and District agree in writing on a revised cost estimate that reflects such increase in the number of Joint Acquisition Projects and a schedule for additional payments due from Conservancy to District in connection with such revised cost estimate.

5. Reporting. Within 30 days of a request by Conservancy, District shall provide to Conservancy copies of all reports, documents, analysis and evaluations obtained or generated by District with respect to the Joint Acquisition Projects and paid for by any Conservancy Funds. District and Conservancy shall meet and confer regularly, at least on a monthly basis, to discuss the status and results of District's pre-acquisition and due diligence activities and efforts for the Joint Acquisition Projects, and the appropriate future direction and next steps for such Joint Acquisition Projects as relates to the Plan and the Implementing Agreement.

6. Accounting. On or before November 30, 2010, District shall deliver to Conservancy a preliminary written accounting estimating all Shared Costs actually incurred as of that date for use in discussing cost share arrangements for future years. On or before March 1, 2011, District shall deliver to Conservancy the following: (a) a

preliminary written accounting detailing all Shared Costs actually incurred and paid by District during the term of the Agreement for each Acquisition Project, Conservancy's portion of such Shared Costs, and all Conservancy Funds used to pay such Shared Costs; and (b) cash in the amount equal to the difference, if any, between the Conservancy Funds and the Total Conservancy Shared Costs.

7. Term. The term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2010

8. Notices. Any notice, demand, request, consent or approval that either Party desires or is required to give to the other Party under this Agreement shall be in writing and shall be sent to the following relevant address:

If to Conservancy:

East Contra Costa County Habitat
Conservancy
651 Pine Street
North Wing, 4th Floor
Martinez, CA 94553
Attention: John Kopchik
Facsimile: (925) 335-1299

If to District:

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
Attention: Nancy Wenninger
Facsimile: (510) 569-1417

9. Miscellaneous Provisions.

(a) Effective Date. The Parties' rights and obligations set forth in this Agreement shall be effective (the "**Effective Date**") the first date upon which both Parties shall have executed this Agreement.

(b) Counterparts. This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

(c) Successors and Assigns. This Agreement may not be assigned, in full or in part, by either Party without the prior written consent of the other Party. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and assigns.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the agreements set forth herein and supersedes any and all prior written and oral understandings relating thereto. Any representations,

amendments or modifications concerning this Agreement shall be of no force or effect unless confirmed in a writing signed by the Parties.

(e) **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under, the internal laws of the State of California.

(f) **Drafting.** Each of the Parties hereto acknowledge that such Party and its counsel have reviewed, revised (where it was deemed appropriate), and approved this Agreement, and that no rule of construction that ambiguities are to be resolved against the drafting Party shall be employed in the interpretation of this Agreement.

(g) **Invalidity.** If any provision of this Agreement or the application thereof to any person(s) or circumstance(s) shall to any extent be held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, and provided that the essential agreement of the Parties to this Agreement is not materially altered as a result of such holding: (i) neither the remainder of this Agreement nor the application of such provision to any person(s) or circumstance(s), other than those as to whom or which it is held to be invalid or unenforceable, shall be affected thereby; (ii) this Agreement shall be construed as though such invalid, illegal or unenforceable provision had never been contained in this Agreement; and (iii) every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision is so stricken from this Agreement, the Parties agree to negotiate in good faith any modifications that may be required to effectuate the intent of this Agreement.

(h) **Performance and Waiver.** Time is of the essence in the performance of each of the obligations of the Parties under this Agreement, but no failure of a Party to this Agreement to insist upon the timely performance of any obligation by another Party shall constitute a waiver of the right to require performance of such obligation, or act as a waiver of the right to require the performance of any other obligation of such Party (or any other party).

(i) **Attorneys' Fees.** In the event of any litigation or arbitration between the Parties to this Agreement in connection with the interpretation of this Agreement, or the enforcement of any right or obligation under this Agreement, the Party prevailing in such litigation or arbitration shall be entitled to payment by the other Party of the court costs and reasonable attorneys' fees and expenses incurred by the prevailing Party in connection with such litigation or arbitration (whether incurred at the trial, appellate, or administrative level), in such amount as the court or administration body may judge reasonable, all of which may be incorporated into and be a part of any judgment or decision rendered in such litigation or arbitration.

(j) **Due Authorization.** Each Party represents and warrants to the other Party as to the following: (1) such Party's 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, shall be necessary in order to enable such party to enter into this Agreement and comply with the terms hereof; and

(3) the person executing this Agreement on behalf of such party has all requisite power and authority to legally bind such Party.

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the Effective Date.

CONSERVANCY:

EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY, a joint
exercise of powers authority

Date: _____

By: _____

Name: John Kopchik

Title: Executive Director

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special district

Date: _____

By: _____

Name: Pat O'Brien

Title: General Manager