EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

SPECIAL MEETING

Wednesday, October 19, 2011
12:00 p.m.

City of Pittsburg
City Hall, Ante Chamber Room, Third Floor
(behind the City Council Chambers)
65 Civic Avenue, Pittsburg, CA 94565

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

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

4) **Consider APPROVING Resolutions No: 2011-04, 2011-05 and 2011-06 related to Conservancy grant applications which AUTHORIZE Conservancy staff to:**
   i. **Submit grant applications to the California Department of Fish and Game (CDFG) for the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (total request: $165,000); and**
   ii. **Enter into grant agreements to accept such grant funds as are approved by CDFG**.

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

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: October 19, 2011

TO: Governing Board

FROM: Conservancy Staff

SUBJECT: Assistance with Acquisition of Vaquero Farms Central, Affinito, Moss Rock, Galvin and Fan Properties by East Bay Regional Park District

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RECOMMENDATION

AUTHORIZE Executive Director to execute Funding Agreements with the East Bay Regional Park District ("EBRPD"), one or more grant and subgrant agreements with the California Wildlife Conservation Board (WCB) for state and federal funds, and a grant agreement with the Gordon and Betty Moore Foundation (GBMF), for acquisition of the following five properties:

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

DISCUSSION

Overview of Properties and Potential Acquisition:

The Vaquero Farms Central, Affinito, Moss Rock, Galvin and Fan properties (individually *Property*, collectively *Properties*) total 540.4 acres and are located throughout the inventory area. A map showing the locations of all five Properties is the first attachment. Additional maps as well as photos showing the Properties are provided in the attached Pre-Acquisition Assessment for each Property.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: October 19, 2011 APPROVED AS RECOMMENDED: ___
OTHER_____

VOTE OF BOARD MEMBERS
___UNANIMOUS
AYES: _____
NOES:_____
ABSENT: _____
ABSTAIN:_____

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

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

BY:_____, DEPUTY

East Bay Regional Park District (EBRPD) and the sellers of each of the Property have reached agreement on the purchase of each Property. An appraisal was commissioned for each Property according to federal appraisal standards. As determined buy these appraisals, the fair market value of each Property is:

- $2,400,000 for Vaquero Farms Central (319.93 acres);
- $2,235,000 for Affinito (116.49 acres).
- $410,000 for Moss Rock (20.49 acres);
- $370,000 for Galvin (61.68 acres); and
- $220,000 for Fan (21.00 acres);

EBRPD's purchase of these properties is contingent on support from the Conservancy.

Funding Plan: The detailed funding plan for acquiring the Properties is provided in Tables 1 and 2, below. The federal funds have been awarded previously but specific approval for use on the Properties is required from WCB and U.S. Fish and Wildlife Service and depends on Conservancy Board approval. EBRPD is proposing the funding levels described below to the EBRPD Board. The grant of WCB state funds requires approval by the WCB. GBMF invited an application for $1,300,000 and Conservancy staff has been working with GBMF to prepare and finalize the application.

Table 1. Funding Plan for Purchase of Each Property

Source	Vaquero Farms Central	Affinito	Moss Rock	Galvin	Fan	Total
EBRPD	$ 240,000	$ 223,500	$ 41,000	$ 37,000	$ 22,000	$ 563,500
Federal Section 6 Grant	$1,080,000	$1,005,750	$184,500	$166,500	$ 99,000	$2,535,750
GBMF	$ 850,000	$ -	$184,500	$166,500	$ 99,000	$1,300,000
WCB (state funds)	$ 230,000	$1,005,750	$ -	$ -	$ -	$1,235,750
Total	**$2,400,000**	**$2,235,000**	**$410,000**	**$370,000**	**$220,000**	**$5,635,000**

Table 2. Funding Plan and Match Funding Plan by Source

Appraised value	$5,635,000
Proposed purchase price	**$5,635,000**
Funding sources and amounts:	
2008 Federal Section 6 Grant (45% of appraised value)	$1,455,750
2010 Federal Section 6 Grant (45% of appraised value) (for VF Central)	$1,080,000
Subtotal, Federal Section 6	$2,535,750
EBRPD (10%)	$563,500
GBMF (45% for three Properties, remainder for VFC)	$1,300,000
WCB Proposition 84 (for Affinito and VF Central remainder)	$1,235,750
TOTAL	**$5,635,000**

Required Non-federal match for federal grant (55%)	$3,099,250
Sources of match:	
EBRPD	$563,500
GBMF	$1,300,000
WCB Proposition 84	$1,235,750
TOTAL	$3,099,250

The following criteria shaped the funding plan:

a) Maximize use of the Conservancy's Federal Section 6 grants because these approved grants have a 3-year expenditure window. The 2008 grant will be the next to expire (expires in May 2012). Use of 2008 funds should be the first used when possible. The Vaquero Farms Central property is not within the service area of the 2008 grant or the 2009 grant, so 2010 federal Section 6 funds are proposed for that property. The Conservancy's Section 6 grants require a 55% non federal match and would therefore be used to cover 45% of the purchase price for the Properties.
b) Request that WCB (state funds) contribute up to 45% of the acquisition cost for the Affinito Property, and fill in the remaining funding gap for Vaquero Farms Central after funds are contributed by Section 6, EBRPD, and GBMF. WCBs funds are reserved for NCCPs but are competitive state wide and should be pursued when available. Cash from prior bond sales is nearly depleted. WCB is tentatively reserving funds for Affinito and it is hoped an additional $230,000 can be allocated to VF Central.
c) Utilize a requested grant of $1,300,000 from the Gordon and Betty Moore Foundation (GBMF). GBMF Funds would provide 45% of the funding needed for Fan, Galvin, and Moss Rock, with the remainder of the grant going to the acquisition of Vaquero Farms Central. GBMF funds will not be used to purchase Affinito
d) Request that EBRPD contribute 10% of the acquisition costs for all Properties. We expect EBRPD would use Measure WW funds for this. Such funds are not in danger of expiring and are allocated by park unit.
e) No Conservancy funds be used. Such funds are very limited and may not be able to count as match for the Section 6 grants.

Would Acquisition of the Property Help the Conservancy Achieve the Conservation Goals of the HCP/NCCP? Yes. Conservancy staff prepared Pre-Acquisition Assessments of the Properties to examine and document the biological resources on each Property and to assess the ability of each Property to meet the conservation requirements of the HCP/NCCP. The following excerpts from the Pre-Acquisition Assessment reports provide a summary of each Property (the full reports are attached). Table 3 provides a summary of the collective acres of land cover that would be protected by these acquisitions.

Vaquero Farms Central

The Vaquero Farms Central Property is 319.9 acres located in the southeast corner of the inventory area. The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 5a). The Property is mainly annual grassland (219.3 acres and 69% of the site) with substantial alkali

grassland (85.3 acres and 27% of the site) in the valley floor areas. It also supports approximately 0.5 acre of pond and alkali wetland each. A critical feature of this Property is that it fills in a conservation gap between two Preserve System properties: Vaquero Farms North and Vaquero Farms South.

The Property is located in the Frisk Creek watershed and includes 2.2 miles (11,827 feet) of intermittent and ephemeral stream, including a portion of the main stem of Frisk Creek. A band of rock outcrop formations are located along the northern edge of the site that provide raptor perching and foraging opportunities (small rodents often burrow under rock formations). The Property includes a relative large ranch headquarters area. The area and the facilities may be useful for future operations and management of properties acquired in this area.

Vaquero Farms Central is an important acquisition because it fills a conservation "hole" between two other Preserve System properties. It also provides a critical contribution toward reaching the 16,500 acres of annual grassland preservation required by the Plan.

Affinito

The Affinito Property consists of six parcels totaling 116 acres. The Property is located on Kirker Pass Road in the northwest portion of the inventory area, approximately half-way between Clayton and Pittsburg. The site supports annual grassland (41.1%), oak savanna (21.4%), and oak woodland (31.0%). It also supports approximately 1.8 acres of alkali grassland and 3.0 acres of riparian. Two first order intermittent streams (0.8 miles or 4,144 feet) flow north across the property between these hills and exit the property at the north boundary. The site's relatively lush character is unique for the area.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 1c). Zone 1 (8,613 acres) was created to encompass all the undeveloped and unprotected lands with potential conservation value in the northwest corner of the inventory area. Acquisition in this zone is intended to support an important connection from Black Diamond Mines Regional Preserve to Detachment Concord. Species that utilize the annual grassland and/or oak savanna that characterize this zone include golden eagle, California tiger salamander, and California red-legged frog. A number of structures are located along the entrance to the Property, including an older house that may have historical value, and several of these could serve a preserve management or public recreation/interpretive function. The sellers have agreed to gift $150,000 to EBRPD to help maintain the older house.

Affinito is an important acquisition as it expands the block of land protected by the Land Waste Management acquisition and contributes to a key linkage between Detachment Concord and Black Diamond Mines Regional Preserve.

Moss Rock

The Moss Rock Property is 20.49 acres located southeast of the city of Clayton along the southern line of Morgan Territory Road. The property is heavily wooded with various trees and shrubs; almost the entire site is mapped as oak woodland (96.3% of the Property). A

short reach of Marsh Creek (163 feet) crosses the property on the northern border, at the western edge of the site. The Property fills in a conservation gap between the Schwartz acquisition and Mount Diablo State Park. Moss Rock is currently owned by Save Mount Diablo, a conservation organization that often serves a middle-man role between private property owners and public land conservation organizations.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 4h). Zone 4 (14,338 acres) was designed to incorporate the area at the highest elevations of Mount Diablo foothills not in public ownership. Land acquisition in the Upper Marsh Creek Sub-basin will be focused in Sub-zones 4a and 4h to help to achieve goals for preservation of core and movement habitat for Alameda whipsnake. Protection of Marsh Creek will also support habitat for foothill yellow-legged frog, California tiger salamander, and California red-legged frog, as well as create important linkages between existing open space and expand protection of the headwaters of Marsh Creek.

Moss Rock is an important acquisition because it connects the Schwartz acquisition to Mount Diablo State Park and avoids a developed in-holding in the middle of park land.

<u>Galvin</u>
The Galvin Property is 61.68 acres located southeast of the city of Clayton on the east side of Morgan Territory Road. It is bound to the east by Morgan Territory Ranch (a one-square mile private property encumbered by a conservation easement), to the west by Morgan Territory Road, and by private property to the north and south. The Property is mostly oak woodland (219.3 acres, 65.7% of the site) with 14.8 acres of chaparral/scrub, 3.2 acres of annual grassland, and 2.6 acres of oak savanna. Acquisition of Galvin provides a building block for expanding the landscape linkage along the southwest border of the inventory area. Galvin is currently owned by Save Mount Diablo, a conservation organization that often serves a middle-man role between private property owners and public land conservation organizations.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 4h). Land acquisition in the Upper Marsh Creek Subbasin is focused in Sub-zones 4a and 4h to help to achieve goals for preservation of core and movement habitat for Alameda whipsnake. Protection of Marsh Creek will also support foothill yellow-legged frog, California tiger salamander, and California red-legged frog, as well as create important linkages between existing open space and expand protection of the headwaters of Marsh Creek.

This site is an important acquisition and would contribute to better connecting between Mount Diablo State Park and the block of conserved lands around Los Vaqueors reservoir, as required by the HCP/NCCP.

<u>Fan</u>
The Fan Property (Property) is located in the approximate center of the HCP/NCCP inventory area, north of Briones Valley Road and west of Deer Valley Road. The Property

adjoins EBRPD's/Conservancy's Fox Ridge acquisition to the south. The Evergreen properties to the west are in the process of being acquired by CCWD as mitigation for expansion of the Los Vaqueros Reservoir. The Property supports 18.1 acres of annual grassland and 2.9 acres of oak savanna. The acquisition of Fan would provide a building block for a landscape linkage between Black Diamond Mines and State Park's Cowell Ranch Property.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis subzone 2e). Zone 2 (14,583 acres) was created to encompass the area dominated by annual grassland (31% of all annual grassland across all acquisition zones) with oak savanna and oak woodland land cover types in the lower elevations of the center of the inventory area.

The Conservancy is required to acquire at least 2,400 acres of annual grassland within Subzones 2e, 2f, and 2h (3.75 square miles) to preserve habitat for California red-legged frog, California tiger salamander, western pond turtle, foothill yellow-legged frog, and big tarplant, as well as a continuous band of San Joaquin kit fox modeled suitable core or low-use habitat between Cowell Ranch State Park and Black Diamond Mines Regional Preserve. The Property lies within these targeted sub-zones.

Fan is a key acquisition for the Conservancy because it helps to close the gap between Cowell Ranch State Park and Black Diamond Mines Regional Preserve, a critical wildlife linkage that must be conserved under the Plan.

Table 3. Summary of Land Covers Type of Properties

Land Cover Type (acres)	**Vaquero Farms Central**	**Affinito**	**Moss Rock**	**Galvin**	**Fan**	**Total Proposed Acquisition (acres)**	**Land Acquisition Requirements (acres)**	**Percent of Land Acquisition Requirements**
Annual grassland	219.3	48.2		3.3	18.1	288.9	16,500	1.8%
Alkali grassland	85.2	1.8				87.0	1,250	7.0%
Rock outcrop	2.0					2.0	N/A	
Chaparral/scrub				15.2		15.2	550	2.8%
Oak savanna		25.1		2.6	2.9	30.7	500	6.1%
Oak woodland		36.4	19.7	40.5		96.6	400	24.1%
Riparian		3.0				3.0	70	4.2%
Ruderal	2.6		0.8			3.4	N/A	
Urban	9.9	2.9				12.8	N/A	
subtotal terrestrial	*319.0*	*117.4*	*20.5*	*61.6*	*21.0*	*539.5*		
Alkali wetland	0.4					0.4	93	0.5%
Pond	0.5					0.5	16	3.2%
subtotal water	*0.9*	*0.0*	*0.0*	*0.0*	*0.0*	*0.9*	*0.9*	
Total Land Cover	**319.9**	**117.4**	**20.5**	**61.6**	**21.0**	**540.4**		
Perennial stream			165.0	479.0		644.0	4,224	15.2%
Intermittent stream	5,879.5	4,144.0				10,023.5	2,112	474.6%
Ephemeral stream	5,947.5			404.0		6,351.5	26,400	24.1%
Total Streams (feet)	**11,827.0**	**4,144.0**	**165.0**	**883.0**	**0.0**	**17,019.0**	**32,736.0**	

Because these acquisitions would help achieve the HCP/NCCP land acquisition requirements for annual grassland, alkali grassland, chaparral/scrub, oak savanna, oak woodland, alkali wetlands, and streams; protect the headwaters of three stream systems (Marsh Creek, Frisk Creek, and Kirker Creek watersheds); help achieve the specific HCP/NCCP requirement for Sub-zones 1c, 2e, 4h, and 5a; provide suitable habitat for several covered species; and significantly add to the corridor between Cowell Ranch/Los Vaqueros in the east and Black Diamond Mines Regional Preserve and the Concord Naval Weapons Station (outside the inventory area) in the west, and to the connection between Morgan Territory Ranch and Mount Diablo State Park, staff finds that acquisition of the Properties will substantially help the Conservancy to achieve the conservation goals of the HCP/NCCP.

Deadline: The various parties involved in these Properties are hoping transactions can close by December 31, 2011. The specific deadlines vary, but with the exception of the Fan property which must close in 2011, the other properties have a deadline in March or April 2012 to allow a cushion. The principal timing constraints will be the timing of the Conservancy's federal and state funds.

Conservancy costs and funding sources: The Conservancy's total out-of-pocket contribution to the acquisition would be $0. The Conservancy would arrange for grant funds to cover approximately $5,071,500.

Future Conservancy actions: The Board would need to approve Management Plans that cover the Properties and funding agreements for management.

Agreements: The Funding Agreement with EBRPD and the federal Subgrant Agreement with WCB needed for each Property would follow the general form shown in the attached templates, with funding amounts matching the Funding Plan described above. For state funds, a standard WCB grant agreement in the general form of the attached template would need to be executed for the purchases receiving state funds, in amounts consistent with the Funding Plan described above (Vaquero Farms Central and Affinito). To receive GBMF funds a grant agreement covering all four properties to be funded with such funds would need to be executed. While no template is available at this time, the GBMF agreement would be in the general form of the previously executed GBMF grant agreement for Souza 3 (attached).

Reasons for recommendation: Staff recommends the purchase of the Properties for the following reasons:

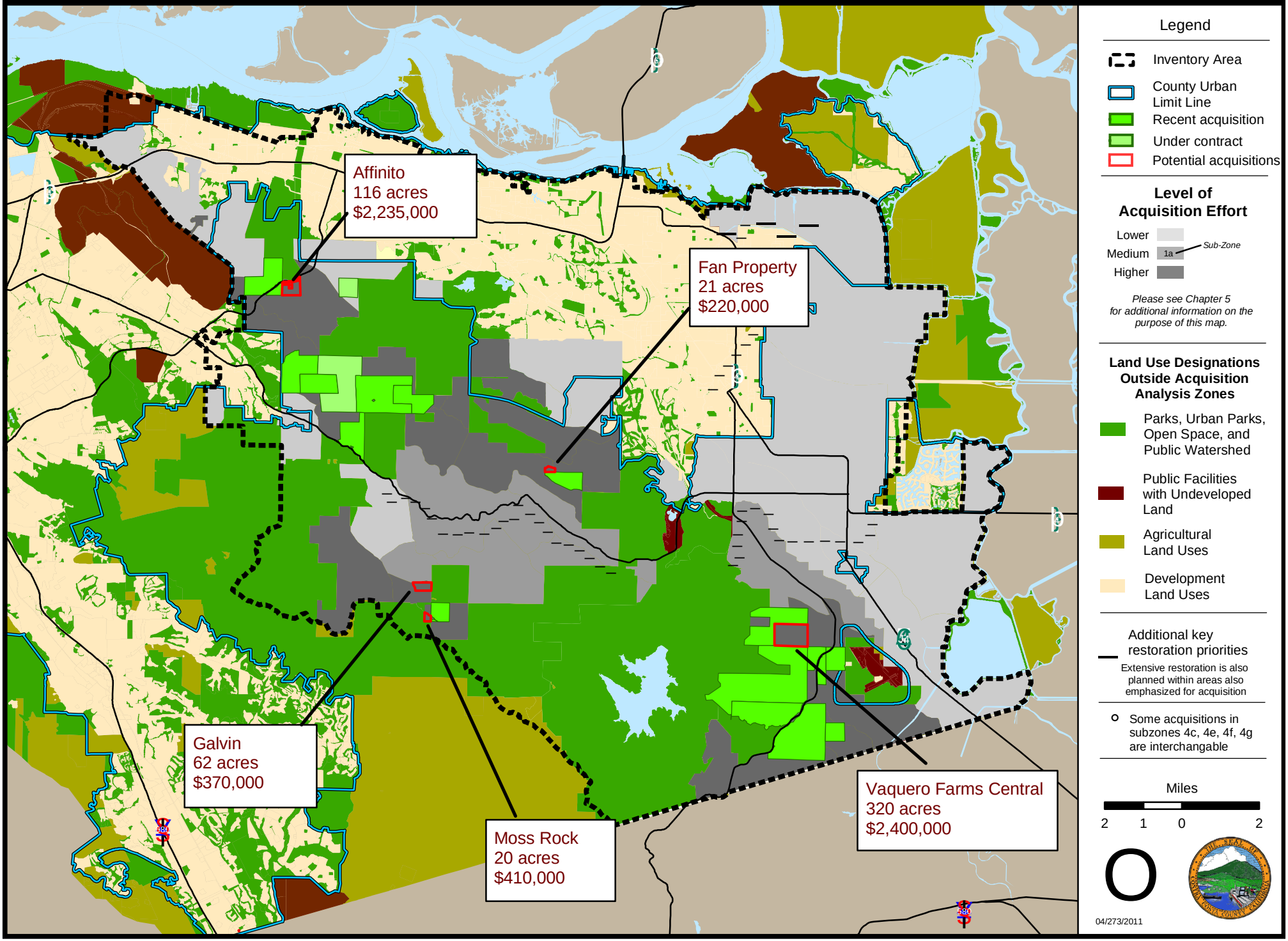
- The Properties have demonstrated willing sellers. Land acquisition under the HCP/NCCP is on a willing seller basis and must seize opportunities when presented.
- The Properties are all in high priority acquisition sub-zones and their preservation would help the Conservancy meet a number of the more challenging land acquisition requirements of the HCP/NCCP, including requirements for preservation of annual and alkali grasslands, chaparral/scrub, oak savanna and streams.
- Two of the Properties contain headwaters for Marsh Creek, one Property contains headwaters for Frisk Creek, and one property contains headwaters for Kirker Creek.

- The Properties are located in areas that are eligible for funding from the Conservancy's approved federal Section 6 grants. The Properties are also in an area that WCB has previously identified as a high priority for granting state funds.
- The Properties are located in the Mount Diablo landscape, an area targeted by the GBMF as one of the ecologically important and sustainable priority areas in the San Francisco Bay Area. Therefore, matching funds in the form of a grant from GBMF are available for acquisition of four of these sites.
- The HCP/NCCP conservation requirements have a time element and all of the grant funds secured have a deadline for expenditure. The Conservancy shouldn't rush into acquisitions or choose speed over quality, but when presented with affordable opportunities to acquire lands that contribute to HCP/NCCP conservation requirements, staff believes it is prudent for the Conservancy to act affirmatively.

Attachments:

- Map showing relative location of all five properties
- Pre-Acquisition Assessments for Vaquero Farms Central, Affinito, Moss Rock, Galvin, and Fan
- Templates of EBRPD Funding Agreement, WCB Subgrant Agreement (federal), WCB Grant Agreement (state) and GBMF Agreement (the agreement for Souza 3 is included).

Proposed Acquisitions and Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Pre-Acquisition Assessment
East Contra Costa County HCP/NCCP Preserve System

SITE IDENTIFICATION

Site Name: Vaquero Farms Central

Site Address/location: 15500 Vasco Road, Byron, Contra Costa County, CA

Property APN(s) #: APN 005-130-005

Size of Parcel(s): 319.93 acres

Survey Overview: The pre-acquisition assessment on potential preserve lands evaluates whether these lands will meet the requirements of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The assessment includes the location, quantity, quality, and types of habitats and natural communities on the site, as well as other site conditions and infrastructure that would support or conflict with the Preserve System's biological goals and objectives. This survey will help the East Contra Costa County Habitat Conservancy prioritize acquisition of preserve lands based on the lands' relative contribution to meeting the biological goals and objectives.

Photo-documentation: Photographs of landscape features and other aspects of the site are attached as Appendix A.

Figures: The following figures are attached as Appendix B.

- Regional Context (Figure 1)
- Consistency with HCP/NCCP Acquisition Priorities (Figure 2)
- Ortho Photo of Parcel (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4)
- Ownership of Adjacent Property (Figure 5)

Template prepared by the
ECCC Habitat Conservancy

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LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

I. Overview and Regional Context (Figures 1, 2 and 3)

The Vaquero Farms Central Property (Property) is 319.9 acres located in the southeast corner of the inventory area. It is bound to the north and west by Vaquero Farms North and to the south by Vaquero Farms South, both of which were recently acquired as part of the HCP/NCCP Preserve System. The Property is bound by privately held lands to the east. The Property is mainly annual grassland (219.3 acres and 69% of the site) with substantial alkali grassland (85.3 acres and 27% of the site) in the valley floor areas. It also supports approximately 0.5 acre of pond and alkali wetland each. A critical feature of this Property is that it fills in a conservation gap between two Preserve System properties: Vaquero Farms North and Vaquero Farms South.

The Property is located in the Frisk Creek watershed and includes 2.2 miles (11,827 feet) of intermittent and ephemeral stream, including more than a mile (5,880 feet) of the main stem of Frisk Creek, which traverses the property from west to east The Property contains a broad valley and two minor valleys surrounded by moderately sloping hills, with elevations ranging from 100 feet to 380 feet. A band of rock outcrop formations are located along the northern edge of the site and provide raptor perching and foraging opportunities (small rodents often burrow under rock formations).

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 5a). Zone 5 (13,156 acres in the Byron Hills) comprises all the unprotected lands dominated by annual grassland and alkali grassland between the Los Vaqueros Watershed lands and the Alameda/Contra Costa County line. Grasslands in this acquisition zone support several of the HCP/NCCP's covered species including California tiger salamander, California red-legged frog, golden eagle, and western burrowing owl, and provide suitable habitat for many more including fairy shrimp, and alkali-dependent covered plants. The goal of acquisition in Zone 5 is to create a continuous habitat connection at least 1 mile wide linking the conservation areas surrounding the Byron Airport with the Los Vaqueros Watershed lands. This goal is targeted at conserving movement routes between known breeding sites and core breeding habitat for San Joaquin kit fox.

Vaquero Farms Central is an important acquisition because it fills a conservation "hole" between two other Preserve System properties. It also provides a critical contribution toward reaching the 16,500 acres of annual grassland preservation required by the Plan. A number of covered species are known to occur on the property (e.g., golden eagle, western burrowing owl, tri-colored blackbird) and a number of other species are likely to occur given the presence of suitable habitat (e.g. California red-legged frog, California tiger salamander, fairy shrimp species, and covered plant species associated with grassland and alkali grassland).

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	***Area (acres)***
Terrestrial Land Cover Types	
Annual grassland	219.3
Alkali grassland	85.2
Rock outcrop	2.0
Ruderal	2.6
Urban	9.9
Total area of terrestrial land cover	***319.0***
Aquatic Land Cover Types	
Alkali wetland	0.4

Pond	0.5
Total area of aquatic land cover	***0.9***

III. Streams (Figure 4)

Stream	***Length (linear feet)***
Intermittent stream	5,879.5
Ephemeral stream	5,947.5
Total streams (linear feet)	***11,827.0***

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc)	***Distance from Site (miles)***	***General description of development and influence on site.***
On-site rural development	On site.	The site contains a residence, operations yard, and livestock facility. On-site development may be used, if needed, to support management of the Byron Hills Preserves. Because it will be acquired along with the remainder of the site, use of these facilities will be under the control of the Conservancy and EBRPD and would be used consistent with the requirements of the HCP/NCCP. This development is not expected to affect natural lands on the site, and may present some opportunities for restoration. In its the current developed state, this area does not count toward any conservation requirements. The Property also contains a well, a pump, and a ridgeline tank for cattle watering.
Rural development	The town of Byron (Byron Highway at Camino Diablo Road) is approximately 2.5 miles away as the crow flies.	Byron is an unincorporated town, characterized by pockets of rural development surrounded by cultivated agriculture. Byron does not have any direct influence on the Property.
Wind turbine	The site is located 800 feet from the closest wind turbine.	The Northwind Wind Farm is situated immediately to the south of the site. The wind farm probably impacts avian species in the vicinity but does not have any direct influence on land uses on the Property.
Quarry	Approximately 0.5 mile.	The Unimin Byron Plant (1,649 acres), a sand quarry, is located just north of Vaquero Farms North, but has approved plans to expand east of Vasco Road, approximately one mile from the Property boundary. The quarry and the proposed expansion are not anticipated to have a direct effect on the Property. 386 acres of the quarry are managed for wildlife and to control invasive plant species. Ponds within the quarry support breeding habitat for tri-colored blackbird, an HCP/NCCP covered species, and tri-colored blackbird have been seen foraging on the Property.

V. Requirements in Specific Acquisition Analysis Zones and Sub-Zones

The site occurs in Conservation Analysis Zone(s) (see HCP/NCCP Chapter 5, Figure 5-1):

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☑5 ☐ 6

Contribution to Acquisition Analysis Zone Requirements under Maximum Urban Development Area Scenario

Sub-Zone Requirement	*Total Requirement*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Zone 5 total area	9,040	307.4	3.4%
Annual Grassland in Sub-zone 5a/5b/5d	7,100	219.3	3.1%
Alkali Grassland in Zone 5	900	85.3	9.5%
Alkali Wetland in Zone 5	40	0.4	1.1%

Contribution to Overall Terrestrial Land Cover Acquisition Requirements under Maximum Urban Development Area Scenario

Land-Cover Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Annual Grassland	16,500	219.3	1.3%
Preserve-wide Alkali Grassland	1,250	85.3	6.8%

Contribution to Overall Estimated Aquatic Acquisition Requirements under Maximum Urban Development Area Scenario

Jurisdictional Wetland and Waters Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Alkali Wetland	93	0.4	0.5%
Preserve-wide Pond	19	0.5	2.7%
Preserve-wide Intermittent stream (feet)	2,112	5,879.5	278.4%
Preserve-wide Ephemeral stream (feet)	26,400	5,947.5	22.5%

VI. Site Conformance with Preserve Design Principles

The following is a subset[1] of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or

[1] The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.
- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).
- **Buffers urban impacts**: site includes buffer land within its boundaries that could minimize indirect effects from urban development.
- **Minimizes edge effects:** site shares a minimum amount of edge (i.e., should have the greatest possible area-to-perimeter ratio) with nonpreserve land, especially urban development. Preserves with low area-to-perimeter ratios may be appropriate to protect linear features with high biological value, such as streams, riparian woodland, valley bottoms, or ridgelines essential to wildlife movement.
- **Fully represents environmental gradients:** includes or connects to open space/parks with a range of environmental gradients, such as topography, elevation, soil types, geologic substrates, slopes, and aspects.
- **Watershed protection:** site contributes to the protection of watersheds, subwatersheds, and headwater streams that are not already in protected status.
- **Management considerations:** desired management treatments such as livestock grazing, prescribed burning, exotic species control, and restoration should be feasible on site.

Property's size (~320 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use.

The Property is adjacent on three sides to two other large Preserve System properties (Vaquero Farms North and Vaquero Farms South) and fills in a conservation gap between these two properties.

The Property does not abut any urban uses.

Acquisition of the Property will reduce Preserve System edge by approximately 8,400 feet (1.6 miles).

The Property is dominated by a series of broad valleys and moderately sloping hills. Soils types range from silty clay loam to alkali, and include a band of rock outcrop formations along the northern edge of the site that provide raptor perching and foraging opportunities (small rodents often seek refuge in or burrow under rock formations). The site mainly supports annual grassland. Alkali grassland is present in the valley bottoms where soil characteristics are predominantly alkaline. Freshwater marsh and seep vegetation is present in stock ponds and also in valley bottoms.

There are five defined seasonal streams that run across the valley floor from west to east. These channels are part of the Frisk Creek watershed, including the mainstem of Frisk Creek. Acquisition would protect an additional 2.2 miles of intermittent and ephemeral streams in the inventory area. Due to extensive grazing on the site, many of the aquatic resources have been degraded and present opportunities for restoration or enhancement. The property includes the southern half of a large pond that is also partially on the Vaquero Farms North Property. The pond berm has partially failed and the feature presents a restoration opportunity.

Based on what is known about the surrounding Preserve parcels, the Property provides suitable breeding and foraging habitat for a number of special-status species. Golden eagles have been observed foraging on site and perching on rock outcrops. Western burrowing owls are relatively abundant on the site. Tri-colored blackbirds have been observed on the Property. Ponds and other water features may support

California tiger salamander, California red-legged frog and fairy shrimp species. Suitable habitat for several covered plants is present. As such, the site will be managed to support these species. Moderate grazing will likely be used to manage vegetation height and exotic plant species.

BUILT FEATURES AND SITE CONSTRAINTS

I. Describe evidence in the field of current and past land uses on the site (e.g., grazing; grading, earthwork, and construction; infrastructure; industry; etc.) and locate on the aerial:

The predominant site use has been cattle grazing.

The Property has an easement (width of 150 feet) in favor of PG&E for a line of towers for electrical transmission and distribution and incidental purposes. This easement bisects the southwestern corner of the Property in a northwesterly to southeasterly direction.

The Property also has a lease in favor of Tres Vaqueros Wind Farms, LLC that would enable the lessee to construct certain support facilities for a neighboring wind farm. The lessee has not exercised any of the rights conveyed by the lease. Under the lease, Tres Vaqueros Wind Farms, LLC is not permitted to place or allow another entity to place Wind Turbine Generators (WTG) on any portion of the Property. The lease does permit the lessee to construct certain facilities in support of wind farm development on neighboring properties, including power lines (but not electrical transmission lines), roads and even an electrical substation. The same lease applies to Vaquero Farms North. The lessee is currently pursuing a land use permit with the County to replace existing turbines with fewer larger ones at the Tres Vaqueros Windfarm. The new turbines would be located in somewhat different areas from the current turbines, the general trend being that the turbines would be moved to higher ground to the west. Under the new plan, neither turbines nor support facilities would be located on the Property. The initial term of this lease expires December 19, 2014, with an option to extend for 20 years, and a second option to extend for another 10 years, or to April 23, 2042. The seller is working to obtain a quitclaim for this lease and it is anticipated that this lease will be terminated by the time of purchase.

The southwestern portion of the site is in the County's wind resource area, although no WTGs have ever been sited in this parcel, nor are there plans for such siting.

II. Describe the type and quantity of structures and impervious surfaces on the Property and map on an aerial. This includes houses, barns, sheds, roads, etc:

To support agricultural operations, several structural improvements have been made which are grouped in the southeastern portion of the Property. These improvements include a riding and show arena and associated infrastructure including corrals, stables, feed storage sheds, holding pens, work alleys, and a livestock weighing station. The site also has a veterinarian building with office, 2 mobile homes, a manufactured home, and a Quonset hut. The remainder of the site does not contain any structures. The total area of these structures and the gravel area where they are located is 9.9 acres.

III. Map any ruderal areas (defined as disturbed areas characterized by sparse nonnative, typically weedy vegetation) and describe their condition:

Landcover mapping conducted for the site (Figure 4 in Appendix B) shows dirt roads comprise the only ruderal areas on the site (2.6 acres).

IV. Discuss any management constraints that you have observed on this site (e.g., interior access roads, gates, fencing, boundary/edge issues, etc.):

Purchase of the property will eliminate the need to move the fences to separate Vaquero Farms North from the Property. Prior to the sale of Vaquero Farms North to EBRPD, the sellers conducted a lot line adjustment that shifted much of the southern and eastern boundaries of Vaquero Farms North (which are also the northern and western boundaries of the Property) by 300 to 600 feet. The boundary fence was

not relocated during the lot line adjustment. Purchase of the Property will eliminate the mismatch between ownership and fence lines.

V. Describe land uses adjacent to the Property that could influence the site's potential as a preserve (e.g., influence the ability to manage or restore the site):

The site is surrounded on three sides by protecting open space. The remaining side (the eastern edge) is bound by private land. However, the Property is included within the Airport Land Use Commission Airport Influence Area Map for the Byron Airport, a designation which discourages any development not compatible with aviation uses, including denser development.

VI. Describe any populations of invasive plant species on site and document on an aerial photo:

No field work for invasive plants was performed.

VII. Discuss any other possible constraints on this site as a potential preserve (water availability, habitat degradation, etc.)

No field work on this site has been conducted. Due to the five streams and two ponds on the Property, as well as the well, pump and tank for watering cattle, water availability does not appear to be an issue. Due to extensive grazing on the site, many of the aquatic resources have been degraded; however, this presents opportunities for restoration or enhancement as required by the NCCP/HCP.

Appendices:

- **Appendix A: Photos**
- **Appendix B: Figures**

Appendix A

Photo 1: View of Property (rock outcrop and beyond) from Vaquero Farms North

Photo 2: View of a pond in the interior of the Property

Photo 3: View of Frisk Creek near ranch headquarters

Photo 4: View of salt grass in an alkali drainage. Note wind turbines in the distance.

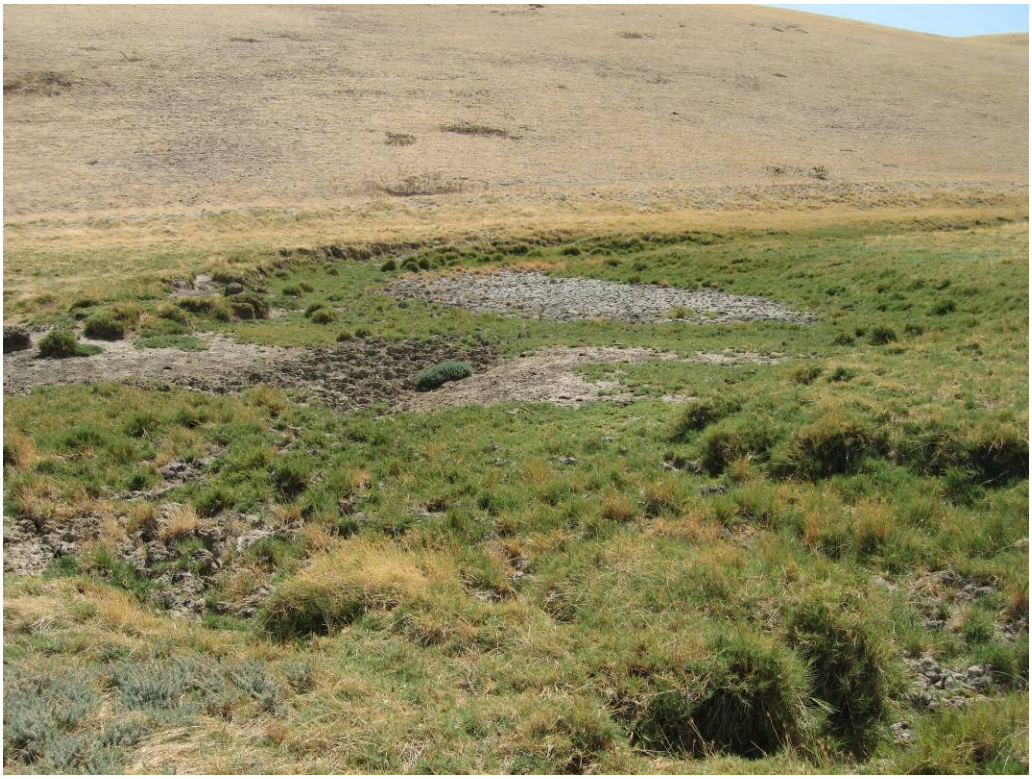

Photo 5: View of stream and alkali vegetation

Photo 6: View of stream meandering in valley. Note water tank at ridgeline.

Photo 7: Western burrowing owl on Property

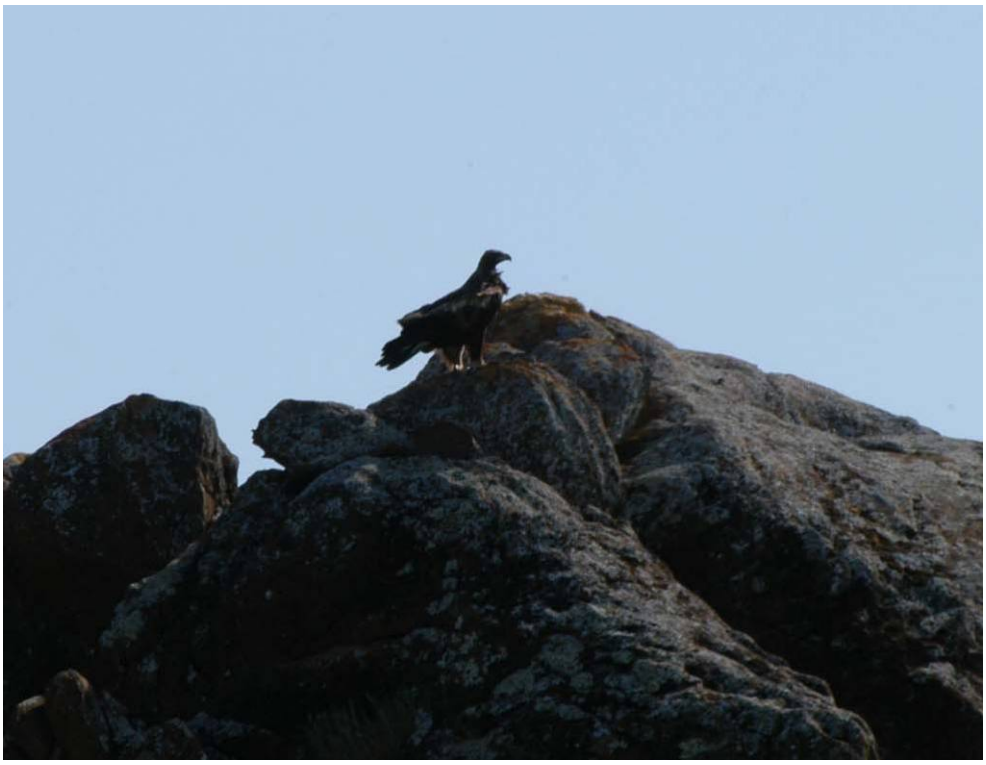

Photo 8: Golden eagle on Property

Exhibit A, Part II: Photos of Improvements

ALL PHOTOGRAPHS TAKEN BY PAUL A ROWAN ON JUNE 13, 2011

Corral area and northern elevation

Southern elevation

Interior detail

Interior detail

Photos 1 – 4
42,320 Sq. Ft. Riding and Show Arena Shelter

Metal girder framework, 200′ x 154′ main structure with two 30′-wide extensions on eastern and southern elevations, metal rafters and fabricated metal roof with a total of 120 skylights, no sidewalls, fully illuminated with high power commercial lighting fixtures, dirt floor, miscellaneous metal corral and alley fencing. Structure is in average physical condition.

Holding pens to west of arena shelter

Weighing station

Detail of weighing station

Loading/unloading chute

Photos 5 – 8

Metal fencing associated with arena shelter, including corrals, holding pens, work alleys, squeeze chute (to be removed by owner), and livestock weighing station with current County Weights and Measures inspection certification.

North elevation

Interior aisle

Bathing facilities

Typical stall

<u>Photos 9-12</u>
<u>20-Stall Horse Stable</u>

Metal frame construction, 145′ x 36′, two 12′-wide rows of stalls with 12′-wide center aisle, wood board and batt exterior walls, fabricated metal roof with skylights and metal gutters and downspouts, sliding access doors on three elevations, concrete slab floor, water and electrical services, interior illumination, attached 10′ x 12′ restroom with exterior access. Individual stalls have openable windows, metal wall surfaces, cushioned floors, and water fountains. Structure is in average physical condition.

Veterinarian barn

Interior view with tack room and office areas

Office area

<u>Photos 13-15</u>
<u>1,296 Sq. Ft. Veterinarian Building</u>

36′ x 36′, wood frame construction with exterior vertical grooved plywood siding, sliding access doors on east and west elevations, metal roof with gutters and downspouts, concrete pad, interior plywood paneling, tack room, office with wall paneling and stone tile floor surfaces.

Photo 16
780 Sq. Ft. Horse Stable

Metal frame construction, 12′ x 65′, three enclosed stalls, three open, metal roof with metal gutter and downspouts, plywood sidewalls, gravel floor, fluorescent lighting, water service, average physical condition.

Photo 17
576 Sq. Ft. Horse Stable

Metal frame construction, 12′ x 48′, four enclosed stalls, metal roof with gutter and downspouts, plywood siding, gravel floor, average physical condition.

Photo 18
912 Sq. Ft. Horse Stable

Metal pole construction, 19′ x 48′, three stalls, metal roof, plywood sidewall along south elevation, dirt floor, average physical condition.

Photo 19
784 Sq. Ft. Storage Shed

Metal pole construction, metal roof with gutter and downspout, built around steel storage container, open storage for tack supplies, average physical condition.

Photo 20
2,340 Sq. Ft. Horse Stable

Metal frame construction, 36′ x 65′, three stalls with open paddocks, metal roof with shed extension, earth floor, fair physical condition.

Photo 21
1,232 Sq. Ft. Horse Stable

Metal frame construction, 22′ x 56′, four stalls, metal roof with shed extension, exterior open paddocks, earth floor, fair physical condition.

Rear of mobile home

Photos 22-24
480 Sq. Ft. Mobile Home

Set on blocks, 10′ x 48′, used as office, has saddle storage and kitchen facilities, propane and electrical hookups, bathroom, and heater, 20′ x 20′ concrete patio with 18′ x 20′ wood pole and metal roof cover.

Covered patio add-on

Interior of mobile home

Photo 25
Recreation Facility

(To be removed by seller)

Photo 26
400 Sq. Ft. Feed Storage Shed

Wood frame, metal roof, 16′ x 25′, 17′ average height, plywood walls, metal roof, gravel floor, average physical condition.

Photo 27
532 Sq. Ft. Feed Storage Shed

Wood frame, 19′ x 28′, 16′ average height, 2-bay, plywood walls, metal roof, gravel floor, average physical condition.

Photo 28
560 Sq. Ft. Quonset Hut

Metal frame structure, concrete slab, sliding metal door access on south elevation, electrical service, average physical condition.

Photo 29
Double Wide Mobile Home

(In process of being removed by owner)

East and north elevations

East and south elevations

Photos 30 – 31
1,936 Sq. Ft. Manufactured Home

Wood frame manufactured home on permanent foundation, interior not inspected, wood exterior siding, asphalt shingle roof with gutters and downspouts, 10′ x 24′ entry porch, 18′ x 26′ decorative stone patio adjacent to entry, gravel yard area with portable storage unit, open parking, minimal landscaping with several mature trees.

Figure 1: Vaquero Farms Central Parcel - Regional Context

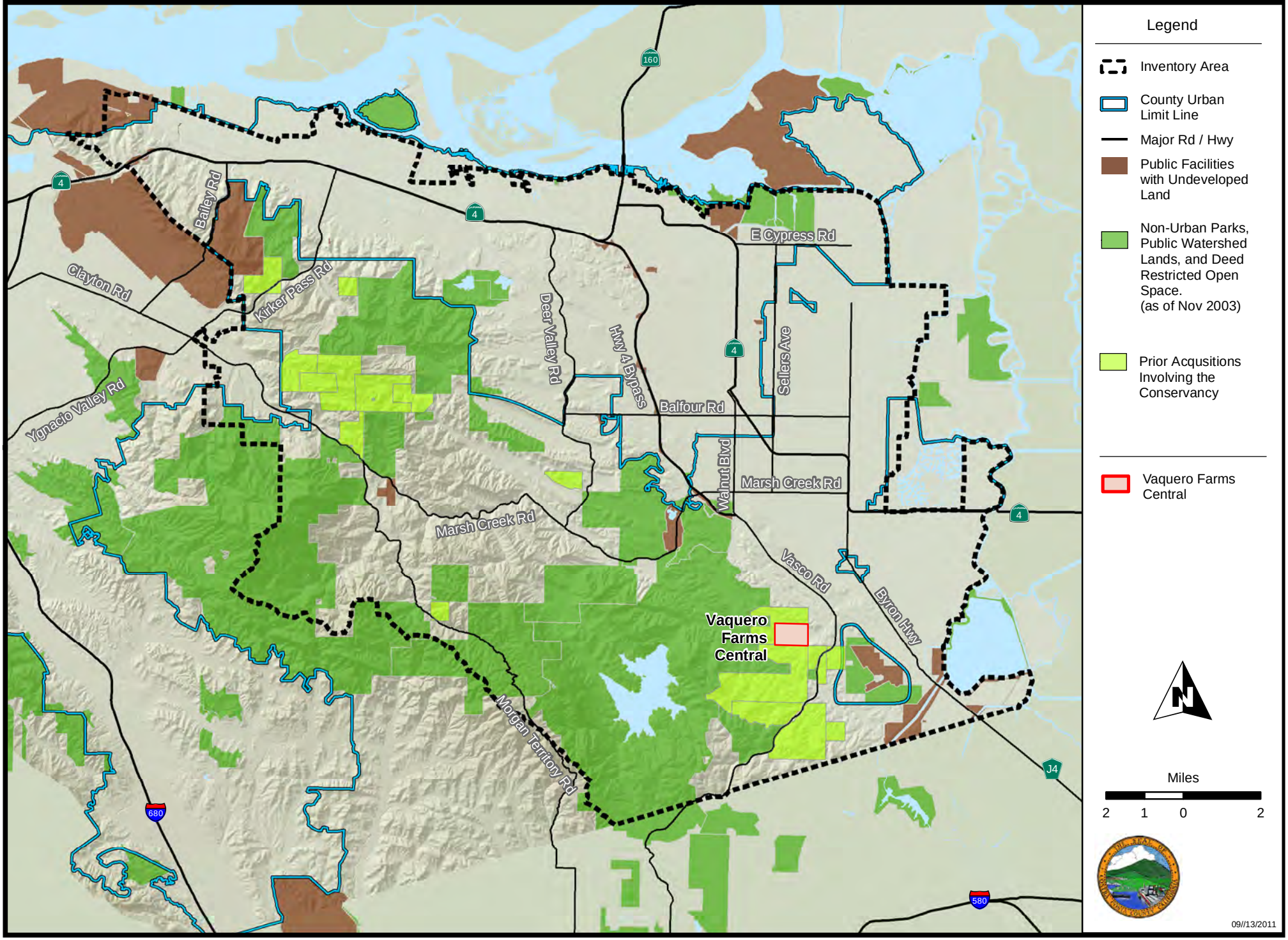

Figure 2: Vaquero Farms Central Parcel - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

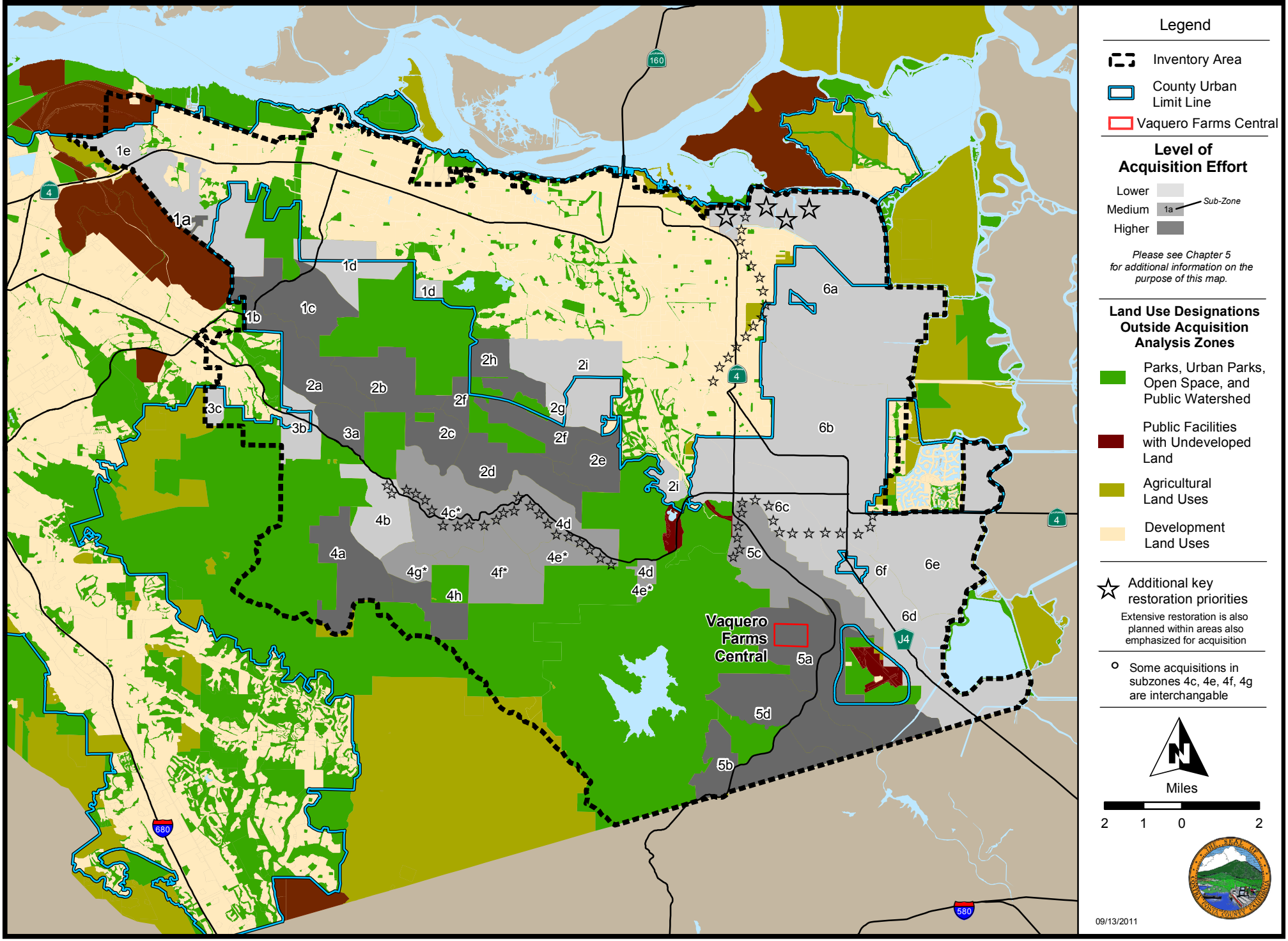

Figure 3: Vaquero Farms Central parcel - April 2008 Orthophotography

Figure 4: Vaquero Farms Central parcel - Terrestrial and Aquatic Land Covers Types

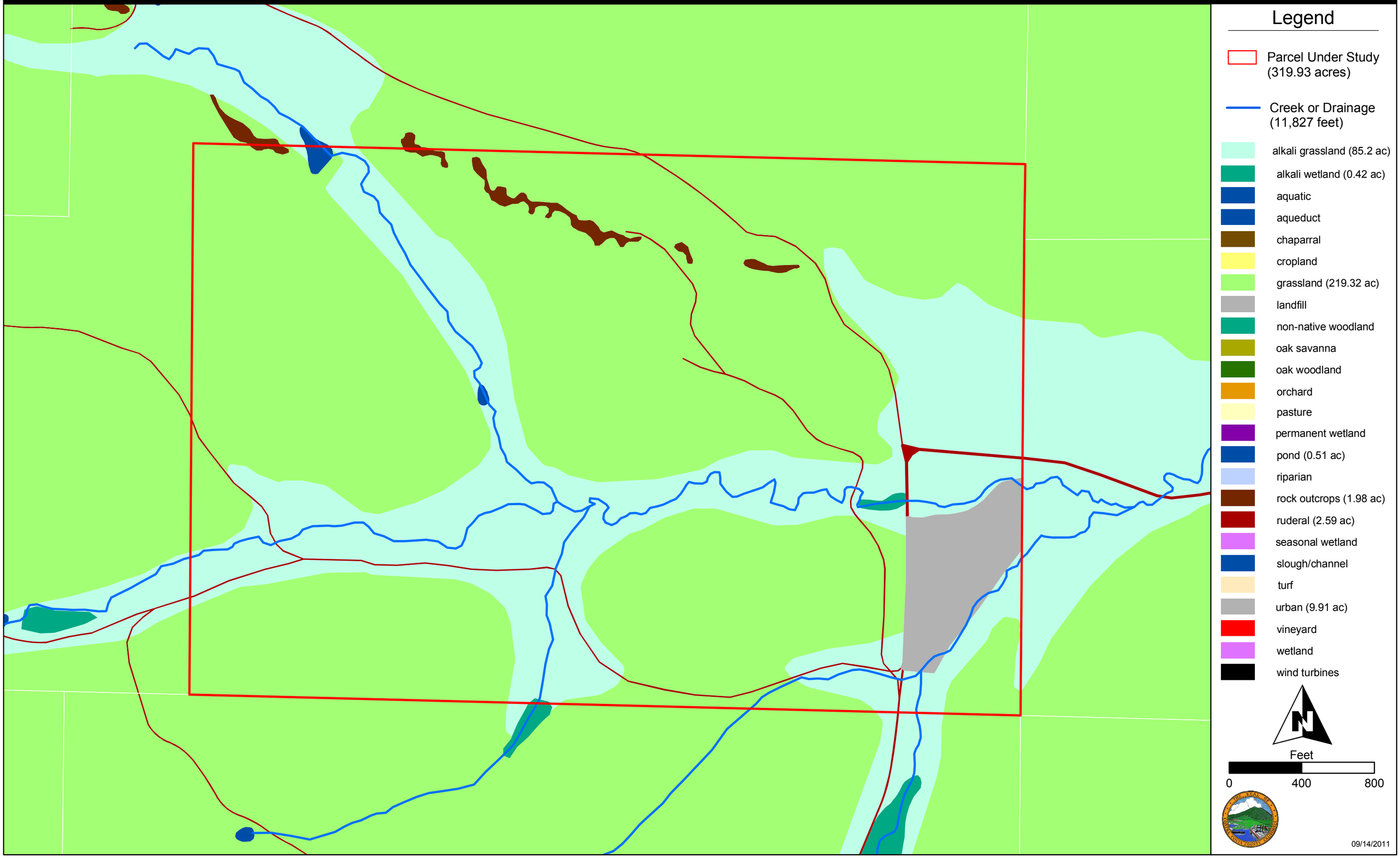

Figure 5: Vaquero Farms Central parcel - Neighborhood

East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Pre-Acquisition Assessment
East Contra Costa County HCP/NCCP Preserve System

SITE IDENTIFICATION

Site Name: Affinito

Site Address/location: 6111-6165 Kirker Pass Road, Pittsburg, CA 94565

Property APN(s) #: APN 075-080-028, 075-080-027, 075-080-026, 075-080-025, 075-080-024, 075-080-019

Size of Parcel(s): The overall size of the property is 116.49 acres (individual parcels are 96.47 acres, 5 acres, 1.89 acres, 2.69 acres, 3.94 acres, and 6.5 acres)

Survey Overview: The pre-acquisition assessment on potential preserve lands evaluates whether these lands will meet the requirements of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The assessment includes the location, quantity, quality, and types of habitats and natural communities on the site, as well as other site conditions and infrastructure that would support or conflict with the Preserve System's biological goals and objectives. This survey will help the East Contra Costa County Habitat Conservancy prioritize acquisition of preserve lands based on the lands' relative contribution to meeting the biological goals and objectives.

Photo-documentation: Photographs of landscape features and other aspects of the site are attached as Appendix A.

Figures: The following figures are attached as Appendix B.

- Regional Context (Figure 1)
- Consistency with HCP/NCCP Acquisition Priorities (Figure 2)
- Ortho Photo of Parcel (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4)
- Ownership of Adjacent Property (Figure 5)

Template prepared by the
ECCC Habitat Conservancy

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LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

I. Overview and Regional Context (Figures 1, 2 and 3)

The Affinito Property (Property) consists of six parcels totaling 116.49 acres. The Property is located on Kirker Pass Road in the northwest portion of the inventory area, approximately half-way between Clayton and Pittsburg. It is bound to the north by Kirker Pass Road and bound to the west by the East Bay Regional Park District's/Conservancy's Land Waste Management acquisition. The remaining two sides (to the east and south) are privately held lands. The site supports annual grassland (41.1%), oak savanna (21.4%), and oak woodland (31.0%). It also supports approximately 1.8 acres of alkali grassland and 3.0 acres of riparian.

The Property is located in the Kirker Creek Watershed and consists almost entirely of moderately to steeply sloping terrain, characterized by portions of three major hills located in the southeasterly, central and southwesterly areas of the site. Two first order intermittent streams (0.8 miles or 4,144 feet) flow north across the property between these hills and exit the property at the north boundary. The terrain has been graded in the central area of the site between the two sterams to create a number of pads for variety of buildings and associated driveway and parking areas.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 1c). Zone 1 (8,613 acres) was created to encompass all the undeveloped and unprotected lands with potential conservation value in the northwest corner of the inventory area. Acquisition in this zone is intended to support an important connection from Black Diamond Mines Regional Preserve to Detachment Concord (aka Concord Naval Weapons Station). Species that utilize the annual grassland and/or oak savanna that characterize this zone include golden eagle, California tiger salamander, and California red-legged frog.

Affinito is a critical piece of the Preserve System as it expands the block of land protected by the Land Waste Management preserve acquisition and contributes to a key linkage between Detachment Concord and Black Diamond Mines Regional Preserve.

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	***Area (acres)***
Terrestrial Land Cover Types	
Annual grassland	48.2
Alkali grassland	1.8
Oak savanna	25.1
Oak woodland	36.4
Riparian	3.0
Urban	2.9
Total area of terrestrial land cover[1]	***117.4***

[1] Land cover acreages calculated through the GIS for this Property exceed the acreage provided in the title documents. This is primarily due to uncertainty in the surveys of rural lands conducted many decades ago. The land cover acreages calculated through the GIS will be the measurements used when crediting the Property to the Plan's requirements.

III. Streams (Figure 4)

Stream	***Length (linear feet)***
Intermittent stream	4,144
Total streams (linear feet)	***4,144***

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc)	***Distance from Site (miles)***	***General description of development and influence on site.***
On-site rural development	On site.	The Property contains three homes (one of which is a substantial, well-maintained home estimated by the seller to be approximately 80-100 years old; another one of the three homes is a modular home). The property also contains livestock infrastructure and a few additional accessory structures. On-site development may be used, if needed, to support management of preserves or for public parkland benefit. Because it will be acquired along with the remainder of the site, use of on-site development will be under the control of EBRPD and the Conservancy and would be used consistent with the requirements of the HCP/NCCP. This development is not expected to affect natural lands on the site, and may present some opportunities for restoration. In it the current developed state, this area is not counted toward the total acres required for conservation.
Rural development	100 feet	An establishment selling firewood is located across the street. The well providing water for the Property is located on the firewood lot parcel and an easement has been granted for this use to the owners of the Property. The firewood lot does not directly affect the Property.
Urban development	approximately 1 mile	Urban development in the City of Pittsburg is approximately 1 mile away, traveling northeast on Kirker Pass Road. This does not directly affect the Property.
Road/highway	Adjacent	Kirker Pass Road, a four lane divided highway, is the main thoroughfare between Clayton and Pittsburg. This route gets high traffic, particularly during commute hours, and hinders wildlife movement north from the Property.

V. Requirements in Specific Acquisition Analysis Zones and Sub-Zones

The site occurs in Conservation Analysis Zone(s) (see HCP/NCCP Chapter 5, Figure 5-1):

☑ 1 ☐ 2 ☐ 3 ☐ 4 ☐5 ☐ 6

Contribution to Acquisition Analysis Zone Requirements under Maximum Urban Development Area Scenario

Sub-Zone Requirement	*Total Requirement*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Zone 1 total area	3,150	114.5	3.6%
Annual Grassland in Sub-zone 1b/1c	1,450	48.2	3.3%

Contribution to Overall Terrestrial Land Cover Acquisition Requirements under Maximum Urban Development Area Scenario

Land-Cover Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Annual Grassland	16,500	48.2	0.3%
Preserve-wide Alkali Grassland	1,250	1.8	0.1%
Preserve-wide Oak Savanna	500	25.1	5.0%
Preserve-wide Oak Woodland	400	36.4	9.1%

Contribution to Overall Estimated Aquatic Acquisition Requirements under Maximum Urban Development Area Scenario

Jurisdictional Wetland and Waters Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Intermittent stream (feet)	2,112	4,144	196.2%

VI. Site Conformance with Preserve Design Principles

The following is a subset[2] of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.
- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).

[2] The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

- **Buffers urban impacts**: site includes buffer land within its boundaries that could minimize indirect effects from urban development.
- **Minimizes edge effects:** site shares a minimum amount of edge (i.e., should have the greatest possible area-to-perimeter ratio) with nonpreserve land, especially urban development. Preserves with low area-to-perimeter ratios may be appropriate to protect linear features with high biological value, such as streams, riparian woodland, valley bottoms, or ridgelines essential to wildlife movement.
- **Fully represents environmental gradients:** includes or connects to open space/parks with a range of environmental gradients, such as topography, elevation, soil types, geologic substrates, slopes, and aspects.
- **Watershed protection:** site contributes to the protection of watersheds, subwatersheds, and headwater streams that are not already in protected status.
- **Management considerations:** desired management treatments such as livestock grazing, prescribed burning, exotic species control, and restoration should be feasible on site.

The Property's size (~117 acres) has the potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use.

The Property's western border abuts EBRPD's/Conservancy's Land Waste Management acquisition. The north edge of the Property is bound by Kirker Pass Road, but the land on the far side of the road is predominantly protected open space.

The Property does not abut any urban areas. The Property does abut Kirker Pass Road, a four-land dived road with concrete median barrier, which is a partial barrier to wildlife movement.

The Property is approximately square. As such, it has low area-to-perimeter ratio.

The Property consists almost entirely of moderately to steeply sloping and predominantly north-facing terrain, characterized by portions of three major hills located in the southeasterly, central and southwesterly areas of the site. The site supports annual grassland (41.1%), oak savanna (21.4%), and oak woodland (31.0%). It also supports approximately 1.8 acres of alkali grassland and 3.0 acres of riparian.

The Property is located in the Kirker Creek Watershed. Two streams (0.8 miles or 4,144 feet) flow north across the property between these hills and exit the property at the north boundary. These first-order streams are a portion of remaining, unprotected Kirker Creek headwaters, in the Hess Creek subwatershed. The site also supports a natural spring, a unique feature that provides a water source for covered species and other wildlife using the site.

Based on existing site conditions and characteristics, implementation of desired management approaches is feasible. Two existing access roads travel south from the developed area of the Property, facilitating movement and management throughout the site. Existing livestock facilities could be used to support grazing on the site. The spring and existing spring box will provide an important water source.

BUILT FEATURES AND SITE CONSTRAINTS

I. Describe evidence in the field of current and past land uses on the site (e.g., grazing; grading, earthwork, and construction; infrastructure; industry; etc.) and locate on the aerial:

Historical and current land uses of the Property include residential, horse boarding, and limited agricultural grazing.

Easements for access and utilities are present in the three westernmost parcels along Kirker Pass Road. A scenic easement is also present on these parcels.

A gas, oil, and mineral easement is associated with APN 075-080-019 (the 6.5-acre parcel), recorded August 30, 1974. There is no known attempt to explore for mineral deposits on this parcel for the past 30 years.

There is also a gas, oil, and mineral easement on an approximate 8.5 acre portion of APN 075-080-028 (the 96.47-acre parcel) in the far northwesterly area of this parcel (recorded April 9, 1974). The easement agreement speaks to extending the original lease term of five years to 10 years. A test well appears to once have been drilled, but now it appears that the lessee's rights to drill or otherwise explore for mineral deposits may have expired.

A portion of APN 075-080-028 (the 96.47-acre parcel), as well as APN 075-080-027(the 5-acre parcel) appears to have once been subject to the Williamson Act, although no associated contract is currently active.

II. Describe the type and quantity of structures and impervious surfaces on the Property and map on an aerial. This includes houses, barns, sheds, roads, etc:

Improved and unimproved driveways from Kirker Pass Road, a public highway, lead to the interior of the Property. The driveway extends southerly to the residential/agricultural building compound located on APN 075-080-027 (the 5-acre parcel) and is mostly a gravel surface, with some concrete. It is noteworthy that the Property may be accessed from Kirker Pass Road while traveling in either direction (there is a break in the median and left turn lane that may used to turn into the driveway from Kirker Pass westbound).

APN 075-080-019 (the 6.5-acres parcel) supports a 1,460 square foot, two-story single family residence in poor condition. APNs 075-080-027 (5-acre parcel) and -028 (96.47-acre parcel) support a 3,460 square foot two-story, single family residence, circa 1935, in good condition. The two-story house is particularly noteworthy as it presents opportunities for future park use such as an office, park residence, or small event center or museum. These parcels also support a 1,680 square foot one-story manufactured home in good condition; a storage shed; a 2,830 square foot horse barn/equipment storage barn; an 1,800 square foot winery building; a. chicken coop; a corral and paddock fencing; and extensive rock wall construction.

Residences are not located within or near to an urban service area and as such, no sanitary sewer or municipal treated water is available on the Property. Water comes from a well located across Kriker Pass Road and is covered buy an easement for such use. All three residential structures have associated conventional septic leachfield systems installed.

III. Map any ruderal areas (defined as disturbed areas characterized by sparse nonnative, typically weedy vegetation) and describe their condition:

Landcover mapping conducted for the site (Figure 4 in Appendix B) does not include any ruderal land cover. The developed portion of the property is considered urban.

IV. Discuss any management constraints that you have observed on this site (e.g., interior access roads, gates, fencing, boundary/edge issues, etc.):

The perimeter of the site is entirely fenced to prevent trespassing. This fence is not anticipated to create any management issues.

V. Describe land uses adjacent to the Property that could influence the site's potential as a preserve (e.g., influence the ability to manage or restore the site):

The Property is bound to the north by Kirker Pass Road, and beyond the road, predominantly protected open space, and bound to the west by the EBRPD's/Conservancy's Land Waste Management acquisition. The remaining two sides are bound by private properties that appear to have agricultural uses.

The Property is located in an area of Contra Costa County that has been historically agricultural in nature for well over 100 years. Private properties in the immediate area of the Property are typically large

acreage holdings, only a few of which have been improved over the years with homesteads and agricultural outbuildings. There has been almost no major subdivision activity in this area; development has been typically limited to minor subdivision of one or two lots, and those are not common.

VI. Describe any populations of invasive plant species on site and document on an aerial photo:

No field work for invasive plants was performed.

VII. Discuss any other possible constraints on this site as a potential preserve (water availability, habitat degradation, etc.)

No field work to assess habitat on this site has been conducted.

An above-ground fuel tank was observed at the time of inspection for the Property appraisal. The fuel tank was located on APN 075-080-028. Hydrocarbon contamination of the soil directly beneath the discharge petcock can often be found where these types of tanks have been in use for long periods of time; however, such contamination is usually very localized. A Phase 1 evaluation of the Property is being conducted. Acceptable results of the of the Phase 1 is a condition for completing the purchase.

The principal source of potable water for the subject property is from an offsite well located on APN 094-100-011, located directly to the north of Kirker Pass Road.

A second source of water is available from a boxed spring that runs year-round. This water source is currently used for agricultural grazing purposes. A separate well has been established on APN 075-080-019 (the 6.5-acres parcel) to serve the residence on that parcel. There is no information available as to the current volume generated by this well, but there are no reported problems with regard to availability of water or the quality thereof.

Appendices:

- **Appendix A: Photos**
- **Appendix B: Figures**

Appendix A

Photo 1: View of eastern drainage looking south

Photo 2: View of box spring

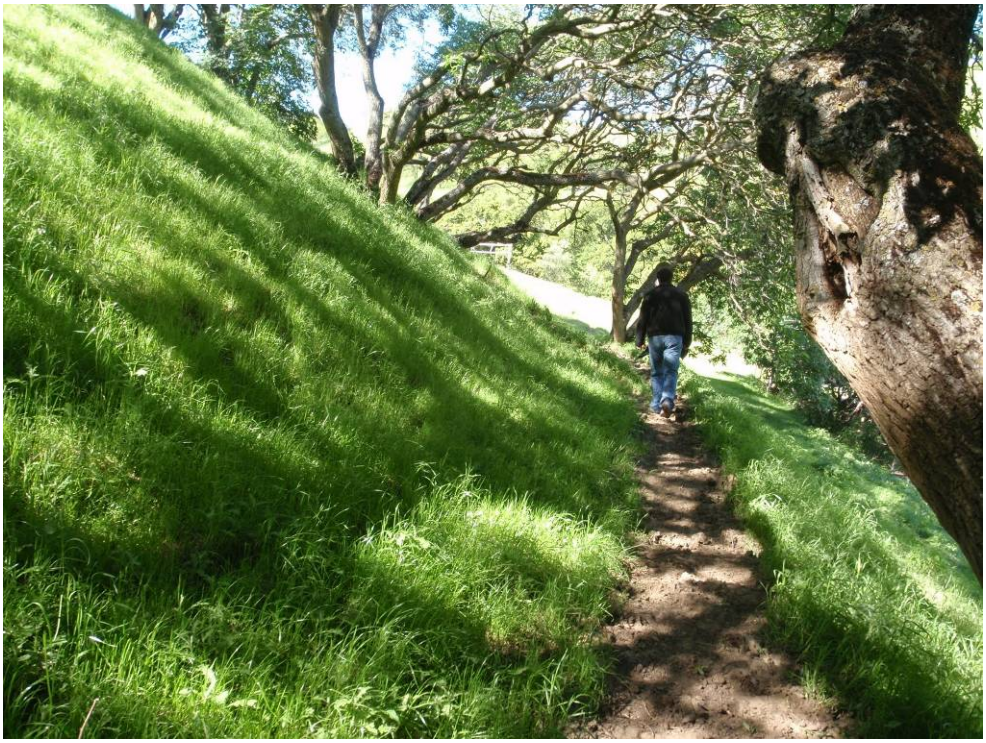


Photo 3: View of trail

Photo 4: View of access road in western drainage looking north

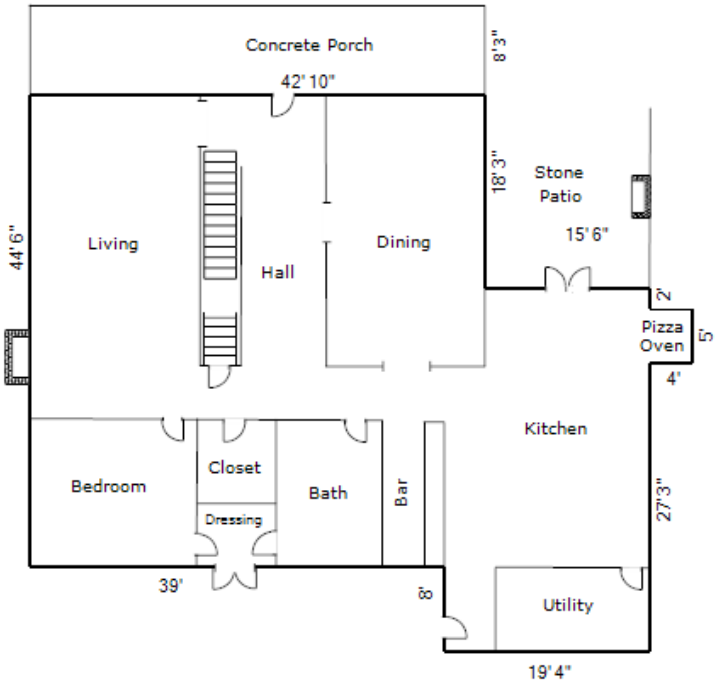
Photo 5: View of developed area in 5-acre parcel looking northeast toward Pittsburg

Photo 6: View of western drainage looking south

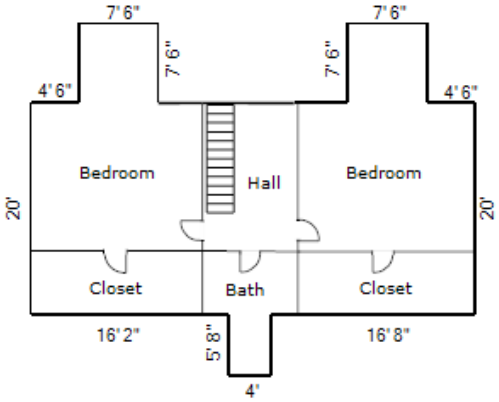
Appendix A, Part II: Photos of Improvements

Sketch

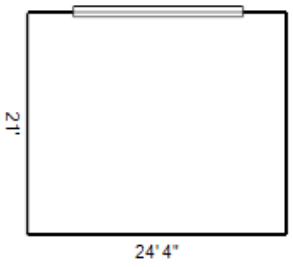
6141 KIRKER PASS ROAD
PITTSBURG, CA
MAIN RESIDENCE



First Floor
[Area: 2488 ft²]



Second Floor
[Area: 972 ft²]



Garage
[Area: 511 ft²]

16 ft

Living Area		Nonliving Area	
First Floor	2487.62 ft²	Garage	511 ft²
Second Floor	971.94 ft²		
Total Living Area (rounded):	**3460 ft²**	**Total Non-Living Area (rounded):**	**511 ft²**

IMPROVEMENT PHOTOGRAPHS

Photo 1
North elevation

Photo 2
South elevation

Photo 3
West elevation

Figure 1: Affinito Parcels - Regional Context

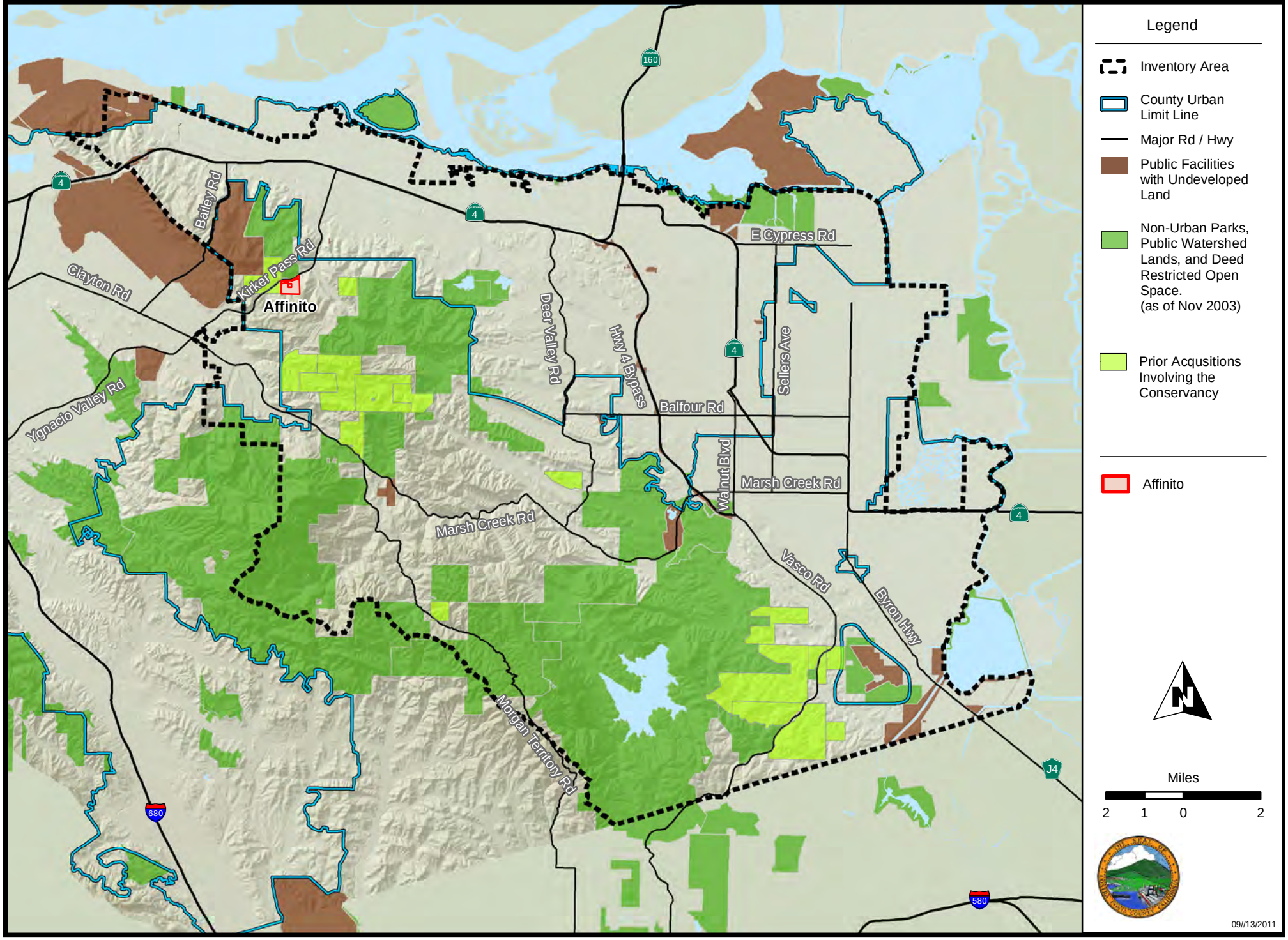


Figure 2: Affinito Parcels - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

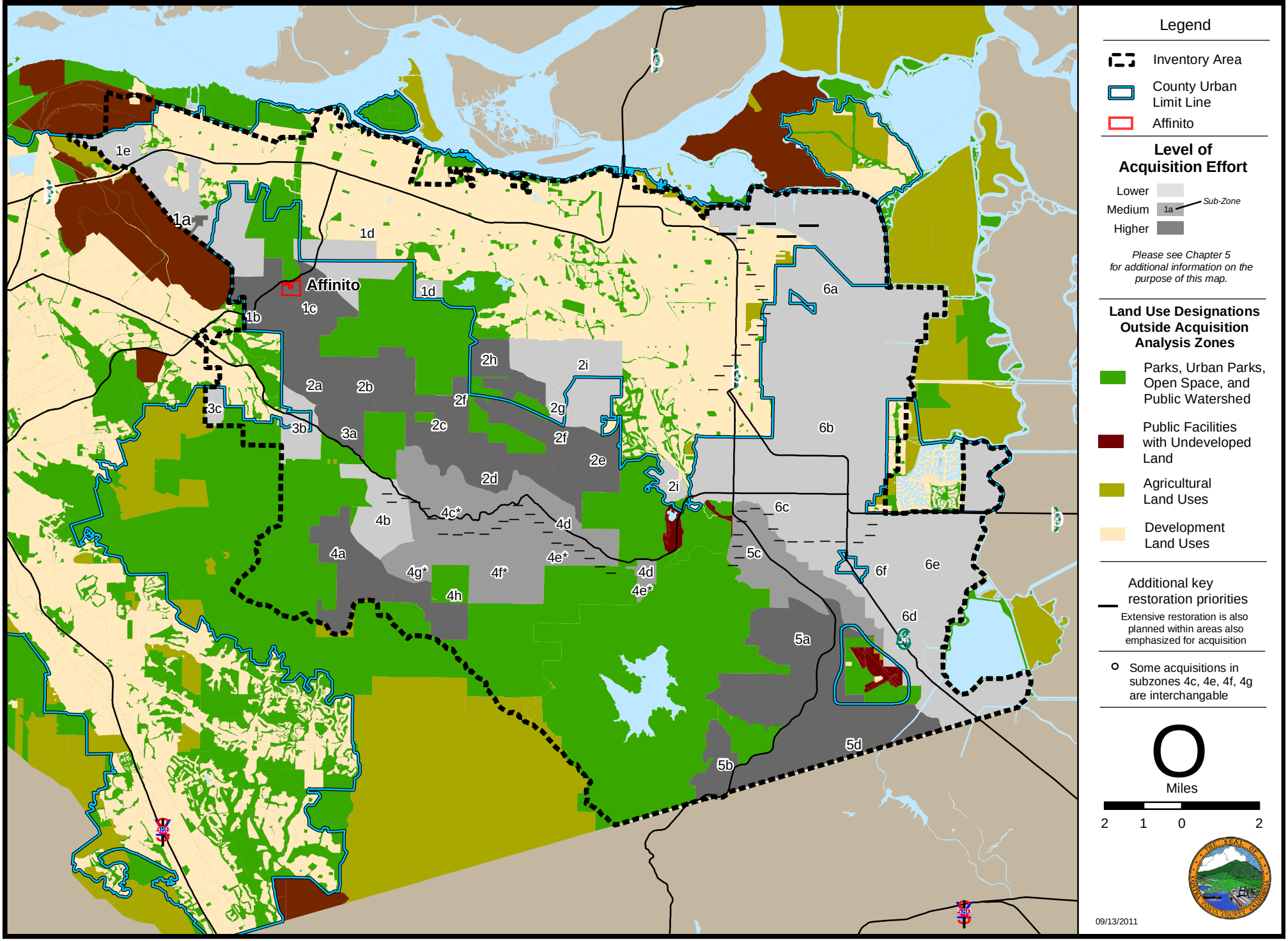


Figure 3: Affinito parcels - April 2008 Orthophotography

Figure 4: Affinito parcels - Terrestrial and Aquatic Land Covers Types

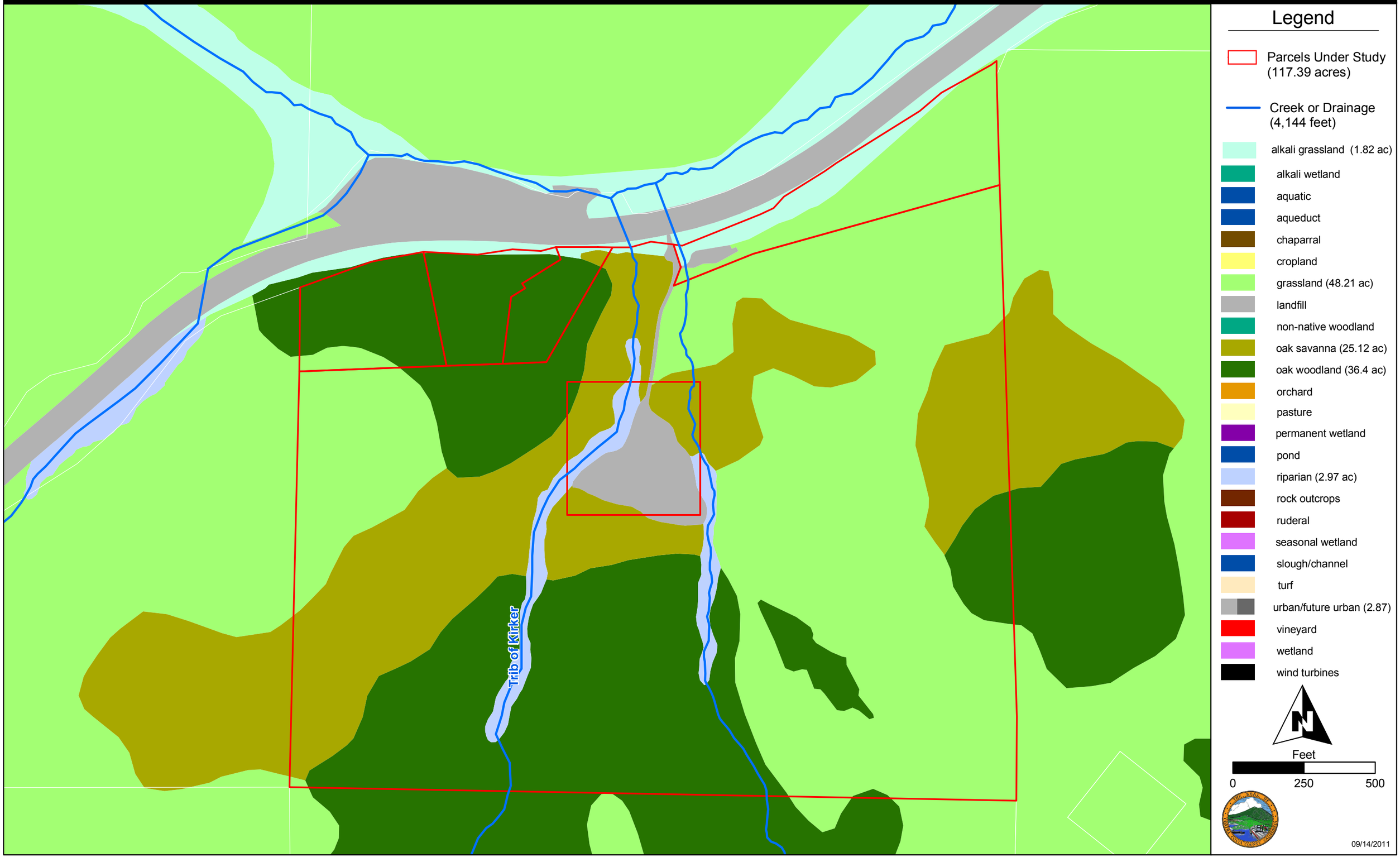
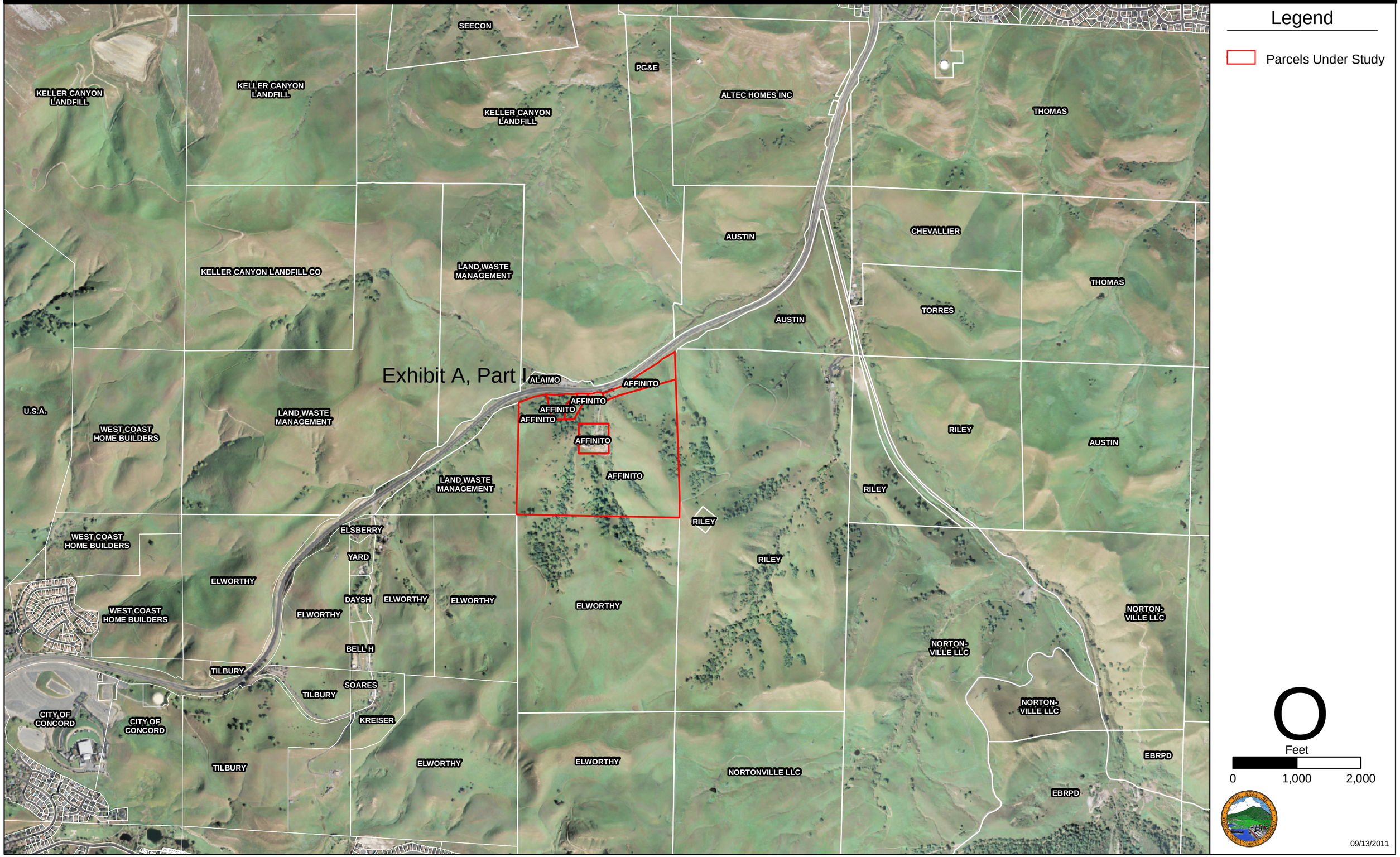


Figure 5: Affinito parcels - Neighborhood



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Pre-Acquisition Assessment
East Contra Costa County HCP/NCCP Preserve System

SITE IDENTIFICATION

Site Name: Moss Rock

Site Address/location: 7030 Morgan Territory Road, unincorporated Contra Costa County, CA

Property APN(s) #: APN 080-100-007

Size of Parcel(s): 20.49 acres

Survey Overview: The pre-acquisition assessment on potential preserve lands evaluates whether these lands will meet the requirements of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The assessment includes the location, quantity, quality, and types of habitats and natural communities on the site, as well as other site conditions and infrastructure that would support or conflict with the Preserve System's biological goals and objectives. This survey will help the East Contra Costa County Habitat Conservancy prioritize acquisition of preserve lands based on the lands' relative contribution to meeting the biological goals and objectives.

Photo-documentation: Photographs of landscape features and other aspects of the site are attached as Appendix A.

Figures: The following figures are attached as Appendix B.

- Regional Context (Figure 1)
- Consistency with HCP/NCCP Acquisition Priorities (Figure 2)
- Ortho Photo of Parcel (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4)
- Ownership of Adjacent Property (Figure 5)

Template prepared by the
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LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

I. Overview and Regional Context (Figures 1, 2 and 3)

The Moss Rock Property (Property) is 20.49 acres located southeast of the city of Clayton along Morgan Territory Road. The Property is bound to the west and south by Mount Diablo State Park. A portion of the Property on the eastern edge borders the Preserve System's Schwartz acquisition. The Property fills in a conservation gap between the Schwartz Preserve and Mount Diablo State Park.

The Property primarily slopes upward to the south from Morgan Territory Road. The lowest point on the property is at the northwest corner along Marsh Creek where the topography is estimated to be 960 feet. The high point on the property is near the southwest corner and is 1,320 feet above sea level.

The property is heavily wooded with various trees and shrubs; almost the entire site is mapped as oak woodland (96.3% of the Property). A short reach of Marsh Creek (163 feet) crosses the property on the northern border, at the western edge of the site. The creek banks are wooded with large bay trees and various native plants. The upper parts of the property are home to dense oak and bay trees that are common in this area. Several clearings provide views of the canyon, surrounding hills, and Mount Diablo.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 4h). Zone 4 (14,338 acres) was designed to incorporate the area at the highest elevations of Mount Diablo foothills not in public ownership. This area is dominated largely by mixed evergreen forest, dense oak woodland, chaparral, and coastal sage scrub. Land acquisition in the Upper Marsh Creek Subbasin will be focused in Subzones 4a and 4h to help to achieve goals for preservation of core and movement habitat for Alameda whipsnake. Protection of Marsh Creek will also support foothill yellow-legged frog, California tiger salamander, and California red-legged frog, as well as create important linkages between existing open space and expand protection of the headwaters of Marsh Creek.

Moss Rock is a critical acquisition because it connects the Schwartz preserve to Mount Diablo State Park and avoids a developed in-holding in the middle of park land.

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	***Area (acres)***
Terrestrial Land Cover Types	
Oak woodland	19.7
Ruderal	0.8
Total area of terrestrial land cover	***20.5***

III. Streams (Figure 4)

Stream	***Length (linear feet)***
Perennial stream	165
Total streams (linear feet)	***165***

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc)	*Distance from Site (miles)*	*General description of development and influence on site.*
On-site rural development	On-site.	The site contains a graded building pad (but no building), an access road (including bridge over Marsh Creek), potable water supply infrastructure, and a septic system. All on site development would be used consistent with the requirements of the HCP/NCCP.
Rural development	Adjacent parcels.	The immediate neighborhood is large parcel rural residential, agricultural grazing, and conservation purchases. Surrounding rural development affects views, potential trail connections and could impact plants and wildlife due to proximity to potential pets, noise, lights, exotic plants, fire ignition sources and fuel breaks.
Urban development	The city of Clayton is located approximately nine miles northwest of the property and is home to the closest urban uses.	Urban development is not close enough to have a significant effect on the Property.

V. Requirements in Specific Acquisition Analysis Zones and Sub-Zones

The site occurs in Conservation Analysis Zone(s) (see HCP/NCCP Chapter 5, Figure 5-1):

☐ 1 ☐ 2 ☐ 3 ☑ 4 ☐5 ☐ 6

Contribution to Acquisition Analysis Zone Requirements under Maximum Urban Development Area Scenario

Sub-Zone Requirement	*Total Requirement*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Zone 4 total area	8,350	19.7	0.2%
Sub-zone 4h	791	19.7	2.5%

Contribution to Overall Terrestrial Land Cover Acquisition Requirements under Maximum Urban Development Area Scenario

Land-Cover Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Oak Woodland	400	19.7	4.9%

Contribution to Overall Estimated Aquatic Acquisition Requirements under Maximum Urban Development Area Scenario

Jurisdictional Wetland and Waters Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Perennial stream (feet)	4,224	165	3.9%

VI. Site Conformance with Preserve Design Principles

The following is a subset[1] of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.
- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).
- **Buffers urban impacts**: site includes buffer land within its boundaries that could minimize indirect effects from urban development.
- **Minimizes edge effects:** site shares a minimum amount of edge (i.e., should have the greatest possible area-to-perimeter ratio) with nonpreserve land, especially urban development. Preserves with low area-to-perimeter ratios may be appropriate to protect linear features with high biological value, such as streams, riparian woodland, valley bottoms, or ridgelines essential to wildlife movement.
- **Fully represents environmental gradients:** includes or connects to open space/parks with a range of environmental gradients, such as topography, elevation, soil types, geologic substrates, slopes, and aspects.
- **Watershed protection:** site contributes to the protection of watersheds, subwatersheds, and headwater streams that are not already in protected status.
- **Management considerations:** desired management treatments such as livestock grazing, prescribed burning, exotic species control, and restoration should be feasible on site.

Property's size (~20 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use. It also provides a critical linkage between the Preserve System's Schwartz acquisition and Mount Diablo State Park.

The Property is adjacent to Preserve System's Schwartz acquisition. It is also adjacent on two sides (west and south) to Mount Diablo State Park.

The Property does not abut any urban uses.

Acquisition of the Property would maintain approximately the same amount of edge currently in the Preserve System. It would reduce edge along the Schwartz acquisition, but increase edge along the

[1] The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

Property's northern border. However, the acquisition of the Property would avoid a potential future developed in-holding in the middle of park land. Such in-holding present a significant management challenge and hinder the value of surrounding park lands by affecting views, potential trail connections and plants and wildlife (due to proximity to potential pets, noise, lights, exotic plants, fire ignition sources and fuel breaks).

The Property primarily slopes upward to the south from Morgan Territory Road. The lowest point on the property is at the northwest corner along Marsh Creek where the topography is estimated to be 960 feet. The high point on the property is near the southwest corner and is 1,320 feet above sea level. The property is heavily wooded with various trees and shrubs; almost the entire site is mapped as oak woodland (96.3% of the Property). The creek banks are wooded with large bay trees and various native plants. The upper parts of the property are home to dense oak and bay trees that are common in this area. Several clearings provide views of the canyon, surrounding hills, and Mount Diablo.

The Property is located in the Upper Marsh Creek watershed. A short reach of Marsh Creek (163 feet) crosses the property on the northern border, at the western end of the site. This reach of Marsh Creek may contain suitable habitat for foothill yellow-legged frog. In addition, this reach, while generally perennial, is in the headwaters of Marsh Creek and protection in this area will have beneficial effects throughout the watershed.

This site persists mostly in its natural condition. As such, this site may need relatively little management to support covered species.

BUILT FEATURES AND SITE CONSTRAINTS

I. Describe evidence in the field of current and past land uses on the site (e.g., grazing; grading, earthwork, and construction; infrastructure; industry; etc.) and locate on the aerial:

The Property does not contain a building but a number of alternations have been made to the property to support a rural single-family home site. The Property is accessed from Morgan Territory Road over a steel bridge that crosses Marsh Creek. In early 2000, a graded building pad was created by a previous owner and several other areas were graded.

II. Describe the type and quantity of structures and impervious surfaces on the Property and map on an aerial. This includes houses, barns, sheds, roads, etc:

The site is improved with a cleared building pad, some barbed wire perimeter fencing and steel gate, a steel bridge across Marsh Creek, a gravel driveway, a well, a pump house, two 4,500 gallon water storage tanks, a fire hydrant near the building pad, and a septic system. The current owner reported that the fencing is not cattle tight. The well reportedly was tested and pumped 8.5 gallons per minute. Electricity is on the site and provides power to the pump house.

III. Map any ruderal areas (defined as disturbed areas characterized by sparse nonnative, typically weedy vegetation) and describe their condition:

The driveway leads to a graded building pad with a private well and septic system. The road and graded area are mapped as ruderal lands in Figure 4.

IV. Discuss any management constraints that you have observed on this site (e.g., interior access roads, gates, fencing, boundary/edge issues, etc.):

Current infrastructure is not expected to create any management issues. The building site could present an opportunity for a park facility or for habitat restoration.

V. Describe land uses adjacent to the Property that could influence the site's potential as a preserve (e.g., influence the ability to manage or restore the site):

With the exception of a few rural homes, barns and trails, the area is physically unchanged from its natural condition. Surrounding sites have been used for cattle grazing and rural home sites for over 100 years. It is likely that the immediate neighborhood will continue to remain as large parcels with some rural home sites as well as conservation purchases.

VI. Describe any populations of invasive plant species on site and document on an aerial photo:

No field work for invasive plants was performed.

VII. Discuss any other possible constraints on this site as a potential preserve (water availability, habitat degradation, etc.)

The Property has a longer boundary with State park lands than it does with EBRPD lands. A management arrangement or property swap could be considered with State Parks in the future to improve management efficiency.

Appendices:

- **Appendix A: Photos**
- **Appendix B: Figures**

Appendix A

Photos courtesy of Scott Hein except as noted.

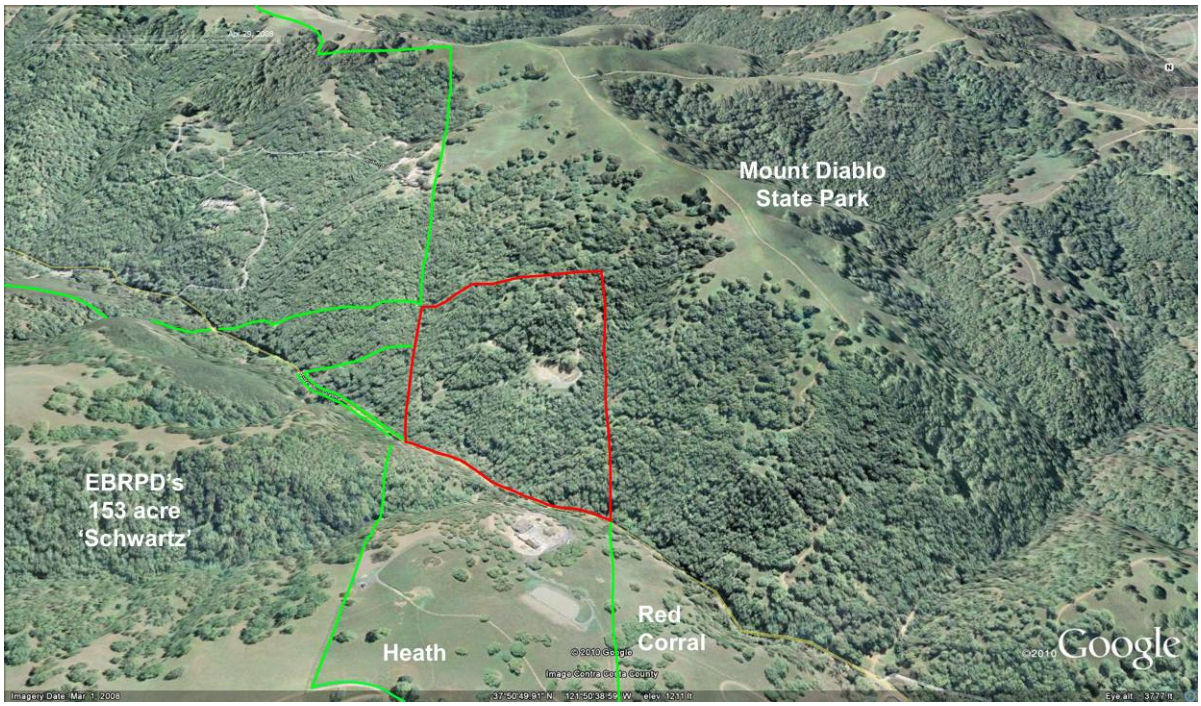


Photo 1: Oblique view of Property looking south

Photo 2: View of access bridge to Property

Photo 3: View of building pad looking east.

Photo 4: View of building pad looking northeast.

Photo 5: View of Property in spring looking east (photo courtesy of George Phillips)

Photo 6: View of Property looking northwest.

Photo 7: View of Marsh Creek on Property when flooding (photo courtesy of George Phillips)

Photo 8: View of Marsh Creek on Property when dry

Figure 1: Moss Rock Parcel - Regional Context

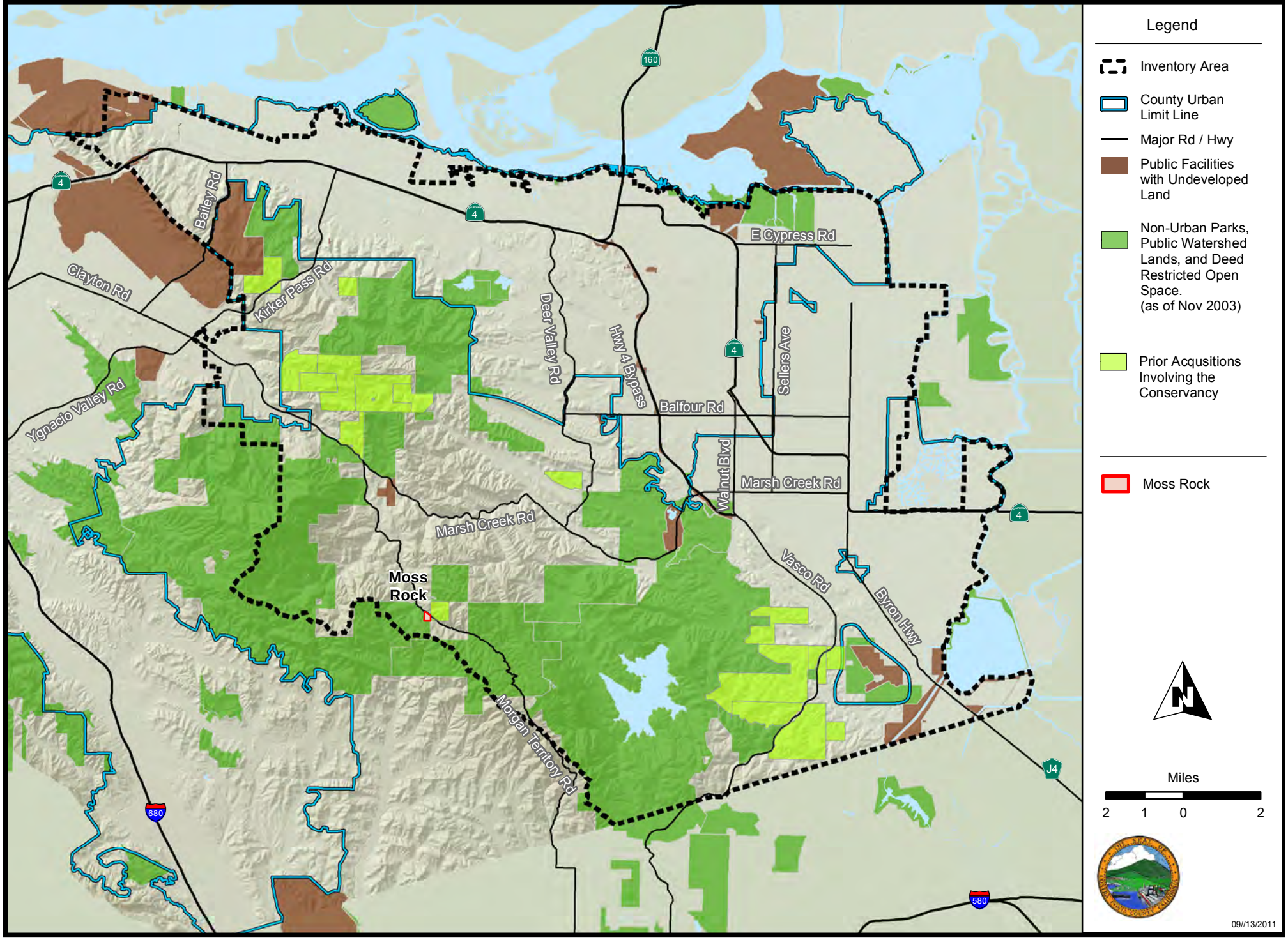


Figure 2: Moss Rock Parcel - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

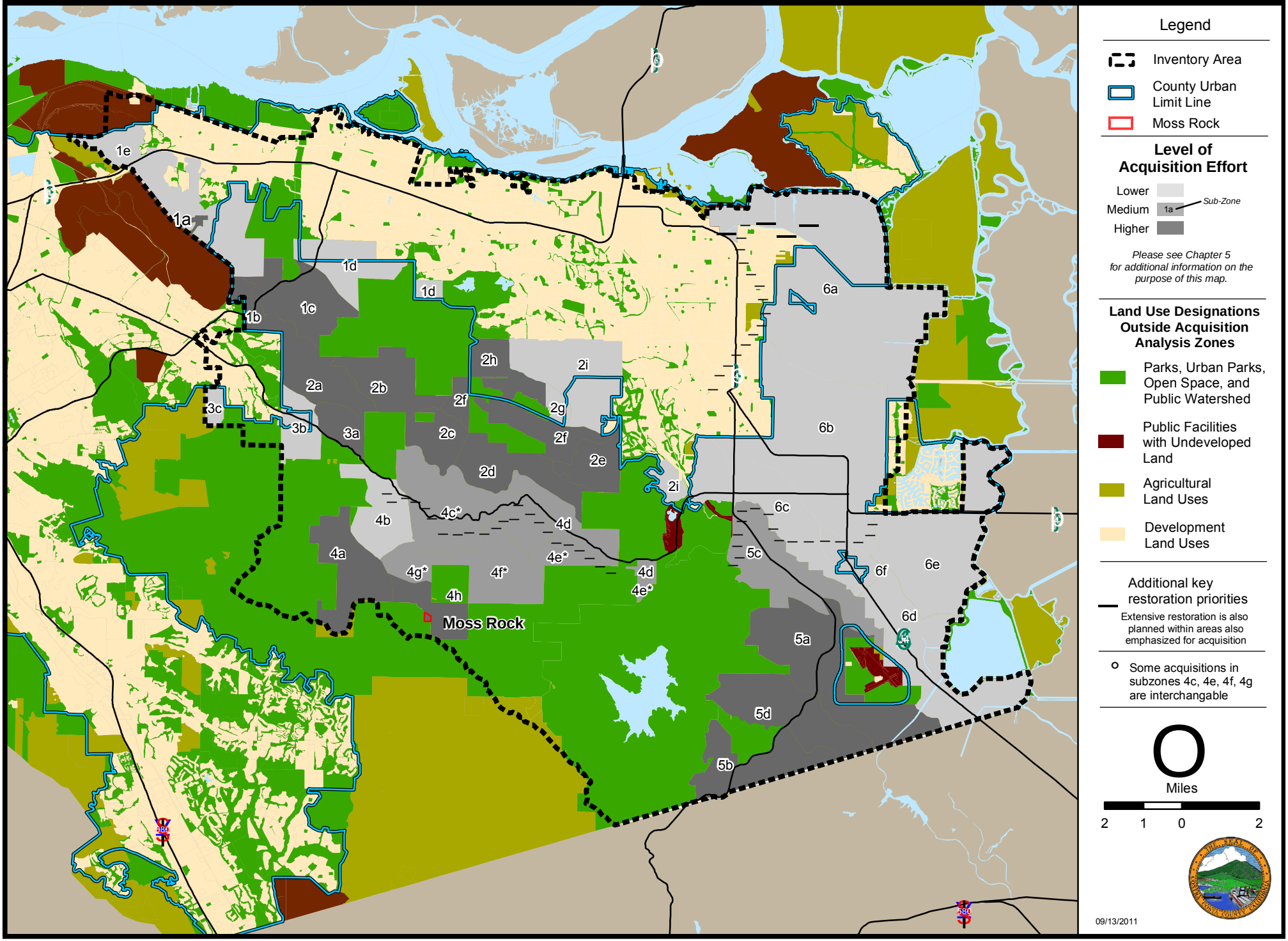


Figure 3: Moss Rock parcel - April 2008 Orthophotography

Figure 4: Moss Rock parcel - Terrestrial and Aquatic Land Covers Types

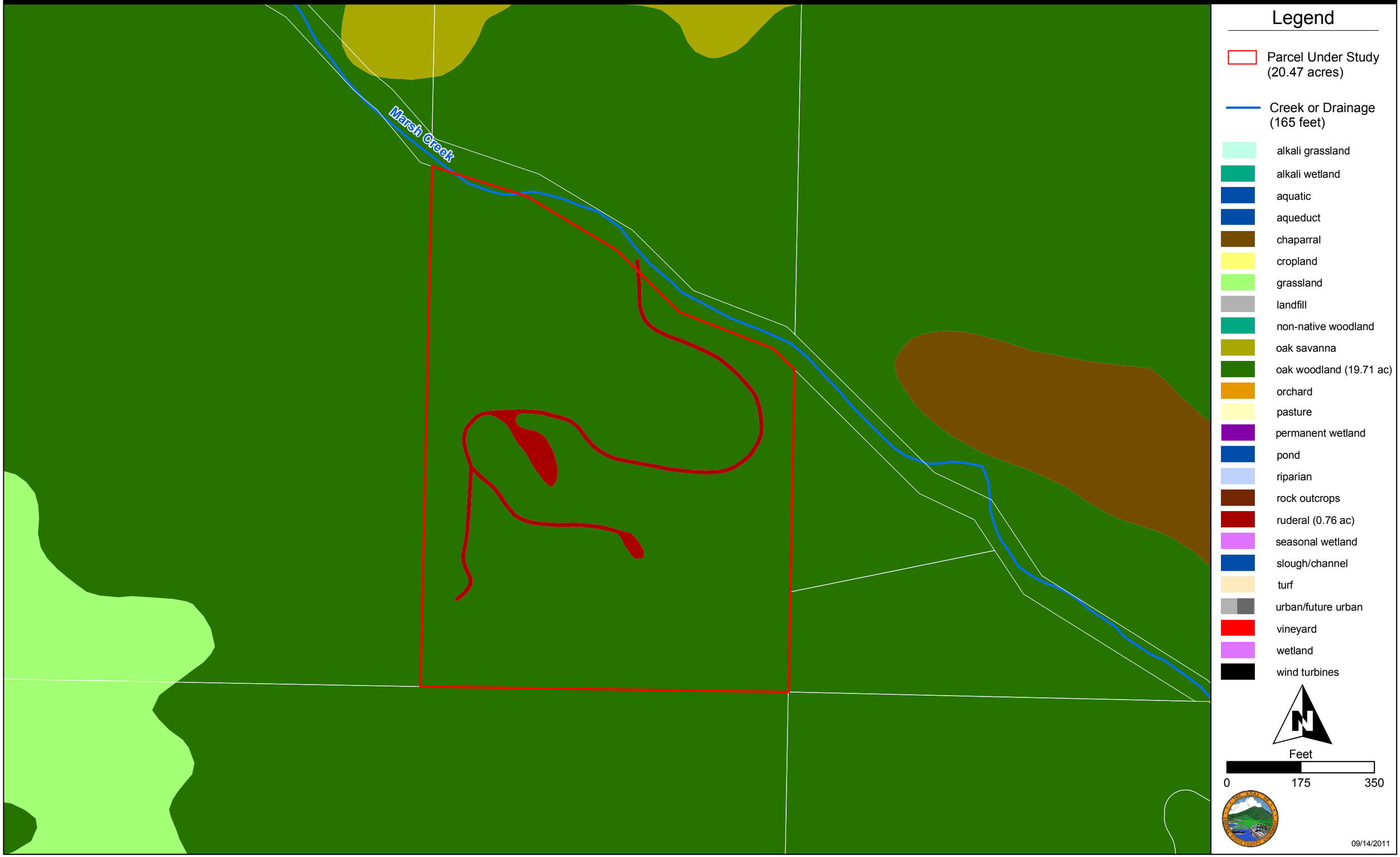
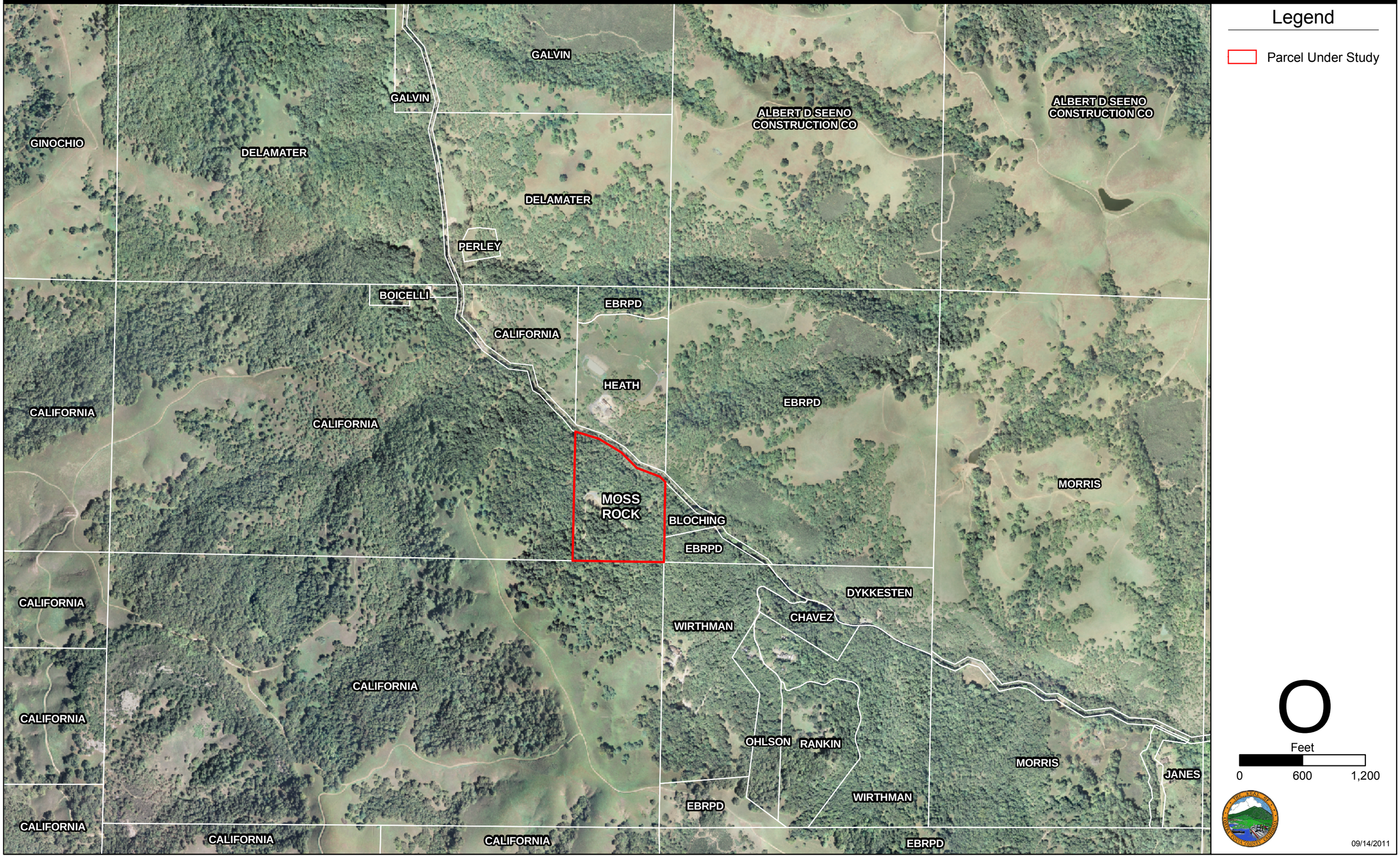


Figure 5: Moss Rock parcel - Neighborhood



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Pre-Acquisition Assessment
East Contra Costa County HCP/NCCP Preserve System

SITE IDENTIFICATION

Site Name: Galvin

Site Address/location: Morgan Territory Road, unincorporated Contra Costa County, CA

Property APN(s) #: APN 080-070-011

Size of Parcel(s): 61.68 acres

Survey Overview: The pre-acquisition assessment on potential preserve lands evaluates whether these lands will meet the requirements of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The assessment includes the location, quantity, quality, and types of habitats and natural communities on the site, as well as other site conditions and infrastructure that would support or conflict with the Preserve System's biological goals and objectives. This survey will help the East Contra Costa County Habitat Conservancy prioritize acquisition of preserve lands based on the lands' relative contribution to meeting the biological goals and objectives.

Photo-documentation: Photographs of landscape features and other aspects of the site are attached as Appendix A.

Figures: The following figures are attached as Appendix B.

- Regional Context (Figure 1)
- Consistency with HCP/NCCP Acquisition Priorities (Figure 2)
- Ortho Photo of Parcel (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4)
- Ownership of Adjacent Property (Figure 5)

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LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

I. Overview and Regional Context (Figures 1, 2 and 3)

The Galvin Property(Property) is 61.68 acres located southeast of the City of Clayton on the east side of Morgan Territory Road. It is bound to the east by Morgan Territory Ranch (a one-square mile private property encumbered by a conservation easement), to the west by Morgan Territory Road, and by private property to the north and south. The Property is mostly oak woodland (219.3 acres, 65.7% of the site) with 14.8 acres of chaparral/scrub, 3.2 acres of annual grassland, and 2.6 acres of oak savanna. Acquisition of Galvin provides a building block for expanding the landscape linkage along the southwest border of the inventory area.

The Property is generally rectangular in shape with moderate to steep topography that slopes upward from Morgan Territory Road. From Morgan Territory Road, a valley extends to the east with peaks along the north and south property lines. The site is mostly left in its natural condition. The northern property line is a chaparral covered ridgeline, with a fire road that crosses the property. The southern property line is covered with oak woodlands and rock outcroppings. The property is wooded and has views of the area and of Mount Diablo. The lowest point on the property is at the northwest corner along Marsh Creek where the topography is estimated to be 870 feet. The high point on the property is near the northeast corner and is 1,500 feet above sea level.

The Property is located in the Upper Marsh Creek watershed. The property is crossed by Marsh Creek which parallels Morgan Territory Road. The Property contains 883 feet of stream including 479 feet of the mainstem of Marsh Creek (likely perennial), and 404 feet of a first order, unnamed ephemeral tributary.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis sub-zone 4h). Zone 4 (14,338 acres) was designed to incorporate the area at the highest elevations of Mount Diablo foothills not in public ownership. This area is dominated largely by mixed evergreen forest, dense oak woodland, chaparral, and coastal sage scrub. Land acquisition in the Upper Marsh Creek Subbasin is focused in Sub-zones 4a and 4h to help to achieve goals for preservation of core and movement habitat for Alameda whipsnake. Protection of Marsh Creek will also support foothill yellow-legged frog, California tiger salamander, and California red-legged frog, as well as create important linkages between existing open space and expand protection of the headwaters of Marsh Creek.

This site is an important piece of the Reserve System and would contribute to expanded connection between Mount Diablo State Park and the block of conserved lands around los Vaqueors reservoir, as required by the HCP/NCCP.

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	***Area (acres)***
Terrestrial Land Cover Types	
Annual grassland	3.3
Chaparral/scrub	15.2
Oak savanna	2.6
Oak woodland	40.5
Total area of terrestrial land cover	***61.6***

III. Streams (Figure 4)

Stream	*Length (linear feet)*
Perennial stream	479
Ephemeral stream	404
Total streams (linear feet)	***883***

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc)	*Distance from Site (miles)*	*General description of development and influence on site.*
Rural development	Adjacent parcels.	The immediate neighborhood is large parcel rural residential, agricultural grazing, and conservation purchases. Surrounding rural development affects views, potential trail connections and could impact plants and wildlife due to proximity to potential pets, noise, lights, exotic plants, fire ignition sources and fuel breaks.
Urban development	The city of Clayton is located approximately nine miles northwest of the property and is home to the closest commercial uses.	Urban development is not close enough to have a significant effect on the Property.

V. Requirements in Specific Acquisition Analysis Zones and Sub-Zones

The site occurs in Conservation Analysis Zone(s) (see HCP/NCCP Chapter 5, Figure 5-1):

☐ 1 ☐ 2 ☐ 3 ☑ 4 ☐5 ☐ 6

Contribution to Acquisition Analysis Zone Requirements under Maximum Urban Development Area Scenario

Sub-Zone Requirement	*Total Requirement*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Zone 4 total area	8,350	61.6	0.7%
Sub-zone 4h	791	61.6	7.8%

Contribution to Overall Terrestrial Land Cover Acquisition Requirements under Maximum Urban Development Area Scenario

Land-Cover Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Annual Grassland	16,500	3.3	0.02%

Preserve-wide Chaparral/scrub	550	15.2	2.8%
Preserve-wide Oak Savanna	500	2.6	0.5%
Preserve-wide Oak Woodland	400	40.5	10.1%

Contribution to Overall Estimated Aquatic Acquisition Requirements under Maximum Urban Development Area Scenario

Jurisdictional Wetland and Waters Requirement	***Total Requirement (acres)***	***Contribution by this Acquisition (acres)***	***Percentage of Requirement Met by Acquisition***
Preserve-wide Perennial stream (feet)	4,224	479	11.3%
Preserve-wide Ephemeral stream (feet)	26,400	404	1.5%

VI. Site Conformance with Preserve Design Principles

The following is a subset[1] of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.
- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).
- **Buffers urban impacts**: site includes buffer land within its boundaries that could minimize indirect effects from urban development.
- **Minimizes edge effects:** site shares a minimum amount of edge (i.e., should have the greatest possible area-to-perimeter ratio) with nonpreserve land, especially urban development. Preserves with low area-to-perimeter ratios may be appropriate to protect linear features with high biological value, such as streams, riparian woodland, valley bottoms, or ridgelines essential to wildlife movement.
- **Fully represents environmental gradients:** includes or connects to open space/parks with a range of environmental gradients, such as topography, elevation, soil types, geologic substrates, slopes, and aspects.
- **Watershed protection:** site contributes to the protection of watersheds, subwatersheds, and headwater streams that are not already in protected status.
- **Management considerations:** desired management treatments such as livestock grazing, prescribed burning, exotic species control, and restoration should be feasible on site.

[1] The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

Property's size (~62 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use. It also provides a critical building block for expanding the landscape linkage along the southwest border of the inventory area.

The eastern end of the Property is adjacent to Morgan Territory Ranch, which is encumbered by a conservation easement. It is less than 0.5 mile from protected lands owned by East Bay Regional Park District and the State of California.

The Property does not abut any urban uses.

The Property does not share any edges with urban uses. While it does not currently share any edges with Preserve System lands, it adjoins one protected property, is in close proximity to other protected lands and is a critical building block for a landscape linkage along the southwest border of the inventory area. It is also in a high priority acquisition area. As such, it is expected that lands in the vicinity of this Property could be protected in the future, thus reducing edge with non-protected lands.

The Property is rectangular in shape with moderate to steep topography that slopes upward from Morgan Territory Road. From Morgan Territory Road, a valley extends to the east with peaks along the north and south property lines. The site is mostly left in its natural condition. The northern property line is a chaparral covered ridgeline, with a fire road that crosses the property. The southern property line is covered with oak woodlands and rock outcroppings. The property is wooded and has views of the area and of Mount Diablo. The lowest point on the property is at the northwest corner along Marsh Creek where the topography is estimated to be 870 feet. The high point on the property is near the northeast corner and is 1,500 feet above sea level. The Property is mostly oak woodland (219.3 acres, 65.7% of the site) with 14.8 acres of chaparral/scrub, 3.2 acres of annual grassland, and 2.6 acres of oak savanna.

Galvin is located in the Upper Marsh Creek watershed. The property is crossed by Marsh Creek which parallels Morgan Territory Road. The Property contains 883 feet of stream including 479 feet of the mainstem of Marsh Creek (likely perennial), and 404 feet of a first order, unnamed ephemeral tributary. This reach of Marsh Creek may be valuable for conservation of the foothill yellow-legged frog. In addition, this reach, while perennial, is in the headwaters of Marsh Creek and protection in this area will have beneficial effects throughout the watershed.

This site persists mostly in its natural condition. In addition, it only has 3.3 acres of annual grassland, a land cover type that typically has the most extensive issues with invasive, non-native vegetation. As such, this site may need relatively little management to support covered species. The two stream segments may be an exception, but they are located near the road and access will be relatively easy.

BUILT FEATURES AND SITE CONSTRAINTS

I. Describe evidence in the field of current and past land uses on the site (e.g., grazing; grading, earthwork, and construction; infrastructure; industry; etc.) and locate on the aerial:

The property is currently subject to a Williamson Act contract (entered into in February 1975).

There are no established utilities on the property, although, electricity and telephone services are available along Morgan Territory Road. A 10-foot wide utility easement granted to PG&E crosses a portion of the site.

A notice concerning water availability was recorded in April 1983.

A creek setback affects the westerly portion of the site.

II. Describe the type and quantity of structures and impervious surfaces on the Property and map on an aerial. This includes houses, barns, sheds, roads, etc:

The property is unimproved other than perimeter fencing and some interior fencing near Marsh Creek Road that prevents grazing, near Marsh Creek. The subject property is accessed from Morgan Territory Road where a steel gate leads to a dirt fire trail. The site is crossed by a fire trail that runs primarily east to west in a loop.

III. Map any ruderal areas (defined as disturbed areas characterized by sparse nonnative, typically weedy vegetation) and describe their condition:

There are no ruderal areas on the Property.

IV. Discuss any management constraints that you have observed on this site (e.g., interior access roads, gates, fencing, boundary/edge issues, etc.):

The site has perimeter fencing. This fence is not anticipated to create any management issues.

V. Describe land uses adjacent to the Property that could influence the site's potential as a preserve (e.g., influence the ability to manage or restore the site):

With the exception of a few rural homes, barns and trails, the general area is physically unchanged from its natural condition. Surrounding sites have been used for cattle grazing and rural home sites for over 100 years. It is likely that the immediate neighborhood will continue to remain as large parcels with some rural home sites, as well as conservation purchases.

VI. Describe any populations of invasive plant species on site and document on an aerial photo:

No field work for invasive plants was performed.

VII. Discuss any other possible constraints on this site as a potential preserve (water availability, habitat degradation, etc.)

The property dopes not directly adjoin other public lands at this time.

Appendices:

- **Appendix A: Photos**
- **Appendix B: Figures**

Appendix A

Photos courtesy of George Phillips except as noted.

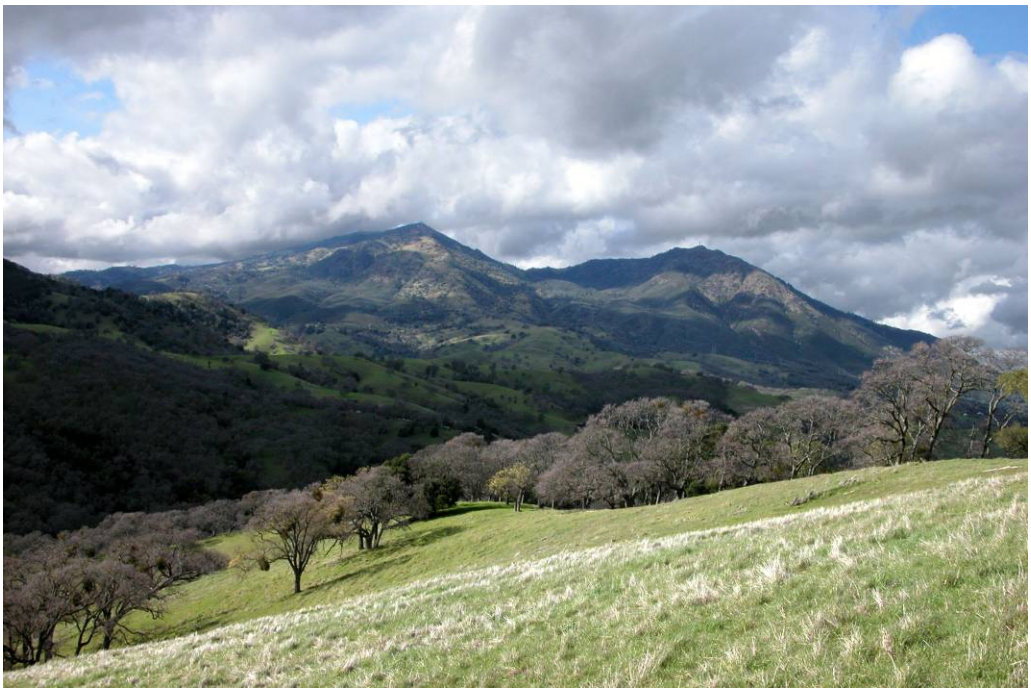


Photo 1: View of Mount Diablo from Property in winter

Photo 2: View of Mount Diablo from Property in summer

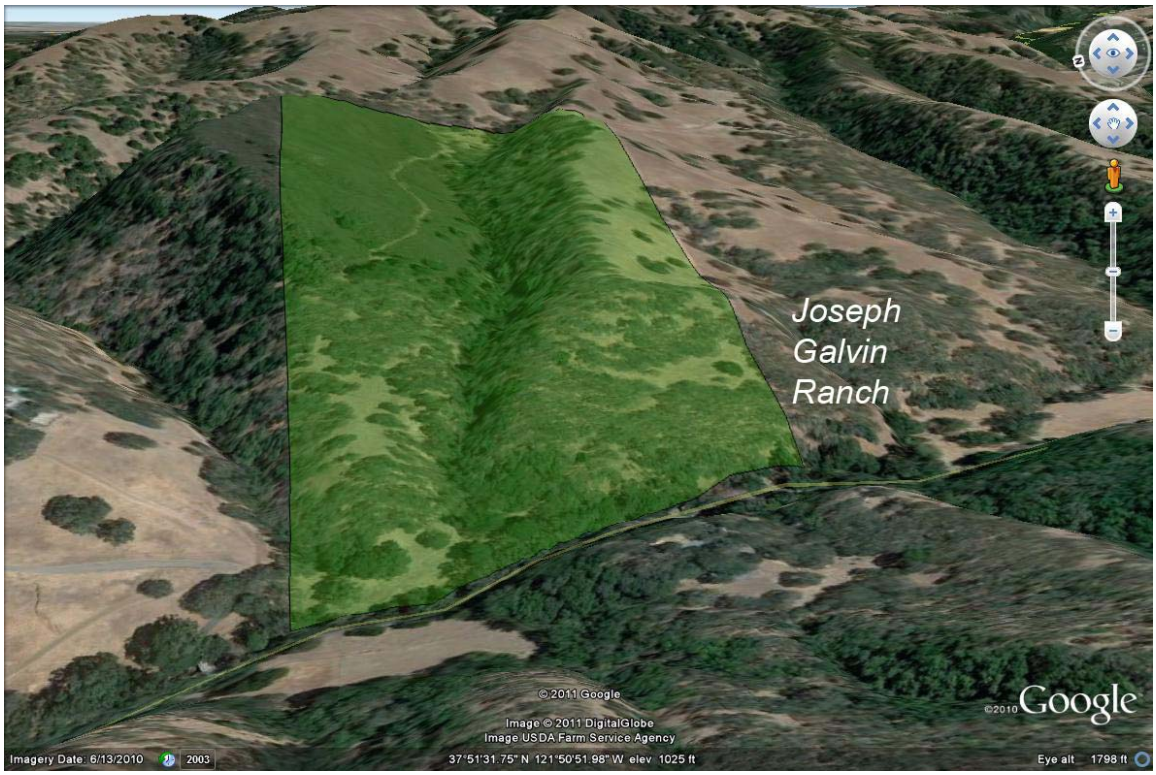


Photo 3: Oblique view of Property looking east

Photo 4: View of chaparral/scrub land cover on Property (looking northeast; photo by Scott Hein)

Photo 5: View of Marsh Creek on Property

Photo 6: View of access gate to Property

Figure 1: Galvin Parcel - Regional Context

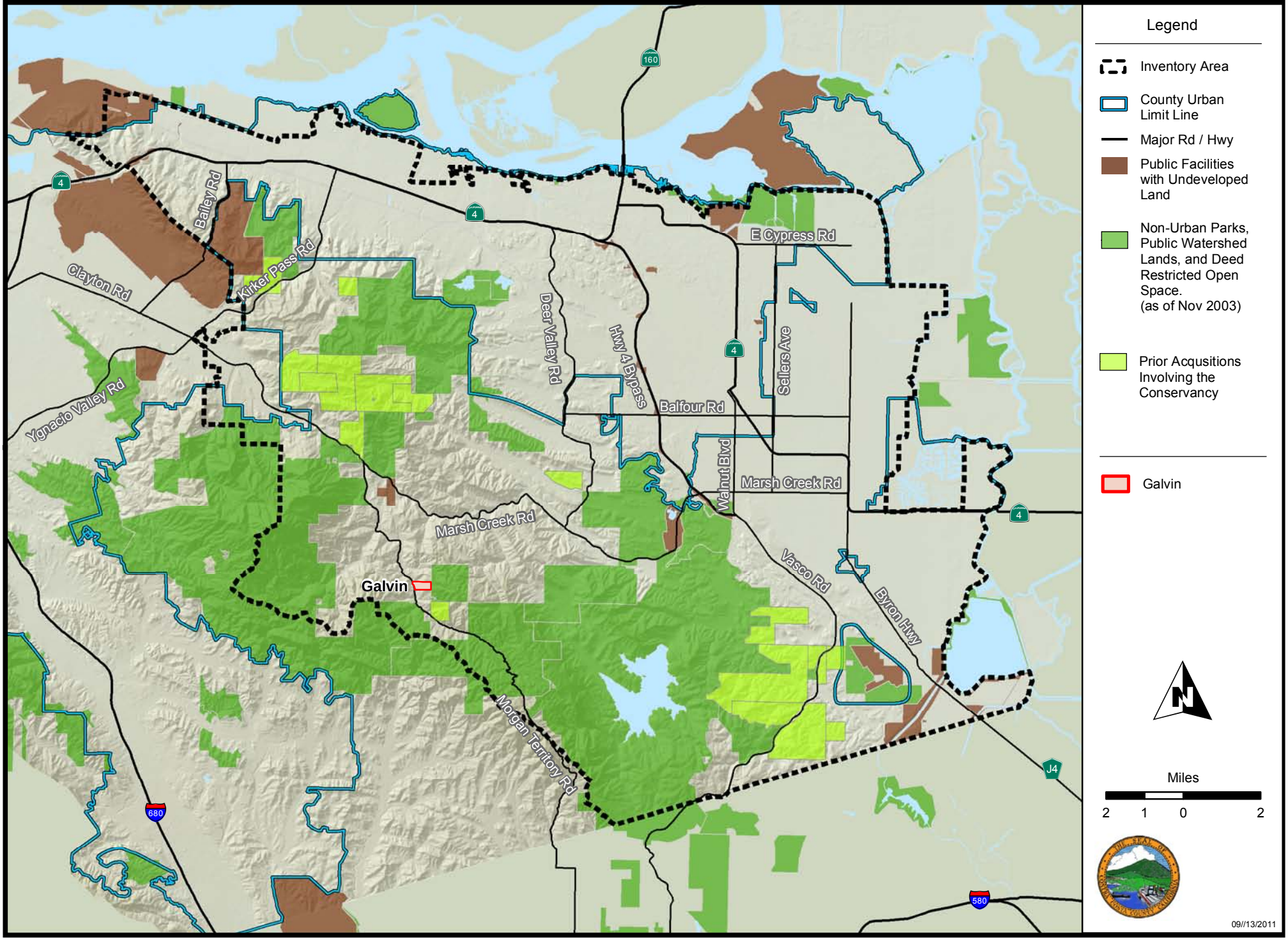


Figure 2: Galvin Parcel - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

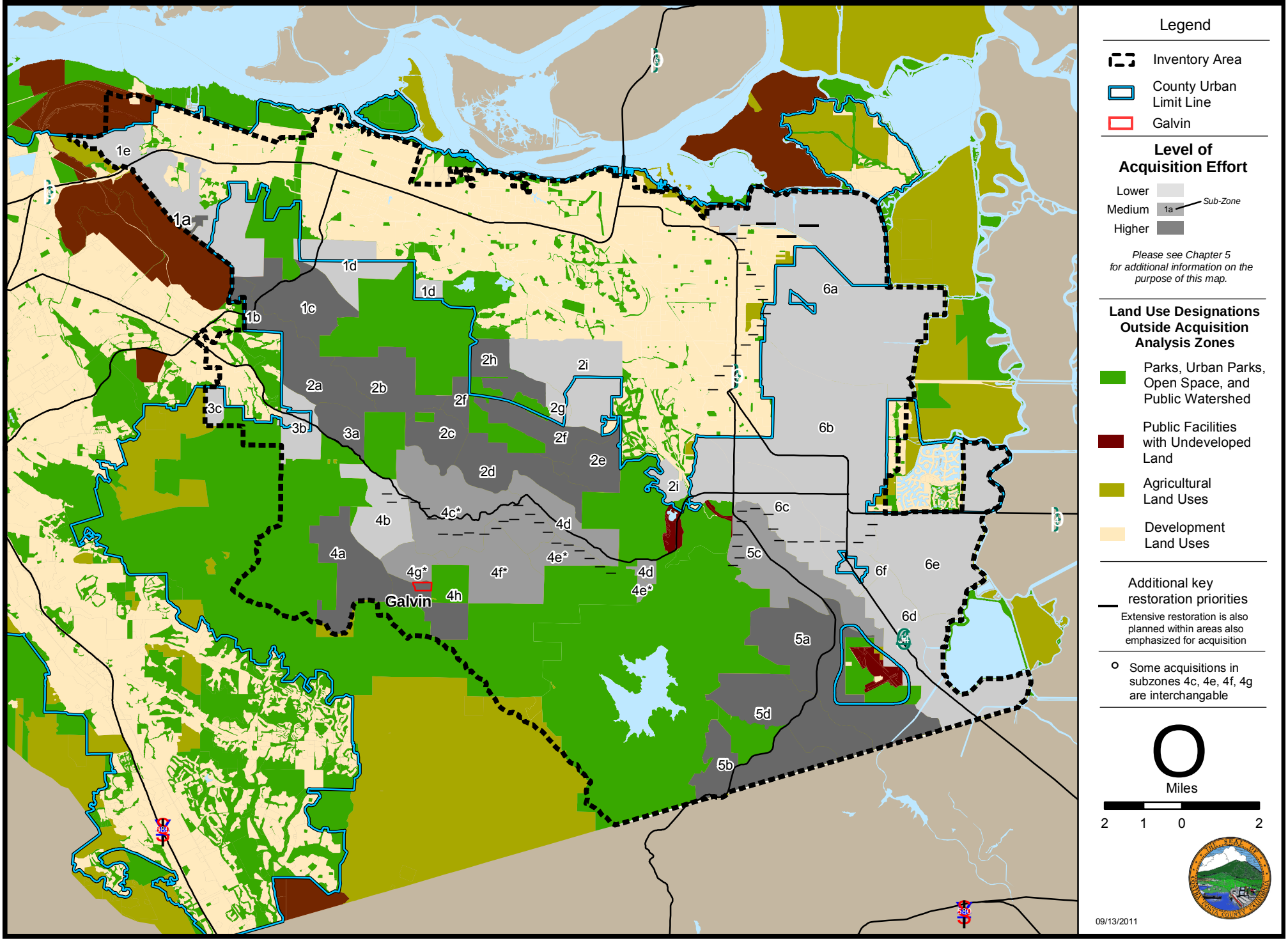


Figure 3: Galvin parcel - April 2008 Orthophotography

Figure 4: Galvin parcel - Terrestrial and Aquatic Land Covers Types

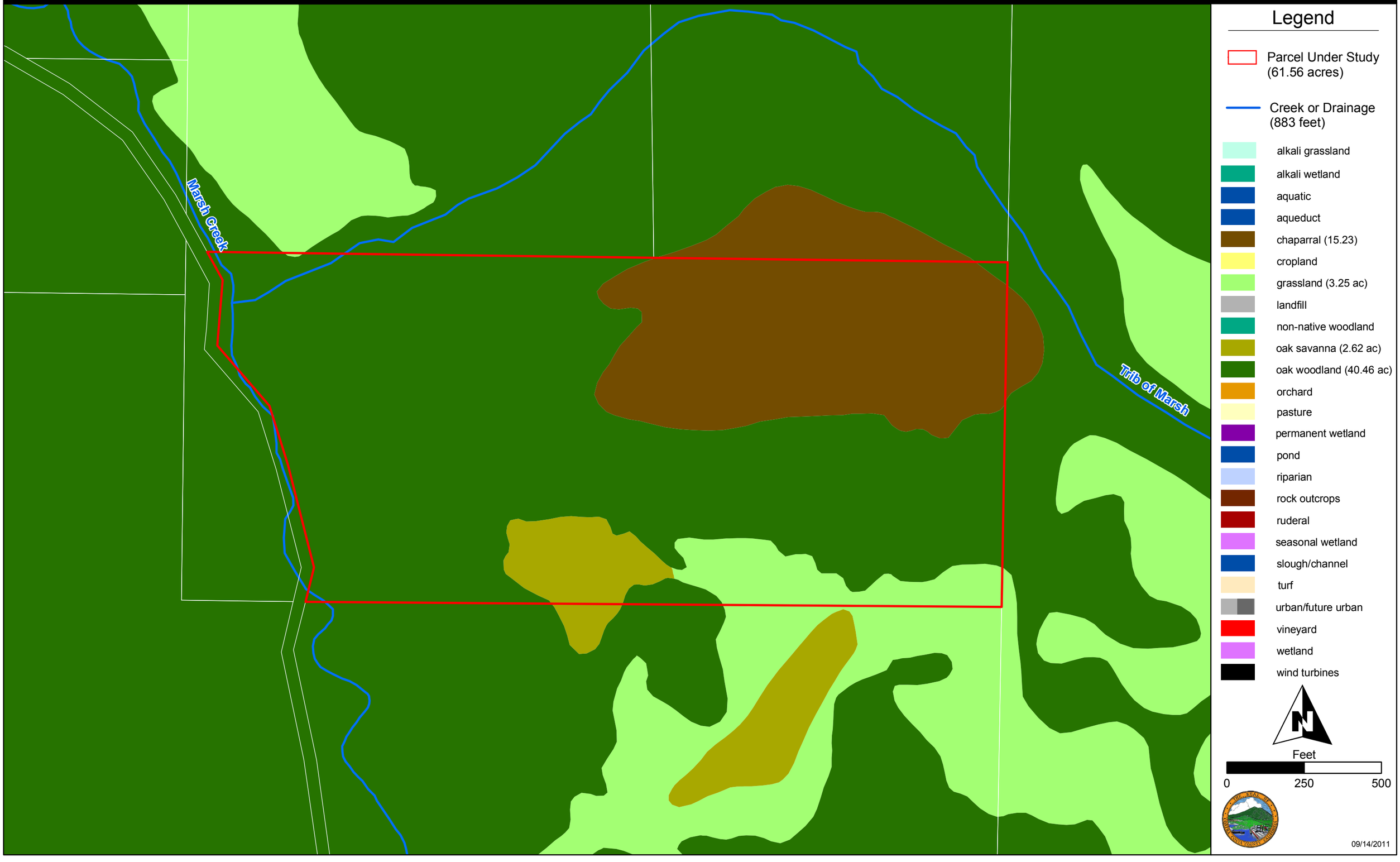
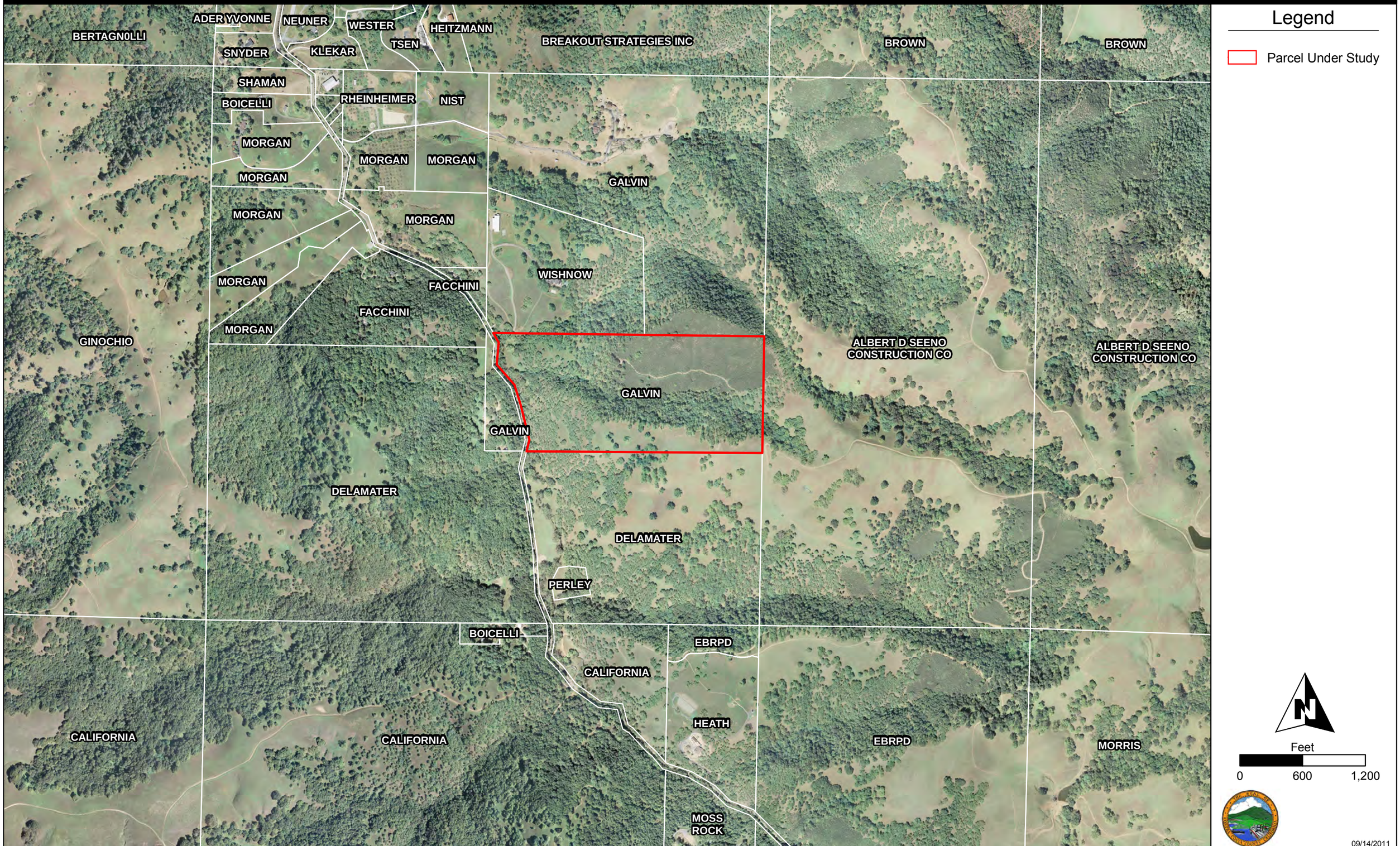


Figure 5: Galvin parcel - Neighborhood



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Pre-Acquisition Assessment
East Contra Costa County HCP/NCCP Preserve System

SITE IDENTIFICATION

Site Name: Fan

Site Address/location: 9663 Deer Valley Road, unincorporated Contra Costa County, CA

Property APN(s) #: APN 007-020-033

Size of Parcel(s): 21 acres

Survey Overview: The pre-acquisition assessment on potential preserve lands evaluates whether these lands will meet the requirements of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The assessment includes the location, quantity, quality, and types of habitats and natural communities on the site, as well as other site conditions and infrastructure that would support or conflict with the Preserve System's biological goals and objectives. This survey will help the East Contra Costa County Habitat Conservancy prioritize acquisition of preserve lands based on the lands' relative contribution to meeting the biological goals and objectives.

Photo-documentation: Photographs of landscape features and other aspects of the site are attached as Appendix A.

Figures: The following figures are attached as Appendix B.

- Regional Context (Figure 1)
- Consistency with HCP/NCCP Acquisition Priorities (Figure 2)
- Ortho Photo of Parcel (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4)
- Ownership of Adjacent Property (Figure 5)

Template prepared by the
ECCC Habitat Conservancy

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

LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

I. Overview and Regional Context (Figures 1, 2 and 3)

The Fan Property (Property) is located in the approximate center of the HCP/NCCP inventory area, north of Briones Valley Road and west of Deer Valley Road. It is bound to the south by the Preserve System's Fox Ridge property. It is bound in all other directions by private property. The Evergreen properties to the west are in the process of being acquired by CCWD as mitigation for expansion of the Los Vaqueros Reservoir. The acquisition of the Property would provide a building block for a landscape link between Black Diamond Mines and State Park's Cowell Ranch Property

The Property supports 18.1 acres of annual grassland and 2.9 acres of oak savanna. Site topography includes valley floor and ridge tops, and includes topographical features such as knolls, creeks/swales, and steeply sloping hillsides. Views from the top of ridgelines and knolls are wide-open vistas of the Sacramento/San Joaquin Bay Delta, the surrounding hills, and Mount Diablo.

The Property is located in an area designated as a high priority for acquisition for the HCP/NCCP Preserve System (acquisition analysis subzone 2e). Zone 2 (14,583 acres) was created to encompass the area dominated by annual grassland (31% of all annual grassland across all acquisition zones) with oak savanna and oak woodland land cover types in the lower elevations of the center of the inventory area.

The Conservancy is required to acquire at least 2,400 acres of annual grassland within Subzones 2e, 2f, and 2h (3.75 square miles) to preserve habitat for California red-legged frog, California tiger salamander, western pond turtle, foothill yellow-legged frog, and big tarplant, as well as a continuous band of San Joaquin kit fox modeled suitable core or low-use habitat between Cowell Ranch State Park and Black Diamond Mines Regional Preserve. The Property lies within these targeted sub-zones.

Fan is a key acquisition for the Conservancy because it helps to close the gap between Cowell Ranch State Park and Black Diamond Mines Regional Preserve, a critical wildlife linkage that must be conserved under the Plan.

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	***Area (acres)***
Terrestrial Land Cover Types	
Annual grassland	18.1
Oak savanna	2.9
Total area of terrestrial land cover	***21.0***

III. Streams

N/A

IV. Proximity to Development (see Figure 5)

Type of Development (urban, suburban, rural, commercial, etc)	***Distance from Site (miles)***	***General description of development and influence on site.***

Rural development	There are few rural residential single-family homes in the immediate neighborhood. The closest appears approximately 500 feet to the north of the Property.	Rural residential development in the vicinity could disrupt resource values through pets, noise, lights, exotic plants and habitat alteration.
Urban development	Development in the City of Brentwood is approximately 2 miles east.	Urban development in Brentwood does not have any direct influence on the Property.

V. Requirements in Specific Acquisition Analysis Zones and Sub-Zones

The site occurs in Conservation Analysis Zone(s) (see HCP/NCCP Chapter 5, Figure 5-1):

☐ 1 ☑ 2 ☐ 3 ☐ 4 ☐5 ☐ 6

Contribution to Acquisition Analysis Zone Requirements under Maximum Urban Development Area Scenario

Sub-Zone Requirement	*Total Acquisition Requirement*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Zone 2 Total Acquisition	9,550	21	0.2%

Contribution to Overall Terrestrial Land Cover Acquisition Requirements under Maximum Urban Development Area Scenario

Land-Cover Requirement	*Total Requirement (acres)*	*Contribution by this Acquisition (acres)*	*Percentage of Requirement Met by Acquisition*
Preserve-wide Annual Grassland	16,500	18.1	0.1%
Preserve-wide Oak Savanna	500	2.9	0.6%

VI. Site Conformance with Preserve Design Principles

The following is a subset[1] of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.

[1] The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).
- **Buffers urban impacts**: site includes buffer land within its boundaries that could minimize indirect effects from urban development.
- **Minimizes edge effects:** site shares a minimum amount of edge (i.e., should have the greatest possible area-to-perimeter ratio) with nonpreserve land, especially urban development. Preserves with low area-to-perimeter ratios may be appropriate to protect linear features with high biological value, such as streams, riparian woodland, valley bottoms, or ridgelines essential to wildlife movement.
- **Fully represents environmental gradients:** includes or connects to open space/parks with a range of environmental gradients, such as topography, elevation, soil types, geologic substrates, slopes, and aspects.
- **Watershed protection:** site contributes to the protection of watersheds, subwatersheds, and headwater streams that are not already in protected status.
- **Management considerations:** desired management treatments such as livestock grazing, prescribed burning, exotic species control, and restoration should be feasible on site.

The Property's size (21 acres) has potential to contribute habitat for covered species. It provides critical benefit to species in that it is a key building block to create a landscape linkage between Cowell Ranch/Los Vaqueros in the east and Black Diamond Mines Regional Preserve in the west.

The Property is bound to the south by the Preserve System's Fox Ridge property.

The Property does not abut any urban uses.

The Property shares its longest edge with the Preserve System's Fox Ridge property. Acquisition of this Property will protect areas essential to wildlife movement.

Site topography includes valley floor and ridge tops, and includes topographical features such as knolls, creeks/swales, and steeply sloping hillsides. The site supports 18.1 acres of annual grassland and 2.9 acres of oak savanna. Views from the top of ridgelines and knolls are wide-open vistas of the Sacramento/San Joaquin Bay Delta, the surrounding hills, and Mount Diablo.

The site is located in the Briones Creek subbasin, although no streams traverse the site. The site is located approximately 250 feet from a portion of the main stem of Briones Creek, an intermittent stream.

The site will be managed to support covered species associated with grasslands and oak savanna. Moderate grazing will likely be used to manage vegetation height and exotic plant species.

BUILT FEATURES AND SITE CONSTRAINTS

I. Describe evidence in the field of current and past land uses on the site (e.g., grazing; grading, earthwork, and construction; infrastructure; industry; etc.) and locate on the aerial:

The predominant site use has been cattle grazing. The site is served by PG&E, but not by any other public utilities. The subject property is raw land.

Four public utility easements on the site include:

- An oil, gas, and mineral rights easement, Recorded August 10, 1977.

- A Declaration Regarding Water Quality, recorded March 3, 1992.
- Two easements affecting the western portion of the Property for roadway and utilities and drainage (January 11, 1980, June 9, 1978).

These easements have little impact on the subject's existing use for grazing open space land.

II. Describe the type and quantity of structures and impervious surfaces on the Property and map on an aerial. This includes houses, barns, sheds, roads, etc:

N/A.

III. Map any ruderal areas (defined as disturbed areas characterized by sparse nonnative, typically weedy vegetation) and describe their condition:

N/A.

IV. Discuss any management constraints that you have observed on this site (e.g., interior access roads, gates, fencing, boundary/edge issues, etc.):

N/A.

V. Describe land uses adjacent to the Property that could influence the site's potential as a preserve (e.g., influence the ability to manage or restore the site):

The site is bound to the south by existing open space. The remaining sides are bound by private land. The likely uses of land in this area is for grazing and potentially for rural residential. Several other sites along the access road to the site are served by utilities, but few of these parcel have homes constructed. The site could serve as a regional trail connection from Cowell to Black Diamond Mines.

VI. Describe any populations of invasive plant species on site and document on an aerial photo:

No field work for invasive plants was performed.

VII. Discuss any other possible constraints on this site as a potential preserve (water availability, habitat degradation, etc.)

Numerous small parcels (built and un-built) lie north and east of the Property.

Appendices:

- **Appendix A: Photos**
- **Appendix B: Figures**

Appendix A

Photo 1: View east to the Briones Valley from the Property

Photo 2: View to the south.

Photo 3: View the southeast

Photo 4: View to the north

Figure 1: Fan Parcel - Regional Context

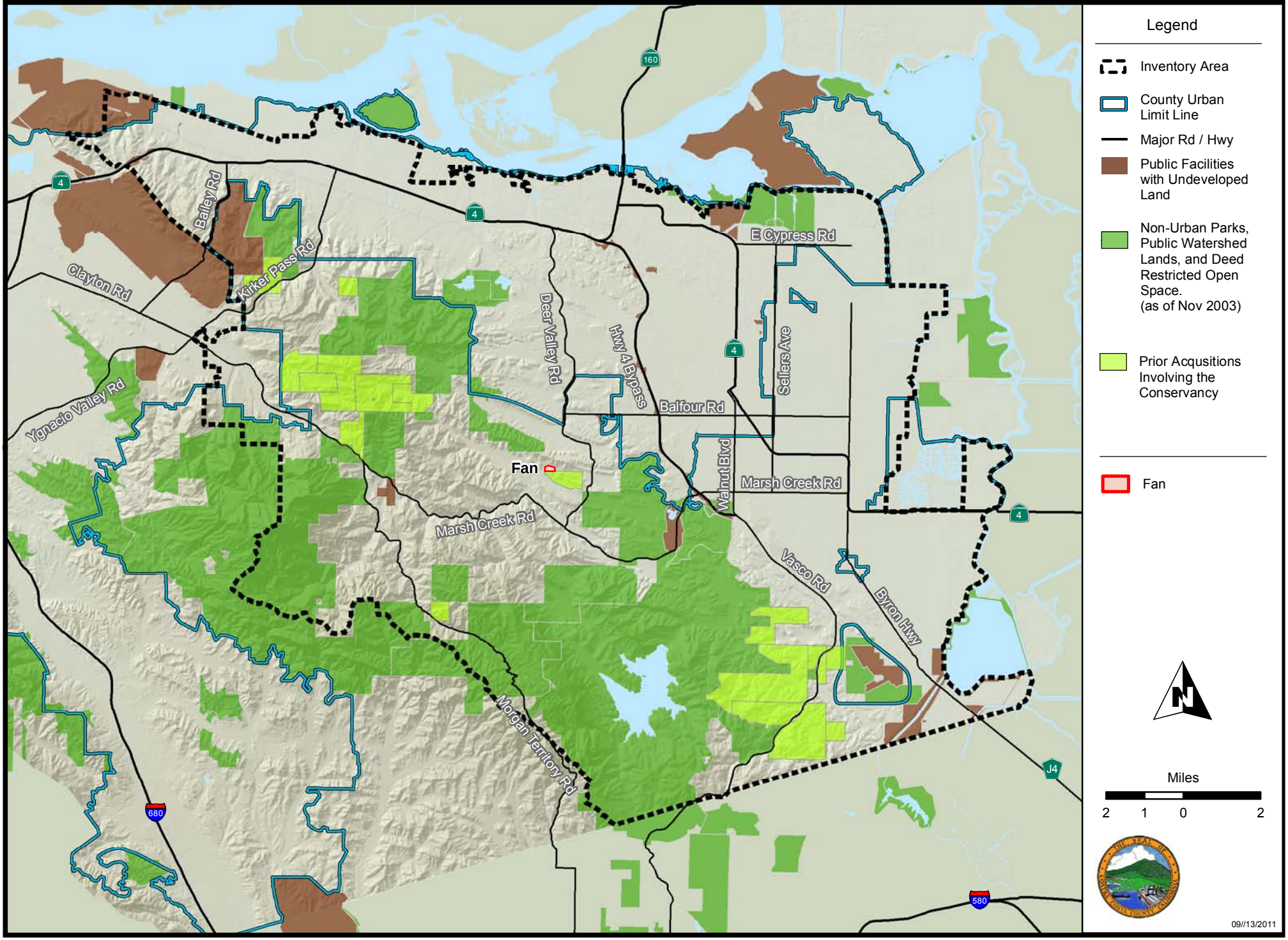


Figure 2: Fan Parcel - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

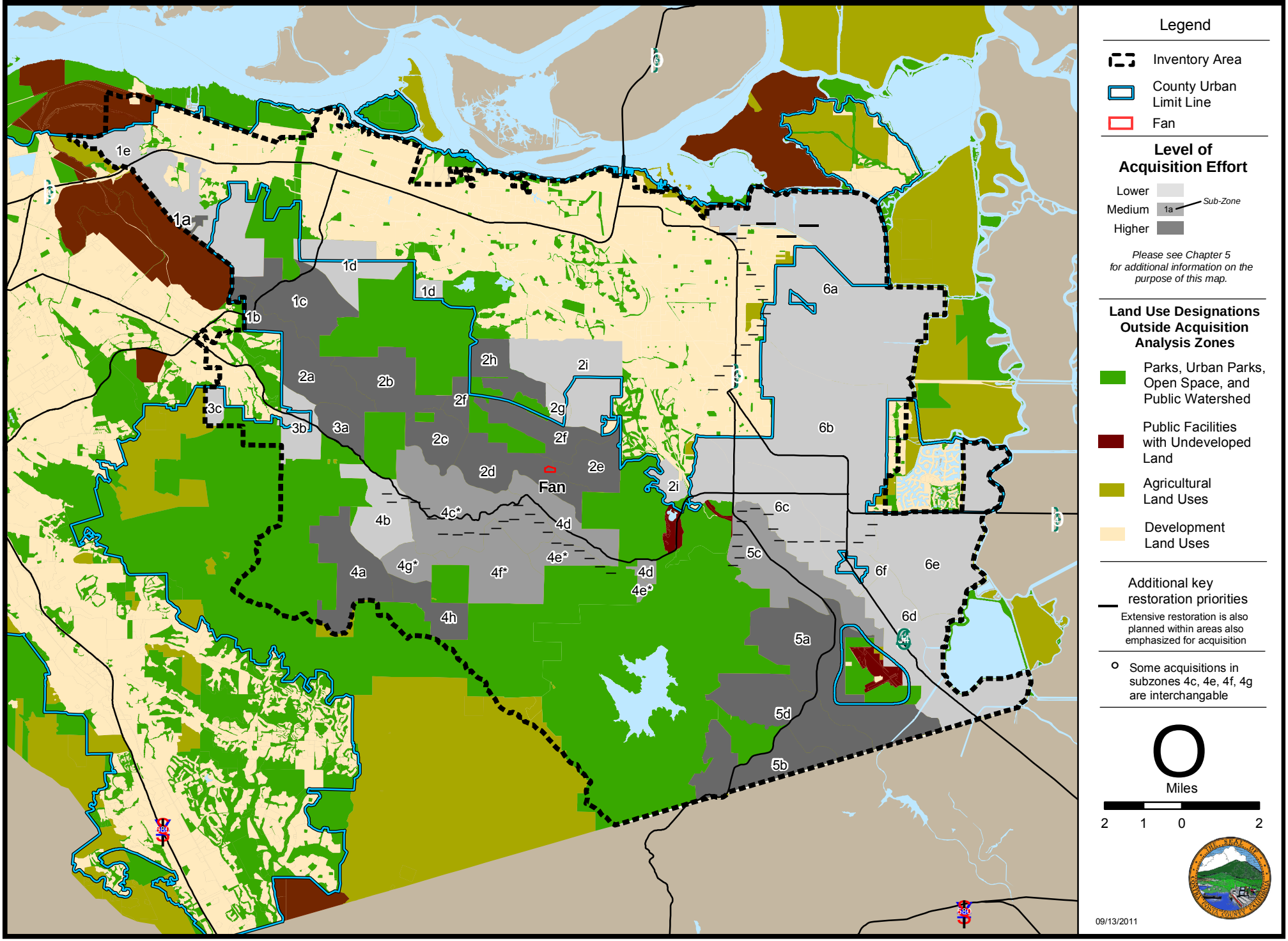


Figure 3: Fan parcel - April 2008 Orthophotography

Figure 4: Fan parcel - Terrestrial and Aquatic Land Covers Types

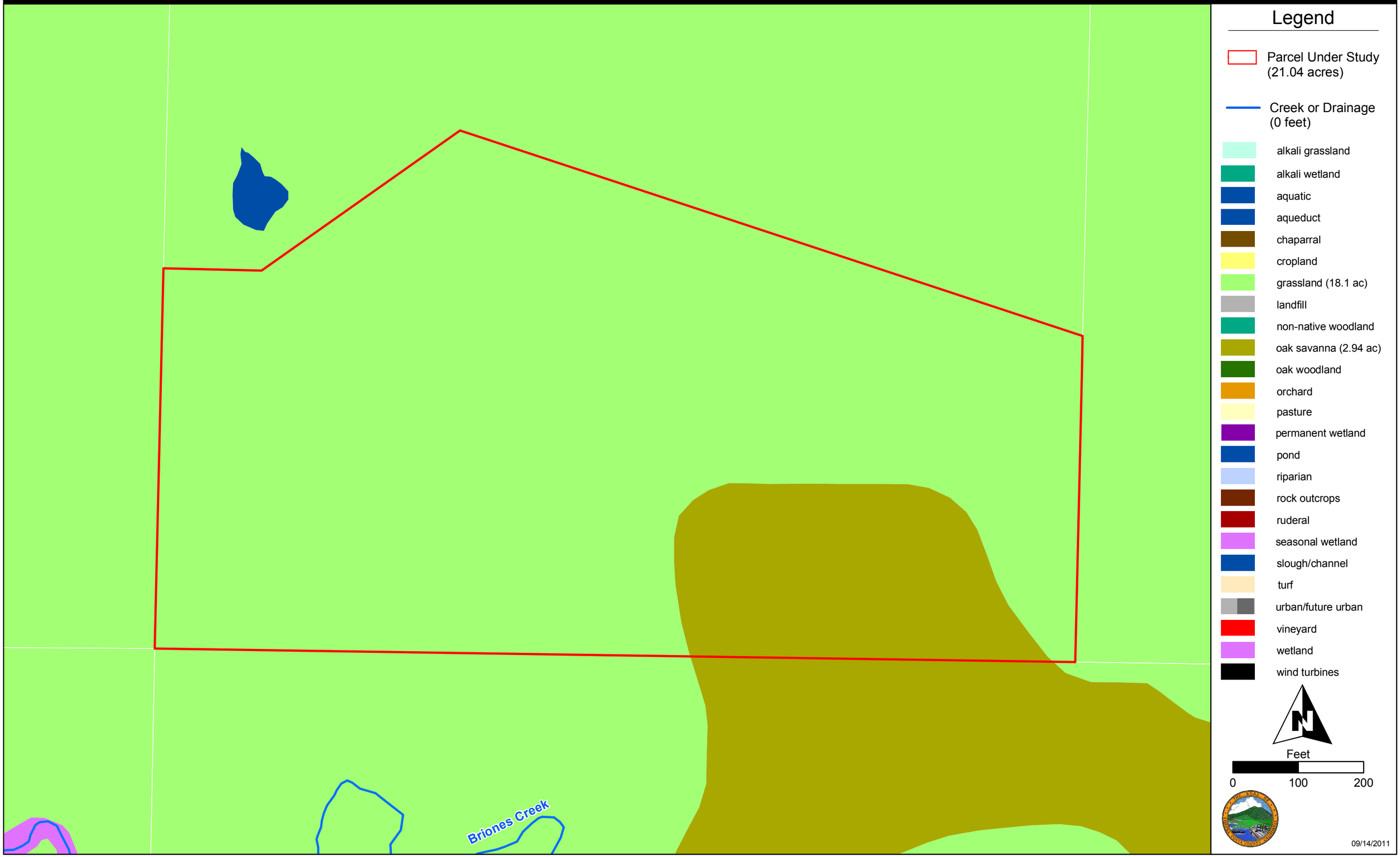


Figure 5: Fan parcel - Neighborhood

FUNDING AGREEMENT
BY AND BETWEEN
EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY AND
EAST BAY REGIONAL PARK DISTRICT
(Insert Property Name)

This **FUNDING AGREEMENT** (the **"Agreement"),** dated _____, 2011, 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 collectively referred to herein as the **"Parties."**

Recitals

A. Conservancy is implementing the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (**"HCP/NCCP"**), dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association and approved by the United States Fish and Wildlife Service (**"USFWS"**) under Section 10 of the Federal Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 *et seq.*), and by California Department of Fish and Game (**"CDFG"**) under California Fish and Game Code Section 2835.

B. The HCP/NCCP provides a framework to protect natural resources in eastern Contra Costa County, to comprehensively conserve species, wetlands, and ecosystems, and to recover endangered species through creation of a preserve network.

C. District is a regional park district which owns and manages lands in Alameda and Contra Costa Counties. District is working cooperatively with the Conservancy to implement the HCP/NCCP as is appropriate and consistent with District's mission.

D. District and [Insert Sellers' names] have entered into that certain Option, Purchase and Sale Agreement ("**Option Agreement**"), effective as of [Insert Date] providing for District's acquisition of that certain real property comprised of approximately [Insert # of acres] located in Contra Costa County, California that is legally described in **Exhibit A** attached hereto (the **"Property"**). The purchase price for the Property under the Option Agreement is [Insert the Purchase Price Alphabetically] ([Insert Numerical Purchase Price]) (the **"Purchase Price"**):

E. The Purchase Price is payable by District under the Option Agreement in two option payments, as follows:

(1) [Insert amount of initial option payment alphabetically] ([Insert amount of initial option payment numerically]) at such time as specified conditions in the Option Agreement are met (the "**Initial**

Option Payment"); and

(2) [Insert amount of final option payment alphabetically] ([Insert amount of final option payment numerically]) [Insert Date] (the **"Final Option Payment"**):

F. The Property possesses significant ecological and habitat values that benefit endangered, threatened, and other species, including without limitation, habitat suitable for the following Covered Species (as defined in the HCP/NCCP) (collectively, the **"Property's Covered Species"**): [Insert list of species]

G. Conservancy desires to provide to District, directly through the escrow set up for this acquisition by District and Sellers, the funds to pay a portion of the Final Option Payment, on or before the date such payments are due under the Option Agreements, for the purpose of advancing the requirements and goals of the HCP/NCCP through funding District's protection of the Property's Covered Species, subject to the terms and conditions set forth below in this Agreement.

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

1. Conservancy Funding. Subject to the terms, conditions and procedures set forth below, Conservancy shall provide to District the amount equal to [Insert amount of final Conservancy funding alphabetically] ([Insert amount of final Conservancy funding numerically]) (the **"Final Conservancy Funding"**), which shall be used solely to fund a portion of the Final Option Payment due Sellers under the Option Agreements.

2. Purpose of Conservancy Funding. District covenants and agrees that if Conservancy provides the Conservancy Funding under this Agreement for District to acquire the Property, District will own, manage and use the Property for the purpose of protecting in perpetuity the Property's Covered Species in accordance with the HCP/NCCP and the other terms and conditions set forth in this Agreement (the **"Funding Purpose"**).

3. Conditions Precedent.

(a) **Conditions Precedent to Deposit of Conservancy Funding.** Conservancy's obligation to deposit the Conservancy Funding into the Escrow (as defined below) shall be subject to the satisfaction, or waiver by Conservancy in writing, of each of the following conditions precedent on or prior to the date the Final Option Payment is due under the Option Agreements (collectively, the **"Conservancy Funding Conditions Precedent"**):

(i) **Property Documents.** District shall have delivered to Conservancy, and Conservancy shall have reviewed and approved, a full and complete copy of all documents and reports obtained by District from Sellers or prepared by or at the direction of District, that relate to the ownership,

development, management, operation and/or use of the Property and/or any of the transactions contemplated by this Agreement, including, without limitation, the following (collectively, the **"Property Information"**):

(A) The Option Agreements, including any and all amendments and modifications thereto entered into by Sellers and District; provided, however, Conservancy has previously reviewed and approved the Option Agreements;

(B) A current preliminary title report for the Property, together with a copy of each recorded document referenced in such report;

(C) A copy of each lease, contract, permit, license or other document or agreement that District has been provided evidencing any unrecorded third party rights to the Property which is currently in effect;

(D) A current appraisal of the Property, including any and all updates thereto; provided, however, that Conservancy has previously reviewed and approved the appraisal of the Property prepared by [Insert Name of Appraiser] dated [Insert Date of Appraisal] and the Appraisal Update Report dated [Insert Date];

(E) A current Phase 1 environmental site assessment for the Property; [if true, insert the following] provided, that Conservancy has previously reviewed and approved Phase 1 for the Property prepared by [Insert Name of Company] as of [Insert Date]; [omit if Phase 1 unnecessary due to no or minimal past disturbance]

(F) A copy of all documentation in District's possession or control relating to the water rights associated with or appurtenant to the Property; and

(G) A copy of any study, report or other written information or documents in District's possession or control relating to the Property and the transactions contemplated by this Agreement or the Option Agreements, including, without limitation, maps, surveys, appraisals, environmental, soils and geotechnical reports, engineering reports, and mineral rights.

(ii) **No Defaults under the Option Agreements.** Neither District nor Sellers shall be in default under any term, condition or provision of the Option Agreements, and the Option Agreements shall remain in full force and effect.

(iii) **Additional Funding.** District shall have deposited, or caused to be deposited into the Escrow the following amounts:

(A) Initial Option Payment;

(B) [Insert amount of final option payment alphabetically] ([Insert amount of final option payment numerically]) which is District's share of the Final Option Payment (the **"District Final Option Payment"**); and

(C) Sufficient funds to pay all title, escrow and closing fees, costs, and expenses allocated to District in the Option Agreements or otherwise payable by District.

(iv) **Approval of Closing Documents.** Conservancy shall have reviewed and approved the final form of all closing documents relating to District's purchase of the Property from Sellers under the Option Agreements including, without limitation, the following (collectively, the **"Closing Documents"**), each signed by all signatories thereto:

(A) Grant Deed transferring the fee interest in the Property from Sellers to District (the **"Grant Deed"**);

(B) Escrow Instructions of Sellers; and

(C) Escrow Instructions of District.

(v) **Delivery of Closing Documents into Escrow.** All of the Closing Documents shall have been delivered into the Escrow with instructions from District to close the transactions contemplated by the Option Agreements and this Agreement in a manner that is not inconsistent with the separate escrow instructions delivered to Escrow Holder by Conservancy.

(vi) **Deed Restrictions.** District shall be irrevocably committed to record in the Official Records of Contra Costa County (**"Official Records"**), concurrent with, but immediately following, recordation of the Grant Deed, deed restrictions covering the entire Property that are designed to provide for the perpetual protection of the Property's Covered Species and otherwise comply with the requirements of the HCP/NCCP and are in form and substance acceptable to Conservancy, USFWS and CDFG and sufficient to permit inclusion of the Property into the Preserve System under the HCP/NCCP (**"Deed Restrictions"**); provided, however, if USFWS or CDFG have not approved the Deed Restrictions prior to the Closing (as defined below), District shall record the Deed Restrictions in the Official Records, as approved by USFWS and CDFG, as soon as reasonably possible following such approval. The Deed Restrictions shall permit construction of [Include if applicable: the proposed [insert rural infrastructure project name from Chapter 2 of the HCP/NCCP] Project, a specifically identified covered activity in the HCP/NCCP, and] District public access improvements and recreational uses, consistent with the Management Plan (as defined below) and Section 6 below. Attached hereto as **Exhibit B** is a draft of

the Deed Restrictions which are still under review by District but are substantially in a form and substance agreeable to Conservancy and District and which agreed upon draft shall be submitted to USFWS and CDFG for review and approval. Conservancy and District shall use their respective reasonable best efforts to negotiate with USFWS and CDFG a mutually acceptable final form of the Deed Restrictions.

(vii) **Baseline Conditions Report.** Conservancy and District shall have reviewed and approved a final baseline conditions report for the Property, the initial draft of which shall have been prepared by or at the direction of Conservancy (**"Baseline Report"**), unless the Parties have agreed in writing to waive preparation of the Baseline Report. The Baseline Report shall provide detailed information on the condition of the Property as of the date District acquires the Property from Sellers. The Baseline Report shall be tailored to the terms and conditions of the Deed Restrictions and the conservation values the Deed Restrictions seek to protect. The Baseline Report must be reviewed, approved, signed and certified by District on or before the Closing. District's certification of the Baseline Report shall confirm that to the District's best knowledge after diligent review of the final Baseline Report and inspection of the Property, the Baseline Report is a current and accurate description and representation of the physical condition and conservation values of the Property as of the Closing.

(viii) **Recordation of Closing Documents.** The Grant Deed and Deed Restrictions shall have been delivered into the Escrow with District's irrevocable instructions to record such documents in the Official Records at the Closing; provided, however, if USFWS or CDFG have not approved the Deed Restrictions prior to the Closing (as defined below), District shall record the Deed Restrictions in the Official Records, as approved by USFWS and CDFG, as soon as reasonably possible following such approval.

(ix) **Grant Funding Requirements.** District understands that Conservancy intends to use federal and state grant funds made available to Conservancy through the California Wildlife Conservation Board **("WCB")** ("**Federal Funding**") [insert other grant funders as applicable and identify collectively as "**Grant Funders**"] to fund all of the Conservancy Funding. District further understands that Conservancy and District will enter into grant agreements with Grant Funders that impose certain obligations on Conservancy and District respecting the use of such funds for this project. District will comply with all grant requirements imposed by Grant Funders in connection with such funding, so long as such requirements are not inconsistent with this Agreement and will execute and deliver all documents as reasonably required by Grant Funders for such funding. District understands that Conservancy shall be unable to approve the Property Information until Grant Funders approve the Property Information. District understands that funds to be paid by District to pay the portion of the Purchase Price not covered by the Conservancy Funding will serve as the non-federal, non-mitigation match for the Federal Funding used by

Conservancy to provide the Conservancy Funding and that District may not use funds generated by mitigation to pay such amounts.

4. District's Covenants. In consideration of Conservancy's disbursement of the Conservancy Funding in accordance with **Section 1** above, District hereby covenants and agrees as follows:

(a) **Notice of Unrecorded Agreement.** District shall record or cause to be recorded, concurrent with the Closing, a Notice of Unrecorded Agreement (**"Notice of Unrecorded Agreement"**), incorporating by reference this Agreement and giving public notice that District received funds under this Agreement in order to assist District in acquiring the Property and that, in consideration of receipt of the Conservancy Funding hereunder, District has agreed to the terms of this Agreement. The Notice of Unrecorded Agreement shall be substantially in the form of **Exhibit C** attached hereto and incorporated herein by reference.

(b) **Delivery of Closing Documents.** District shall provide to Conservancy, promptly following the Closing, a conformed copy of the recorded Grant Deed, Deed Restrictions and Notice of Unrecorded Agreement, with all recording information identified thereon, as well as a copy of the final closing or settlement statement and the title insurance policy insuring District as the fee owner of the Property. District shall also provide Conservancy with copies of such other documents related to the Closing as requested by Conservancy.

(c) **Amendment or Termination of Deed Restrictions.** District shall not amend or modify the Deed Restrictions without first obtaining Conservancy's written approval to such amendment or modification. District shall not terminate the Deed Restrictions without first obtaining Conservancy's written approval.

(d) **Use of Property.** Following acquisition of the Property, District shall use, operate, manage and maintain the Property in perpetuity in a manner that complies with the Deed Restrictions and this Agreement, and fulfills the Funding Purpose set forth in **Section 2** above.

(e) **Management Plan and Management Costs.** Conservancy and District shall jointly prepare a management plan for the Property (**"Management Plan"**) that shall be consistent with the HCP/NCCP and shall be completed as soon as reasonably possible but no later than [Insert Date] unless the Conservancy and District are able to close escrow on the Property prior to [Insert Date], in which case the Management Plan will be completed no later than one year following the date of the close of escrow. Conservancy shall prepare and provide to District an initial draft of the Management Plan. District shall promptly review and comment on the initial draft Management Plan. Conservancy and District shall work together in good faith to produce a final Management Plan that is mutually acceptable to Conservancy and District. The Management Plan will include a monitoring plan for the Property and an estimated budget of all management and monitoring costs associated with implementation of the

Management Plan (**"Management Costs"**). Conservancy and District intend to allocate Management Costs between the Parties consistent with the general principle such that Conservancy will pay for those Management Costs relating to management and monitoring of the Property's Covered Species and District will pay for those Management Costs relating to public access and public use of the Property. On or before final approval of the Management Plan, Conservancy and District will enter into a written agreement confirming the Parties' 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. Conservancy shall pay all costs associated with preparation of the Management Plan. Following completion of the Management Plan, District shall use and manage the Property in accordance with the Management Plan.

(f) **Lease Revenues. [include this section (f) only if the property has communication tower, wind lease or residential lease revenue]**

(i) **Leases.** The District will acquire the Property subject to those certain Pacific Gas and Electric communications facility leases referenced in the Option Agreements (collectively, the **"Leases"**), and following the District's acquisition of the Property, the District will be entitled to receive all the revenues due the lessor under the Leases (the **"Lease Revenues"**).

(ii) **Allocation of Lease Revenues.** All Lease Revenues received by District under the Leases shall be used by District as follows:

(A) To pay management costs associated with the management of any real property that is (i) identified in those certain grant agreements, Grant No. E 21-HL-3, Grant Title: 2007 HCPLA San Joaquin Multi-Species Conservation Plan HCPLA and Grant No. E-26-HL-3, Grant Title: 2008 HCPLA, East Contra Costa HCPLA, between USFWS and CDFG (the "**Federal Grant Agreements"**) and (ii) included in the ECC NCCP/HCP preserve lands (collectively, the **"Lease-Funded Management Costs"**), which Lease-Funded Management Costs may include, without limitation, any combination of the following costs:

1. Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);
2. Fence repair, replacement and construction;
3. Maintaining roads and access facilities;
4. Control of invasive or exotic species;
5. Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;
6. Removal of debris & unnecessary structures, including buildings & unnecessary roads;
7. Other habitat enhancement activities;

8. Monitoring of habitat conditions and of HCP/NCCP covered species; and

9. Adaptive management activities guided by monitoring.

The Conservancy and District recognize that the Property (which includes District's right to receive the Lease Revenues) was purchased with a combination of funds provided by the Conservancy and District; and/or

(B) To fund a non-wasting endowment (the **"Endowment"**) to provide funding for those Lease-Funded Management Costs incurred following the date the Leases are terminated; the Parties intend that District shall invest an agreed-upon amount of the Lease Revenues to generate annual interest sufficient to pay that portion of the Lease-Funded Management Costs covered by Lease Revenues according to a schedule agreed to by Conservancy and District, pursuant to **Section 4(f)(ii)(A)** above (the **"Endowment Goal"**).

(iii) **Grazing Lease Revenues.** The Parties understand that, at some point in the future, District may enter into a grazing lease for the Property. The lease revenues received by District under such grazing lease will not be subject to the allocation of lease revenues provisions of **Section 4(f)(ii)** above and such grazing lease revenues may be spent in District's sole discretion.

(iv) **Annual Budget and Annual Reporting.** On or before the beginning of each calendar year, District and Conservancy shall jointly prepare an annual written budget setting forth the total amount of Lease Revenues projected for collection by the District during the upcoming year, together with District's proposed expenditures consistent with **Section 4(f)(ii)** above (the **"Annual Budget"**). Within thirty (60) days following the end of each calendar year, District shall deliver to Conservancy an accounting for the immediately preceding calendar year (the **"Annual Accounting"**) which shall set forth (A) the total amount of Lease Revenues collected during such calendar year; (B) how such Lease Revenues were actually expended by District during such year, and (C) the total amount of the Endowment, together with the projected amount of the Endowment Goal. The requirements set forth in this section may be modified and expressly superseded in the funding agreement contemplated under **Section 4(e)** above.

(g) **Future Wetland Restoration Projects.** Following District's execution of this Agreement, Conservancy shall have the exclusive right to work with District to conduct, or cause to be conducted, wetland and/or habitat creation, restoration,

enhancement, and/or development improvements, projects or activities on the Property to satisfy the requirements of the HCP/NCCP (**"Habitat Activities"**). Any Habitat Activities conducted, or caused to be conducted, on the Property by Conservancy shall (i) be paid for by Conservancy, provided that it is expected the District may provide some staff resources; (ii) require District's prior reasonable approval respecting design, location and phasing, and (iii) be conducted in accordance with a separate written agreement entered into by Conservancy and District providing for such projects, if and to the extent either Party to this agreement requires such agreements. The written agreement shall address Conservancy's reimbursement for District's costs and staff time where appropriate, in light of the type of project and the staff resources required of District. District understands that Conservancy may encounter urgent timing constraints to complete some Habitat Activities in order to comply with the HCP/NCCP. If Conservancy reasonably determines that District will not be able to meet such deadlines, Conservancy and District shall exercise their respective reasonable good faith efforts to enter into a written agreement on reasonable terms and conditions for Conservancy to step in and manage construction of the Habitat Activities through timely completion in a manner substantially consistent with the District's previous approvals of such activities and the other written agreements entered into by the Parties respecting the Habitat Activities. Neither District nor any other third party shall conduct any Habitat Activities on the Property unless such party first obtains Conservancy's written reasonable approval of such Habitat Activities. Should District be required to mitigate project impacts for any portion of its project relating to public access/use of the Property, District shall be allowed to mitigate on the Property so long as said mitigation does not conflict or interfere with Conservancy's existing or planned Habitat Activities projects.

(h) **Access to the Property.** From and after the Effective Date and through the Closing, District shall use its reasonable best efforts to coordinate with Sellers to provide Conservancy, and Conservancy's employees, agents and consultants, WCB and WCBs' employees, agents and consultants access at reasonable times upon reasonable prior notice to the Property to conduct appropriate due diligence investigations and to conduct Habitat Activities. District shall also make available District's employees and agents to Conservancy, WCB and their respective employees, agents, and consultants to provide additional explanatory information and answer questions respecting the Property and to otherwise assist in Conservancy's and WCBs' due diligence investigation of the Property. Following District's acquisition of the Property, District shall provide access to the Property to Conservancy and Conservancy's employees, agents and consultants, at reasonable times upon reasonable prior notice, to monitor District's compliance with the terms of this Agreement and to exercise any of Conservancy's rights hereunder.

(h) **Transfer.** District shall not assign, sell, transfer, exchange or otherwise convey all or any portion of the Property without obtaining the prior written approval of Conservancy, which approval shall not be unreasonably denied as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Funding Purpose.

(i) **Security.** District shall not use all or any portion of the Property as security for any debt without obtaining the prior written approval of Conservancy.

5. Funding Procedure.

(a) **Escrow.** Conservancy shall deposit the Conservancy Funding directly into the escrow (the **"Escrow"**) that has been opened to consummate District's purchase of the Property in accordance with the Option Agreements, at The Final Conservancy Funding shall be released from the [Insert Name and Address of Title Company], Attention: Escrow Officer (Escrow Number [Insert Escrow Number] (**"Escrow Company"**). Escrow to Sellers to pay the portion of the Purchase Price not covered by the District under Section 3(a)(iii) above upon confirmation that the Grant Deed, Deed Restrictions and Notice of Unrecorded Agreement have been recorded in the Official Records (the **"Closing"**) provided, however, if USFWS or CDFG have not approved the Deed Restrictions prior to the Closing (as defined below), District shall record the Deed Restrictions in the Official Records, as approved by USFWS and CDFG, as soon as reasonably possible following such approval. The Closing shall occur, if at all, on or before [Insert Closing Date] (the **"Closing Date"**), unless otherwise mutually agreed by Conservancy and District in writing. If the Closing has not occurred on or before the Closing Date and Conservancy is not in default under this Agreement, Conservancy shall be entitled to terminate this Agreement by delivering written notice of termination to District, upon which the Parties shall have no further rights or obligations under this Agreement, including without limitation the obligation to fund the Conservancy Funding.

(b) **Closing and Escrow Costs and Expenses.** Conservancy shall not be responsible for paying any closing, escrow or title insurance costs, fees or expenses due in connection with District's acquisition of the Property.

6. Public Access. Conservancy understands and acknowledges that property located in the vicinity of the Property has been identified in District's current Master Plan as a potential regional park and that District's mission incorporates both resource conservation and public access goals. Conservancy further recognizes that the HCP/NCCP permits public access and recreational uses on Preserves (as defined in the HCP/NCCP) provided such public access and recreational uses are conducted in a manner consistent with the species conservation goals and recreation provisions contained therein. Conservancy acknowledges that one of the reasons that the District is entering into this Agreement and acquiring the Property is specifically to provide public access and recreational uses on the Property. Consequently, Conservancy and District shall work collaboratively to identify and include in the Management Plan appropriate public access facilities and recreational uses for the Property that are consistent with protection of the conservation values of the Property and the HCP/NCCP and which will be developed jointly by Conservancy and District. All proposed public uses and recreational facilities for the Property shall be sited on the Property in locations that are consistent with the protection of the Property's conservation values and will be subject to the prior approval of Conservancy, which approval shall not be withheld

provided such uses and facilities do not impair the Property's conservation values and are otherwise consistent with the HCP/NCCP.

7. Cooperation. From and after the Effective Date, Conservancy and District shall each use its respective good faith reasonable best efforts to cooperate with the other Party in exercising such Party's rights under this Agreement, which shall include, without limitation, the Parties' respective good faith reasonable best efforts to assist in satisfying the Final Conservancy Funding Conditions Precedent.

8. Default and Remedies.

(a) **Notice of Breach.** In the event of a breach by Conservancy or District of any of the terms, covenants or conditions of this Agreement or any written agreement entered into by Conservancy or District respecting the allocation of Management Costs as required under **Section 4(e)**, the non-breaching party shall give written notice to the breaching party describing the breach (**"Notice"**), and the breaching party shall have thirty (30) days from the date of the Notice to cure the breach or, if the breach is not curable within such thirty (30) day period, to commence and diligently pursue such cure to completion.

(b) **Remedies.** If the breaching party fails to cure any breach within the cure period provided in **Section 8(a)** above, the breaching party shall be in default under this Agreement (**"Default"**). In the event of a Default under this Agreement, the non-breaching party shall have all remedies available at law or in equity.

(i) **Additional Conservancy Remedies.** In addition to the remedies available under **Section 8(b)** above, if the non-breaching party is Conservancy and the breaching party is District and Conservancy is not then in default under this Agreement, Conservancy may require District to convey its interest in the Property to Conservancy or to another public entity or nonprofit organization that is willing and financially able to assume all of the obligations and responsibilities of District hereunder, subject to receipt of any approvals required under any public funding grant agreements for the Property.

(ii) **Additional District Remedies.** In addition to the remedies available under **Section 8(b)** above, if the non-breaching party is District and the breaching party is Conservancy and District is not in default under this Agreement, District may require either Conservancy or another entity acceptable to Conservancy to accept a conveyance of District's interest in the Property subject to receipt of any approvals required under any public funding grant agreements for the Property. Upon such conveyance, Conservancy or the other entity will assume any and all terms, covenants and conditions of the Agreement that were imposed upon District by the Agreement or any related documents. Upon transfer of the Property to Conservancy or another entity acceptable to Conservancy under this **Section 8(b)(ii)**, this Agreement shall terminate and neither party hereto shall have any further obligations hereunder.

9. Injury or Destruction to a Habitat Activities Project. District shall not be responsible for the unauthorized acts of third parties, and natural disasters such as fire, floods, storms, earthquakes or landslides and shall have no obligation to restore any Habitat Activities projects injured or destroyed due to such or similar causes; provided, that nothing in this section shall prevent Conservancy and District from reaching separate agreement to take such additional steps to restore such injury or destruction to the Habitat Activities projects that are mutually acceptable to Conservancy and District in each Party's sole and absolute discretion.

10. Public Announcements. Other than when otherwise required by law, District shall consult with Conservancy's prior to any public announcement or press release describing the District's acquisition of the Property and specifically the Conservancy's funding activities associated with the acquisition of the Property.

11. Representations and Warranties. The Parties hereby represent and warrant to each other that the execution, delivery and performance by such Party of this Agreement together with the transactions contemplated thereby have been duly authorized and approved by such Party. Upon execution and delivery by each Party, this Agreement shall constitute the legal, valid and binding obligations of such Party under applicable law, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and to the discretion of courts of applicable jurisdiction to enforce equitable remedies including, without limitation, specific performance and injunctive relief.

12. 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 District:	If to Conservancy:
East Bay Regional Park District 2950 Peralta Oaks Ct. Oakland, CA 94605 Attention: Land Acquisition Manager Facsimile: (510) 569-1417	East Contra Costa County Habitat Conservancy 651 Pine Street, North Wing, 4th Floor Martinez, CA 94553 Attention: John Kopchik, Executive Director Facsimile: 925-335-1299

Notices may be sent by any of the following means: (i) by delivery in person, (ii) by certified U.S. mail, return receipt requested, postage prepaid, (iii) by Federal Express or other reputable "overnight" delivery service, provided that next-business-day delivery is requested by the sender, or (iv) by facsimile transmission; provided that a hard copy of such notice shall have been deposited into the U.S. mail to the recipient on the

same day as transmission. Notices delivered in person shall be deemed effective immediately upon receipt (or refusal of delivery or receipt). Notices sent by certified mail shall be deemed given on the date deposited with the U.S. Postal Service. Notices sent by Federal Express or other reputable "overnight" delivery service shall be deemed given on the date deposited with the delivery service. Notices sent by facsimile transmission shall be effective on the date of successful transmission. Either Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

13. No Partnership. Nothing in this Agreement shall be deemed to create a partnership between any combination of the parties hereto.

14. 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 or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the Party to be charged.

(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 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.

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

DISTRICT:

EAST BAY REGIONAL PARK DISTRICT, a California special district

Date: _____, 2011

By: _____
Name: Robert E. Doyle
Title: General Manager

CONSERVANCY:

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

Date: _____, 2011

By: _____
Name: John Kopchik
Title: Executive Director

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Form of Deed Restrictions

RECORDING REQUESTED BY AND	**)**
WHEN RECORDED MAIL TO:	**)**
	)
East Bay Regional Park District	**)**
_____	**)**
_____	**)**
Attention: _____	**)**
	)

Space Above Line for Recorder's Use Only

GRANT OF DEED RESTRICTIONS

THIS GRANT OF DEED RESTRICTIONS (**"Grant of Deed Restrictions"**) has been executed as of _____, 201_, by EAST BAY REGIONAL PARK DISTRICT, a California special district (**"District"**) with respect to that certain real property containing approximately 852.33 acres, located in the County of Contra Costa, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the **"Property"**).

RECITALS

A. District is the sole owner in fee simple of the Property.

B. This Grant of Deed Restrictions is being executed, delivered, and recorded in the Official Records of Contra Costa County (**"Official Records"**) to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the **"HCP/NCCP Conservation Instruments"**):

(i) East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan (**"HCP/NCCP"**), dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association, and approved by the United States Fish and Wildlife Service (**"USFWS"**) under Section 10 of the Federal Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 *et seq.*) (**"FESA"**) and by California Department of Fish and Game (**"CDFG"**) under California Fish and Game Code Section 2835 (**"DFG"**); and

(ii) Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan, by and between East Contra Costa County Habitat Conservancy, County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District, District, USFWS, and CDFG (the **"Implementing Agreement"**); and

(iii) The federal incidental take permit issued by USFWS to East Contra Costa County Habitat Conservancy, County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District and District (collectively, the **"Permittees"**) for the HCP/NCCP pursuant to Section 10(a)(1)(B) of FESA, as it may be amended from time to time; and

(iv) The state take permit issued to Permittees for the HCP/NCCP pursuant to California Fish and Game Code Section 2835, as it may be amended from time to time.

C. A management plan for the Property, entitled "*[Insert title of Management Plan]*" and dated _____, has been *[revise to "or will be" if Deed Restrictions are recorded before Management Plan is completed]* developed in accordance with the applicable requirements of the HCP/NCCP Instruments (the **"Management Plan"**). A full and complete copy of the Management Plan resides in the offices of each of District, USFWS and CDFG**.**

D. The Property possesses open space, wildlife and habitat values, including significant ecological and habitat values that benefit endangered, threatened, and other species identified in the Management Plan (the **"Conservation Values"**). As is further described in the Management Plan, the Conservation Values include, but are not limited to, habitat for the following Covered Species (as defined in the HCP/NCCP) (collectively, the **"Property's Covered Species"**): *[Identify Covered Species under HCP/NCCP present on, or associated with, the Property]*

AGREEMENTS

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, District hereby declares that the Property, and every part thereof or interest therein, is now held and shall hereafter, in perpetuity (subject to termination only pursuant to **Section 5(b)** below), be held, transferred, sold, leased, conveyed and occupied subject to the restrictions (collectively, the **"Restrictions"**) set forth herein. The Restrictions shall burden and run with the Property, and every part thereof or interest therein, and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property, or any part thereof. The Restrictions are intended to be a covenant running with the land in accordance with California Civil Code Section 1461 *et seq.* and shall only be terminated in accordance with **Section 5(b)** below.

1. **Purposes**. The purposes of the Restrictions are to ensure that the existing open space, wildlife and habitat values of the Property will be forever protected by preventing any use of the Property that would significantly impair or interfere with the Conservation Values (the **"Purposes"**).

2. **Prohibited Uses**. Any activity on or use of the Property inconsistent with the Purposes of the Restrictions is prohibited. Without limiting the generality of the foregoing,

District, and its personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees, are expressly prohibited from doing or permitting any of the following uses and activities on the Property, unless, and only to the extent that, a generally prohibited activity is specified as an approved management practice or permitted use in any of the following (collectively, the **"Plans"**): (i) the Management Plan, as amended from time to time; (ii) the Recreation Plan that has been *[revise to "or will be" if Deed Restrictions are recorded before Recreation Plan is completed]* prepared for the Preserve System (as such term is defined in the HCP/NCCP and the Implementing Agreement), as amended from time to time(the **"Recreation Plan"**); and/or (iii) the Exotic Plant Control Program that has been *[revise to "or will be" if Deed Restrictions are recorded before Exotic Pest Control Program is completed]* prepared for the Preserve System (as such term is defined in the HCP/NCCP and the Implementing Agreement), as amended from time to time:

(a) Except as permitted in the Plans, unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Purposes of the Restrictions;

(b) Except as permitted in the Plans, use of off-road vehicles and use of any other motorized vehicles;

(c) Grazing and agricultural activity of any kind, except for those grazing and/or other agricultural practices and uses consistent with the biological goals and objectives of the HCP/NCCP and specifically permitted in the Plans;

(d) Except as permitted in the Plans, recreational activities including, but not limited to, hunting or fishing;

(e) Commercial or industrial uses;

(f) Any legal or de facto division, subdivision or partitioning of the Property or any fee transfer of less than the entire Property;

(g) Except as permitted in the Plans, construction, reconstruction or placement of any building, billboard, or any other structure or improvement of any kind;

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;

(i) Except as permitted in the Plans, planting, introduction or dispersal of non-native or exotic plant or animal species;

(j) Except as permitted in the Plans, , filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, and granting or authorizing any surface entry for any of these purposes;

(k) Except as permitted in the Plans, altering the surface or general topography of the Property, including building of roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material;

(l) Removing, destroying, or cutting of native trees, shrubs or other vegetation, except as permitted in the Plans, and/or as required for fire breaks, maintenance of existing foot trails or roads, prevention or treatment of disease, utility line clearance, or control of non-native or exotic plants.;

(m) Except as permitted in the Plans, manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or sub-surface waters; and

(n) Transferring or abandoning any water or air rights necessary to protect, sustain, maintain or restore the Conservation Values.

[Include additional specific prohibited uses if and as appropriate for specific property subject to the Deed Restrictions.]

3. **District's Reserved Rights.** District reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with, the Purposes of the Restrictions and the terms and conditions of this Grant of Deed Restrictions.

4. **Required Notice to Future Lessees and Licensees.** Any lease, license, easement, or other rental or use agreement subsequently entered into or made with respect to any portion of the Property, whether written or oral, shall contain an express provision informing the lessee, tenant, licensee or other contracting party of the Restrictions and this Grant of Deed Restrictions and shall require such lessee, tenant, licensee or other contracting party to comply with all such Restrictions and the terms of this Grant of Deed Restrictions throughout the term of such lease, license or rental or use agreement.

5. **Conveyances of Property.**

(a) If District conveys the fee interest in all or any portion of the Property to another governmental or quasi-governmental entity, then upon such conveyance, the party receiving title to the Property, or portion thereof, shall confirm in writing the continued legal effectiveness of the terms and conditions this Grant of Deed Restrictions following such conveyance and shall cause to be recorded in the Official Records such instruments as District may reasonably request to effectuate such confirmation or continue the effectiveness of the Restrictions following such transfer.

(b) Before District conveys the fee interest in all or any portion of the Property to any party other than a governmental or quasi-governmental entity, District shall first enter into, and record in the Official Records, a conservation easement that fully satisfies all the following requirements (the **"Conservation Easement"**): (i) the Conservation Easement will satisfy all of the requirements under California Civil Code Section 815 *et seq.* for creating a conservation easement interest thereunder; (ii) the Conservation Easement will be held by East Contra Costa County Habitat Conservancy, a joint exercise of powers authority, or another nonprofit conservation organization that (x) is qualified and authorized to hold a conservation easement under California Civil Code Section 815.3, (y) has the financial and stewardship capacity and experience to hold conservation easements of this nature. and (z) has been approved in advance by USFWS and CDFG; (iii) the Conservation Easement will include terms and conditions consistent with the protection of the Conservation Values and the Purposes of the Restrictions; (iv) the Conservation Easement will include other terms and conditions substantially similar to those included in other conservation easements that have been recorded to satisfy the habitat conservation requirements set forth in the HCP/NCCP Conservation Instruments; and (v) the form of Conservation Easement shall be approved in advance of recordation by USFWS and CDFG. Effective automatically upon recordation of a Conservation Easement covering all or any portion of the Property, the Restrictions and this Grant of Deed Restrictions shall terminate with respect to the portion of the Property covered by such recorded Conservation Easement.

6. **Right of Inspection.** USFWS and CDFG, through its employees and representatives, shall be entitled to enter upon the Property on an annual basis for the limited purpose of confirming compliance with the terms and conditions contained in this Grant of Deed Restrictions. Prior to any such entry for inspection purposes, the party exercising such inspection rights shall provide fourteen (14) days written notice to District, and District shall have the right, through District's employees and representatives, to accompany and observe such inspections. If the party conducting such annual inspection, or such party's employees or agents, prepare any reports, diagrams, charts, graphs, photographs, audio or visual recordings or other writings as a result of such inspections, copies of such documents and recordings shall be provided promptly to District.

USFWS and CDFG hereby agree to hold harmless District, its officers, directors, agents, employees, invitees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including attorneys' fees), penalties, judgments, or obligations whatsoever for or in connection with injury (including death) or damage to any person or the loss or damage of property to whomsoever belonging or pecuniary or monetary loss which District may sustain, incur, or suffer as a result of USFWS's or CDFG's entry and activities upon the Property pursuant to the rights granted under this **Section 6** or resulting from, arising out of, or in any way related to activity conducted by or the omission of USFWS and CDFG, unless the injury or damage resulted from the sole negligence or the intentional and willful misconduct of the District, its officers, directors, agents or employees.

7. **Remedies.** If USFWS or CDFG determines there is a violation of the terms of this Grant of Deed Restrictions, written notice of such violation and a demand for corrective

action sufficient to cure the violation shall be given to District, with a copy provided to USFWS and/or CDFG, as appropriate. If District fails to cure the violation within fifteen (15) days after receipt of written notice and demand from USFWS or CDFG, as applicable, or if the cure reasonably requires more than fifteen (15) days to complete and District fails to begin the cure within such fifteen (15) day period or fails to continue diligently to complete the cure, USFWS or CDFG may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Grant of Deed Restrictions, to recover any damages to which USFWS or CDFG may be entitled for such violation or for any injury to the Conservation Values, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury.

If USFWS or CDFG, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, USFWS or CDFG may pursue its remedies under this section without prior notice to District or without waiting for the period provided for cure to expire. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(a) **Costs of Enforcement.** Should proceedings be brought to enforce or interpret any of the terms of this Grant of Deed Restrictions, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs and expenses, including reasonable attorneys' and experts' fees and costs.

(b) **Enforcement Discretion.** Enforcement of the terms of this Grant of Deed Restrictions shall be at the respective discretion of USFWS and CDFG, and any forbearance by either such party to exercise its rights under this Grant of Deed Restrictions in the event of any breach of any term of this Grant of Deed Restrictions shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Grant of Deed Restrictions or of any of such party's rights under this Grant of Deed Restrictions. No delay or omission by USFWS or CDFG in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) **Acts Beyond District's Control.** Nothing contained in this Grant of Deed Restrictions shall be construed to, or shall entitle, USFWS or CDFG to bring any action against District for any injury to or change in the Property resulting from (i) any natural cause beyond District's control, including, but not limited to, fire, flood, storm, and earth movement, or any prudent action taken by District under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by USFWS or CDFG or any of their employees.

8. **Public Access.** Nothing contained in this Grant of Deed Restrictions shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to execution and recordation of this Grant of Deed Restrictions.

9. **Liberal Construction.** It is the intention of District that the Purposes of the Restrictions shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Grant of Deed Restrictions in perpetuity, notwithstanding economic hardship or changed conditions of any kind.

10. **Notices.** Any notice, demand, request, consent, approval, or communication that District, USFWS or CDFG desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To District:	East Bay Regional Park District Land Acquisition Department 2950 Peralta Oaks Ct. Oakland, CA 94605 Attn: Land Acquisition Manager
To USFWS:	United States Fish and Wildlife Service _____ _____ Attn: _____
To DFG:	California Department of Fish and Game _____ _____ Attn: _____

or to such other address as a party shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

11. **Amendment.** This Grant of Deed Restrictions may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by District, or District's successors in interest, and approved in advance by USFWS and CDFG. Any such amendment shall be consistent with the Purposes of the Restrictions and shall not affect the perpetual duration of the Grant of Deed Restrictions. Any such amendment must be in writing, must refer to this Grant of Deed Restrictions by reference to its recordation data, must be approved by USFWS and CDFG, and must be recorded in the Official Records.

12. **Controlling Law.** The interpretation and performance of this Grant of Deed Restrictions shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable Federal law.

13. **Severability.** If a court of competent jurisdiction voids or invalidates on its face any provision of this Grant of Deed Restrictions, such action shall not affect the remainder of this Grant of Deed Restrictions. If a court of competent jurisdiction voids or invalidates the application of any provision of this Grant of Deed Restrictions to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

IN WITNESS WHEREOF District has executed this Grant of Deed Restrictions on the day and year first above written.

DISTRICT:

EAST BAY REGIONAL PARK DISTRICT, a California special district

By: _____
Name: Robert E. Doyle
Title: General Manager

EXHIBITS:
Exhibit A -- Legal Description of the Property

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, 200_, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as _____ of East Bay Regional Park District, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

EXHIBIT C

Form of Notice of Unrecorded Agreement

RECORDING REQUESTED BY, AND WHEN RECORDED, PLEASE MAIL TO: East Contra Costa County Habitat Conservancy Attn: John Kopchik 651 Pine Street, North Wing, 4th Floor Martinez, CA 94553555	
APNs: 075-160-003 & -004, 075-200-003	Space above for Recorder's Use

NOTICE OF UNRECORDED AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)
([Insert Name of Property])

THIS NOTICE OF UNRECORDED AGREEMENT (WITH COVENANTS AFFECTING REAL PROPERTY) (the "Memorandum") is made this _____, 2011 (the "Notice Date"), by EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, a joint exercise of powers authority ("Conservancy"), and EAST BAY REGIONAL PARK DISTRICT, a California special district ("District"), to provide notice of an agreement between Conservancy and District affecting the real property described below.

This Notice is executed pursuant to that certain Funding Agreement, dated _____, 2011, between Conservancy and District (the "Agreement"). The real property that is the subject of this Notice is comprised of 852.33 acres, located in Contra Costa County, California, and described on **Exhibit A** (the "Property"), pursuant to which Conservancy has provided certain funding to District in support of District's acquisition of the Property.

TO ALL INTERESTED PARTIES, PLEASE BE ADVISED AS FOLLOWS:

1. This Notice has been executed and recorded for the purpose of imparting notice of the Agreement and the respective rights and obligations of the parties thereto as set forth therein. All of the terms and conditions set forth in the Agreement are incorporated herein by this reference as if fully set forth herein. All capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement.

2. The Agreement includes certain rights and obligations of District relating to the Property, and certain restrictions on District's use of the Property, including, without limitation, the following:

(a) District will own, manage and use the Property for the purpose of protecting in perpetuity the Property's Covered Species in accordance with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association and approved by the United States Fish and Wildlife Service and the California Department of Fish and Game ("HCP/NCCP") and the other terms and conditions set forth in the Agreement (the "Funding Purpose").

(b) District will not assign, sell, transfer, exchange or otherwise convey all or any portion of the Property without obtaining the prior written approval of Conservancy, which approval shall not be unreasonably denied as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Funding Purpose.

(c) District shall not use all or any portion of the Property as security for any debt without obtaining the prior written approval of Conservancy.

3. This Notice is solely for the purpose of recording and in no way modifies the provisions of the Agreement. Conservancy and District 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.

4. A full and complete copy of the Agreement can be obtained from Conservancy or District at the following addresses:

East Contra Costa County Habitat Conservancy
651 Pine Street, North Wing, 4th Floor
Martinez, CA 94553

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605

5. This Notice shall not be amended, modified, or removed except by a writing executed by Conservancy and District and recorded in the Official Records of Contra Costa County.

This Notice has been executed by Conservancy and District as of the Notice Date.

CONSERVANCY:

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

By:_____
Name:_John Kopchik_____
Title:__Executive Director_____
Date: _____

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special
district

By:_____
Name:_Robert E. Doyle_____
Title:_General Manager_____
Date: _____

ATTACHMENT 1 TO NOTICE OF UNRECORDED AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

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: john.kopchik@dcd.cccounty.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, Assistant General Manager

Phone: (510) 544-2601
Fax: (510) 612-5441
E-Mail: nwenninger@ebparks.org

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

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

Section 6 Grant Agreement Numbers: [Insert Section 6 Grant Agreement Numbers]

WCB Subgrant Agreement Number: [Insert WCB Subgrant Agreement Number]

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 Applications for Federal Assistance submitted by CDFG, [insert grant #] (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 Applications. The Notice of Federal Assistance Approval for [insert grant #] (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 Agreements for Grant No. [insert grant #], Grant Title: [insert grant tile], (the "Federal Grant Agreement") which specify additional terms and conditions of the grant of Federal Grant Funds. The Federal Approval Notices 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. Successor Subgrantee has entered into an agreement to purchase the Property described in Section 3.1 of this Agreement, which Property is a portion of the real property identified in the Federal Grant Applications. 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 the Property (the "Acquisition").

1.4. USFWS will permit CDFG, acting through WCB, to subgrant Federal Grant Funds to Subgrantee for the purpose of facilitating Successor Subgrantee's Acquisition 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 Applications, must be provided as a match for the Federal Grant Funds.

2. SCOPE OF AGREEMENT

2.1. Pursuant to Chapter 4 of Division 2 (commencing with Section 1300) of the California Fish and Game Code and, WCB hereby subgrants to Subgrantee Federal Grant Funds in a sum not to exceed [Insert amount of subgrant funds alphabetically] ([Insert amount of subgrant funds numerically]) (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, and the Subgrant Funds shall be used, only for the purpose of facilitating Successor Subgrantee's purchase of fee title to approximately [Insert Number of Acres] acres of land known as the [Insert Name of Property] and designated Assessor's Parcel Numbers [Insert Assessor Parcel Numbers] located in the County of Contra Costa, California (the "Property"). The Property is more particularly described in **Exhibit A** attached to this Agreement.

3.2. Subgrantee and Successor Subgrantee covenant and agree that if WCB requests disbursement of the Subgrant Funds and Successor Subgrantee acquires the Property, the Property shall be held and used for the purposes of [insert grant purpose] (individually and collectively, the "Purposes of Subgrant").

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:

a. WCB shall have reviewed and approved all documents pertaining to Successor Subgrantee's acquisition of the Property, including but not limited to 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. 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.

b. Subgrantee shall have provided 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 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, following acquisition by Successor Subgrantee, the Property will be preserved and managed in accordance with and will fulfill certain commitments under the ECCC NCCP/HCP, to the extent provided for in the Federal Grant Applications and the Federal Grant Agreements. The Certification shall be attached to this Agreement as **Exhibit B.**

e. Subgrantee shall have provided WCB with a written commitment by Subgrantee and Successor Subgrantee for management of the Property in perpetuity consistent with the Purposes of Subgrant and according to the provisions of the ECCC 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 shall be attached to this Agreement as **Exhibit C**.

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 the authorizing resolution or other action 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 (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 required for the Acquisition has been provided.

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;

b. Project Name and Number of Agreement;

c. Dollar amount and purpose of disbursement;

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 from the federal Payment Management System to the State Treasurer's Office of an amount not to exceed [Insert Amount Alphabetically] ([Insert Amount Numerically]) 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:

a. The Subgrant Funds shall be used as 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.

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 agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit G.**

i. Subgrantee shall cause Successor Subgrantee to provide to WCB, promptly following the close of escrow, a conformed copy of the recorded deed(s) and Notice, 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 their files.

j. 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 designated staff or representatives of WCB, CDFG and USFWS shall

be allowed access to the Property at such intervals as WCB, CDFG or USFWS considers appropriate to meet federal requirements to which it is subject.

k [include this section K only if Property has wind turbine, residential or communication tower lease revenue]The Property will be acquired by Successor Subgrantee subject to one or a combination of communication leases or permits that have been approved by WCB in accordance with the terms of this Agreement (collectively, the "Leases"). Following Successor Subgrantee's acquisition of the Property, Successor Subgrantee will be entitled to receive the lease revenues due under such Leases (collectively, the "Lease Revenues"). All Lease Revenues received by Successor Subgrantee shall be used by Successor Subgrantee as follows:

(i) To pay management costs associated with the management of any real property that is (1) identified in the Federal Grant Agreements, and (2) included in the ECC NCCP/HCP preserve lands (collectively, the "Management Costs"), which Management Costs may include, without limitation, any combination of the following costs:

(A) Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);

(B) Fence repair, replacement and construction;

(C) Maintaining roads and access facilities;

(D) Control of invasive or exotic species;

(E) Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;

(F) Removal of debris & unnecessary structures, including buildings & unnecessary roads;

(G) Other habitat enhancement activities;

(H) Monitoring of habitat conditions and of ECC HCP/NCCP covered species; and

(I) Adaptive management activities guided by monitoring; and/or

(ii) To fund a non-wasting endowment that will provide funding for those Management Costs incurred following the date(s) Lease Revenues will be received and available to cover such costs.

The provisions of this Section 6.1.k of this Agreement only apply to Lease Revenues received under the Leases, which expressly include communication facility leases, and do not apply to lease revenues, if any, received under any grazing leases or other types of leases.

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 their respective addresses 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 do 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.

8. REMEDIES

In the event of a Default under this Agreement, in addition to any and all remedies available at law or in equity, 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 and/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 benefit to be derived from full compliance with the terms of this Agreement is preserving and protecting chaparral, oak woodland, oak woodland savanna, grassland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands and because such benefit exceeds 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 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 default, 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 chaparral, oak woodland, oak woodland savanna, grassland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands. 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 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.

9. NONPROFIT ORGANIZATION SUBGRANTEE

9.1. If 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 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, commitment and resolution described in Section 4.1 (d) – (g) (the "Effective Date"). Subgrantee, Successor 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 [Insert Date] if escrow has not closed by that date.

10.3. Prior to Successor Subgrantee's close of escrow for acquisition of the Property, any party 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 deposit of the Subgrant Funds into Escrow but before close of escrow for Successor Subgrantee's acquisition of the 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 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 the other parties except as provided herein.

10.5. The provisions of this Agreement that are not fully performed as of the close of escrow, 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 for Successor Subgrantee's acquisition of the Property and remain in full force and effect.

11. LIABILITY, MODIFICATIONS, INTERPRETATION

11.1. Subgrantee and Successor Subgrantee shall 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, 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 either of 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 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. Any costs incurred by WCB or CDFG, where it is the prevailing party, in enforcing the terms of this Agreement against Subgrantee, 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.

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 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 acknowledge 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, such party will maintain records sufficient to show that no state funds were used for those expenditures, and that 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 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.

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 and 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 Resolution or Other Action of Governing Body of Subgrantee
Exhibit F – WCB's Logo
Exhibit G – Form of Notice of Unrecorded Agreement to Subgrant

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 _____, 2011, 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

By: _____
John P. Donnelly, Executive Director

Date: _____

SUBGRANTEE
EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
(John Kopchik)

Title: __Executive Director_____

Date: _____

SUCCESSOR SUBGRANTEE
EAST BAY REGIONAL PARK DISTRICT

By: _____
(Robert E. Doyle)

TITLE: _General Manager_____

Date: _____

EXHIBIT A
(Legal Description and APNs of Property)

EXHIBIT B

Certificate of No Regulatory Requirement

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

Subgrantee's acquisition of the Property (as defined in the Agreement) located in Contra Costa County, California, 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, provided that Property acquired with any Subgrant Funds will be preserved and managed in accordance with, and will fulfill certain commitments of, the ECC NCCP/HCP, to the extent consistent with the Federal Grant Application and the Federal Grant Agreement.

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

Dated: _____, 20_____

SUBGRANTEE

East Contra Costa County Habitat Conservancy

By:_____

Print Name:_John Kopchik_____

Title:__Executive Director_____

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By:_____

Print Name:__Robert E. Doyle_

Title:__General Manager_____

EXHIBIT C
Commitment for Management and Funding

The undersigned are the Executive Director of the East Contra Costa County Habitat Conservancy (ECCCHC) and the General Manager of the East Bay Regional Park District (EBRPD), 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 commit to the Wildlife Conservation Board (WCB) as follows:

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 ECCC 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 commit to manage the Property (as defined in the Agreement) located in Contra Costa County, California,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"

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.

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.

Subgrantee and Successor Subgrantee make 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

East Contra Costa County Habitat Conservancy

By:_____

Print Name:__John Kopchik_____

Title:__Executive Director_____

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By:_____

Print Name:__Robert E. Doyle

Title:__General Manager_____

EXHIBIT D
(Assurances and Certifications)

OMB Approval No. 0348-0042

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 aquired 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 Exhibit A, Part II: Photos
APPLICANT ORGANIZATION	DATE SUBMITTED

OMB Approval No. 0348-0042

ASSURANCES - CONSTRUCTION PROGRAMS

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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 aquired 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 Page 14
APPLICANT ORGANIZATION Page 15	DATE SUBMITTED Page 16

EXHIBIT E

(Certified Resolution or Other Action of Governing Body of Subgrantee)

EXHIBIT F
(WCB Logo)

WCB
State of California
Wildlife Conservation Board

EXHIBIT G
(Notice of Unrecorded Grant 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: [Insert Name of Property]
County: Contra Costa
APNs: [Insert Assessor Parcel Numbers]

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 _____, 2011, 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, Subgrantee and Successor Subgrantee have entered into the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest, WCB Subgrant Agreement No. [Insert WCB Subgrant Agreement Number] (Section 6 Grant Agreements No. [Insert Section 6 Grant Agreements Numbers]) ("Subgrant" or "Agreement"), pursuant to which WCB subgrants to Subgrantee certain Federal Grant Funds for Successor Subgrantee's acquisition of fee title to approximately [Insert Number of Acres] acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from _____. 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 agree 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 have agreed to the terms of the Subgrant. The Subgrant is incorporated by reference into this Notice.

3. Subgrantee and Successor Subgrantee covenant and agree 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 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, Subgrantee and Successor Subgrantee that commenced [Insert Date], 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:

_East Contra Costa County Habitat Conservancy

By:_____

Print Name:__John Kopchik__ _____

Title:__Executive Director_____

SUCCESSOR SUBGRANTEE:

_East Bay Regional Park District_____

By:_____

Print Name:_Robert E. Doyle_____

Title:_General Manager_____

[Notary Acknowledgment]

CALIFORNIA WILDLIFE CONSERVATION BOARD
GRANT AGREEMENT
FOR
ACQUISITION OF FEE INTEREST
[for state funds]

Grantee: 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: john.kopchik@dcd.cccounty.us

Federal Employer ID No./Taxpayer ID No.: 26-2547338

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

Attn: Nancy Wenninger, Assistant General Manager

Phone: (510) 544-2601
Fax: (510) 612-5441
E-Mail: nwenninger@ebparks.org

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

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

Grant Agreement Number: [Insert Grant Agreement Number]

Notices to be addressed to:

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

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

For Grantor:	Wildlife Conservation Board 1807 13th Street, Suite 103 Sacramento, CA 95811-7137 Attn: Executive Director
With a copy to:	Department of Fish and Game 1416 Ninth Street, 12th Floor Sacramento, CA 95814 Attn: Director

1. SCOPE OF AGREEMENT

Pursuant to Chapter 4 of Division 2 (commencing with Section 1300) of the California Fish and Game Code and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection fund of 2007 (Proposition 84, Public Resources Code Section 75055(d)(2)), the Wildlife Conservation Board ("Grantor") hereby grants to East Contra Costa County Habitat Conservancy, ("Grantee") and East Bay Regional Park District, ("Successor Grantee") , a sum not to exceed [Insert amount of grant funds alphabetically] ([Insert amount of grant funds numerically]) ("Grant Funds"), upon and subject to the terms and conditions of this Grant Agreement for Acquisition of Fee Interest ("Agreement").

2. PURPOSES OF GRANT

Grantor is entering into this Agreement, and the Grant Funds shall be used, only for the purpose of the project (the "Project") described as: Successor Grantee's acquisition of fee title to approximately [Insert Number of Acres] of land known as the [Insert Name of Property], located in the County of Contra Costa, California (the "Property"). The Property is more particularly described in **Exhibit A** attached to this Agreement.

Grantee and Successor Grantee covenant and agree that if Grantor deposits the Grant Funds into escrow and Successor Grantee acquires the Property, 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 ("ECCC NCCP/HCP") (individually and collectively, the "Purposes of Grant").

3. CONDITIONS OF GRANT

Grantor's obligation to disburse Grant Funds under this Agreement is conditioned upon and subject to the satisfaction of all of the following conditions precedent:

3.1. Grantor shall have reviewed and approved all documents pertaining to Successor Grantee's acquisition of the Property, including, without limitation, appraisals, preliminary title reports and items referenced therein, options, agreements for purchase and sale, escrow instructions, and instruments of

conveyance. Such review and approval by Grantor shall not be unreasonably withheld or delayed. Successor Grantee shall have removed or caused to be removed, or otherwise addressed to the satisfaction of Grantor, any encumbrances or defects of title that Grantor determines are inconsistent, or could interfere, with the Purposes of Grant. Any outstanding security interests or monetary encumbrances affecting the Property shall have been terminated.

3.2. Grantee shall acquire the Property from a willing seller for a purchase price that does not exceed the fair market value of the Property, 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 Business and Professions Code. The appraisal shall be prepared pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) and approved by the Department of General Services. The appraisal shall become part of the project file maintained by Grantor and shall be retained for no less than three years from the date of value.

3.3. Grantor shall have reviewed and approved a certified resolution or other appropriate action of the governing board or governing body of Grantee and Successor Grantee, authorizing the execution and performance of this Agreement and the acquisition of the Property by Successor Grantee. Upon approval by Grantor, the authorizing resolution or other action shall be attached to this Agreement as **Exhibit B**.

3.4. Grantee and Successor Grantee shall have deposited, or caused to be deposited, into escrow all funds beyond those granted under this Agreement that are needed for Grantee and Successor Grantee to complete the Project.

3.5. Concurrently with this Agreement, WCB and Grantee and Successor Grantee have entered into Subgrant Agreement No. [Insert Subgrant Agreement Number], pursuant to which WCB agrees to subgrant to Grantee the entire federal share of funding to facilitate Grantee's acquisition of the Property.

4. DISBURSEMENT PROCEDURE

Except as provided in paragraph 17, upon satisfaction of all of the above Conditions of Grant, and subject to approval of the Project by the Wildlife Conservation Board at a duly noticed public meeting, Grantor shall disburse the Grant Funds directly into an escrow account established for the Project according to the following procedure:

4.1. Grantee shall request disbursement of the Grant Funds by sending a letter to the Grantor ("Disbursement Request"). The Disbursement Request shall be signed by an authorized representative of Grantee and shall contain all of the following:

a. Name and address of Grantee;

b. Project Name and Number of Grant Agreement;

c. Dollar amount and purpose of disbursement;

d. Name, address and telephone number of the title company or escrow holder, name of the escrow officer, and the escrow account number to which the Grant Funds will be disbursed; and

e. A certification by Grantee that all funds (exclusive of the Grant Funds to be provided under this Agreement) needed to complete the Project have been secured and have been or will be deposited to escrow prior to or at the same time as the requested Grant Funds.

4.2. After receipt of the Disbursement Request, Grantor will promptly and timely (estimated to be 45 working days from the date Grantor receives the Disbursement Request) disburse an amount not to exceed [Insert amount alphabetically] ([Insert amount numerically]) into the designated escrow account.

5. GRANTEE'S AND SUCCESSOR GRANTEE'S COVENANTS

In consideration of Grantor's disbursement of the Grant Funds, Grantee and Successor Grantee hereby covenants and agrees as follows:

5.1. The Grant Funds shall be used as 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.

5.2. The Property shall be held and used only in a manner that is consistent with this Agreement, including the "Purposes of Grant" set forth in Section 2.

5.3. Grantee and Successor Grantee shall recognize the cooperative nature of the Project and shall provide credit to the Grantor, the California Department of Fish and Game ("CDFG") and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Grantee and/or Successor Grantee referencing the Project. Subject to the mutual agreement of Grantor, Grantee and Successor Grantee regarding text, design and location, Grantee shall, or shall cause Successor Grantee to, post sign(s) on the Property to indicate the participation of Grantor and CDFG in Successor Grantee's purchase of the Property; *provided however*, that the sign(s) shall display Grantor's logo, as shown on **Exhibit C**.

5.4. 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, acting through the Executive Director of the Wildlife Conservation Board ("WCB"), or its successor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

5.5. 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 of California, acting through the Executive Director of WCB, or its successor.

5.6. Grantee shall record or cause to be recorded, concurrently with close of escrow for the purchase of the Property, a Notice of Unrecorded Grant Agreement (the “Notice”), incorporating by reference this Agreement and giving public notice that Grantee received funds under this Agreement in order to assist Successor Grantee in acquiring the Property and that, in consideration for the receipt of the Grant Funds, Grantee and Successor Grantee have agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit D**.

5.7. Grantee or Successor Grantee shall provide to Grantor, promptly following the close of escrow, a conformed copy of the recorded deed(s) and Notice, with all recording information, as well as a copy of the final closing or settlement statement and the title insurance policy insuring Successor Grantee as the owner of fee simple title to the Property. Grantee shall also cause Successor Grantee to provide copies of such other documents related to the closing of the above transaction as requested by Grantor. These documents shall become part of the project file maintained by Grantor.

5.8. At the request of Grantor, not less than once in any period of three calendar years, Grantee and Successor Grantee shall allow designated staff of Grantor to access the Property to assess compliance with the terms, covenants and conditions of this Agreement.

5.9 Grantee and Successor Grantee agree to ensure that the terms and conditions of this Grant Agreement shall be taken into account when calculating the Baseline/Business As Usual of the Property for purposes of establishing carbon credits or other emissions offsets proposed to be authorized, created, sold, exchanged or transferred. Grantee and Successor Grantee agree to notify Grantor prior to any such proposed establishment.

5.10 [include section 5.10 only if the Property has communication tower, wind turbine or residential lease revenue] The Property will be acquired by Successor Grantee subject to one or a combination of communication leases or permits that have been approved by WCB in accordance with the terms of this Agreement (collectively, the "Leases"). Following Successor Grantee's acquisition of the Property, Successor Grantee will be entitled to receive the lease revenues due under such Leases (collectively, the "Lease Revenues"). All Lease Revenues received by Successor Grantee shall be used by Successor Grantee as follows:

a. To pay management costs associated with the management of any real property that is (1) identified in the Federal Grant Agreement and described in Exhibit A attached to the Agreement, and (2) included in the ECC NCCP/HCP preserve lands (collectively, the "Management Costs"), which Management Costs may include, without limitation, any combination of the following costs:

(i) Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);

(ii) Fence repair, replacement and construction;

(iii) Maintaining roads and access facilities;

(iv) Control of invasive or exotic species;

(v) Improvement of livestock watering facilities to prevent

degradation of natural waters and wetlands;

(vi) Removal of debris & unnecessary structures, including buildings & unnecessary roads;

(vii) Other habitat enhancement activities;

(viii) Monitoring of habitat conditions and of ECC HCP/NCCP covered species; and

(ix) Adaptive management activities guided by monitoring;

and/or

b. To fund a non-wasting endowment that will provide funding for those Management Costs incurred following the date(s) Lease Revenues will be received and available to cover such costs.

The provisions of this Section 5.10 of this Agreement only apply to Lease Revenues received under the Leases, which expressly include a communication facility lease, and do not apply to lease revenues, if any, received under any grazing leases or other types of leases.

6. BREACH AND DEFAULT

6.1. In the event of a breach of any of the terms, covenants or conditions of this Agreement, Grantor shall give written notice to Grantee and Successor Grantee 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 Grantee and Successor Grantee at the addresses for notices set forth at the beginning of this Agreement.

6.2. If Grantee or Successor Grantee does 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, Grantee or Successor Grantee does not commence the cure within the 90-day period and diligently pursue it to completion, then Grantee and Successor Grantee shall be in default ("Default") under this Agreement.

6.3. Grantee and Successor Grantee shall also be in Default under this Agreement upon the discovery that information given to Grantor by or on behalf of Grantee or Successor Grantee under or in connection with obtaining this Agreement was materially false or misleading. Notice of a Default under this Section 6.3 shall be given in accordance with Section 6.1.

7. REMEDIES

In the event of a Default under this Agreement, in addition to any and all remedies available at law or in equity, Grantor shall have the following remedies:

7.1. Grantor may seek specific performance of this Agreement. Grantee and Successor Grantee agree that payment by Grantee and/or Successor Grantee to Grantor of an amount equal to the Grant Funds disbursed under this Agreement would be inadequate compensation to Grantor for any Default because the benefit to be derived by Grantor from full compliance by Grantee and Successor Grantee

with the terms of this Agreement is the 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 ECCC NCCP/HCP area and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by Grantor by way of Grant Funds under this Agreement.

7.2. Grantor may require Grantee and/or Successor Grantee to convey a conservation easement over the Property in favor of Grantor or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and to pay, or cause Successor Grantee to pay, a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum granted to Grantee pursuant to this Agreement, together with interest compounded semi-annually starting from the date of this Agreement to and including the date of payment, at a rate equivalent to that which is being earned at the time of Default on deposits in the State of California's Pooled Money Investment Account. 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 ECCC NCCP/HCP area. The value of the conservation easement shall be determined by a fair market value 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 Grantor. The appraisal shall be prepared pursuant to USPAP and, if required by law, approved by the Department of General Services.

7.3. Despite the contrary provisions of Article 6 of this Agreement, if Grantor determines that circumstances require immediate action to prevent or mitigate interference with the Purposes of Grant arising from a breach of this Agreement, then Grantor may pursue its remedies without waiting for the period provided for cure to expire.

8. NONPROFIT ORGANIZATION GRANTEE

If the existence of Successor Grantee is terminated for any reason, title to all interest in the Property acquired with Grant 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 8 shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

9. TERM

9.1. This Agreement shall be deemed executed and effective when signed by an authorized representative of each party and received in the respective offices of Grantee, Successor Grantee and Grantor, together with the resolution described in Section 3.3 (the "Effective Date"). Grantee, Successor Grantee and Grantor shall each sign four original Agreements. Grantee and Successor Grantee shall receive

one completely executed original and Grantor shall receive three completely executed originals.

9.2. The term of this Agreement will commence on the date authorized by the Wildlife Conservation Board, as set forth in Section 16 and, unless previously terminated as provided in Section 9.3, will expire on [Insert Date], if escrow has not closed by that date.

9.3. Prior to Successor Grantee's close of escrow for acquisition of the Property, any party 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. If this Agreement is terminated after Grantor's deposit of the Grant Funds into escrow but before close of escrow for Successor Grantee's acquisition of the Property, Grantee shall cause the escrow holder to immediately return all Grant Funds to Grantor and Grantee shall bear all costs and expenses of such termination.

9.4. The provisions of this Agreement that are not fully performed as of the close of escrow, including but not limited to Section 2 (Purposes of Grant) and Section 5 (Grantee's and Successor Grantee's Covenants), shall survive the close of escrow for Successor Grantee's acquisition of the Property and remain in full force and effect.

10. LIABILITY; MODIFICATIONS; INTERPRETATION

10.1. Grantee and Successor Grantee shall indemnify, protect and hold harmless Grantor, 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, except that Grantee and Successor Grantee shall have no obligation to indemnify or hold harmless an Indemnified Party for Claims caused by the negligent or wrongful act of that Indemnified Party.

10.2. This Agreement may be modified only by written amendment signed by Grantor, Grantee, and Successor Grantee. No prior or contemporaneous oral understanding or agreement not incorporated in this Agreement shall be binding on either of the parties.

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

10.4. 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.

10.5. Grantee, Successor Grantee, and their 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 Grantor.

10.6. This Agreement is not assignable or transferable by Grantee or Successor Grantee, either in whole or in part, except in connection with a transfer of the Property approved by Grantor under Section 5.4 of this Agreement.

10.7. Any costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Agreement against Grantee, 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 Grantee and Successor Grantee.

10.8. Enforcement of the terms of this Agreement by Grantor shall be at the discretion of Grantor, and any forbearance by Grantor 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 Grantor under it.

10.9. Grantor will notify Grantee and Successor Grantee as promptly as possible following Grantor's receipt of any request for information related to the Project under the California Public Records Act (Government Code Section 6250 *et seq*.).

11. CONDEMNATION

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, Grantor, Grantee, and Successor Grantee 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. Grantor shall be entitled to the share of the Award (as defined below) which equals the ratio of the Grant Funds provided by Grantor to the purchase price Successor Grantee paid to acquire the Property (*e.g.*, if Grantor provided $50,000.00 of Grant Funds and the purchase price was $75,000.00, then Grantor would be entitled to two-thirds 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 Grantee in connection with the taking or purchase.

12. AUDIT

Grantee and Successor Grantee 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 three years after final disbursement by Grantor. During such time, Grantee and Successor Grantee 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 Grantor shall be borne by Grantee and Successor Grantee. The audit shall be confined to

those matters connected with this Agreement, including but not limited to administration and overhead costs.

13. UNION ORGANIZING

By signing this Agreement, Grantee and Successor Grantee hereby acknowledge the applicability of Government Code Sections 16645 through 16649 to this Agreement and certify that:

13.1. No state funds disbursed by this grant will be used to assist, promote or deter union organizing;

13.2. Grantee and Successor Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure;

13.3. Grantee and Successor Grantee shall, where state funds are not designated as described in Section 13.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program; and

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

14. NON-DISCRIMINATION

During the performance of this Agreement, Grantee and Successor Grantee 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. Grantee and Successor Grantee 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. Grantee and Successor Grantee shall comply with the provisions of 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*.). 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) are incorporated by reference into this Agreement. Grantee and Successor Grantee shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Grantee or Successor Grantee 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. Grantee and Successor

Grantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Project.

15. 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
Exhibit B – Certified Resolution or Other Action of Governing Body of Grantee and Successor Grantee
Exhibit C – Grantor's Logo
Exhibit D – Form of Notice of Unrecorded Grant Agreement

16. AUTHORIZATION

The signature of the Executive Director certifies that at the Wildlife Conservation Board meeting held on [Insert Date], the Board authorized the award of an acquisition grant to Grantee as provided in this Agreement.

17. NON-AVAILABILITY OF FUNDS.

Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer's Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

IN WITNESS WHEREOF, this Agreement is made and entered into this [Insert day of month] day of [Insert Month, Year], in the State of California, by and between the Wildlife Conservation Board East Contra Costa County Habitat Conservancy and East Bay Regional Park District, each of which hereby agrees to the terms and conditions referenced on pages 1 through 12, along with Exhibits A through D, of this Agreement.

STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD

By: _____
John P. Donnelly

Title: Executive Director

Date: _____

GRANTEE:
EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
John Kopchik

Title: Executive Director

Date: _____

SUCCESSOR SUBGRANTEE
EAST BAY REGIONAL PARK DISTRICT

By: _____
Robert E. Doyle

TITLE: General Manager

Date: _____

Project Name:
County:
Project ID:

FUNDING CERTIFICATION:

I hereby certify that (a) the following funds will be encumbered on behalf of Grantor; and (b) Grant Funds shall not be disbursed unless and until sufficient proceeds from the source identified below become available to Grantor to disburse.

_____ _____
Fiscal Officer Date

Grantee:	Organization name Mailing Address City, State Zip Contact Name Contact Telephone No. Contact Facsimile No.
WCB Grant Agreement #:	WC–_____
Agreement Term:	to
WCB Grant Amount:	
Fund Source:	
Appropriation Item:	Chapter _____, Statutes of _____ Item _____
Expenditure Code:	

EXHIBIT A

(Legal Description)

EXHIBIT B

(Resolution)

EXHIBIT C

(WCB Logo)

WCB
State of California
Wildlife Conservation Board

EXHIBIT D
(Notice of Unrecorded Grant Agreement)

RECORDING REQUESTED BY:

[*Insert Grantee Name and Address*]

WHEN RECORDED, RETURN TO:

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

APN: [Insert Assessor Parcel Numbers] *Space above line for Recorder's use*

Project Name: [Insert Project Name]
County: Contra Costa County

NOTICE OF UNRECORDED GRANT AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)

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

A. 1. WCB, Grantee and Successor Grantee have entered into the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest, Grant Agreement No. [Insert Grant Number] ("Grant" or "Agreement"), pursuant to which WCB grants to Grantee certain funds for Successor Grantee's acquisition of fee title to approximately [Insert Number of Acres] acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from [Name of Receiver], Receiver, on behalf of sellers ("Sellers") which include the following: [Insert Names of Sellers]. 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 Grant.

2. Grantee and Successor Grantee agree under the terms of the Grant to execute this Notice to give notice that Grantee received funds under the Agreement to assist Grantee in acquiring the Property and that, in consideration of the Grant Funds, Grantee and Successor Grantee have agreed to the terms of the Grant. The Grant is incorporated by reference into this Notice.

3. Grantee and Successor Grantee covenant and agree in Section 5 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 Grant" set forth in Section 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 ("ECCC NCCP/HCP") (individually and collectively, the "Purposes of Grant").

3.2. 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, acting through the Executive Director of the Wildlife Conservation Board ("WCB"), or its successor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

3.3. 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 of California, acting through the Executive Director of WCB or its successor.

3.4. At the request of Grantor, not less than once in any period of three calendar years, Grantee and Successor Grantee shall allow designated staff of Grantor to access the Property to assess compliance with the terms, covenants and conditions of this Agreement.

4. Pursuant to Section 7 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, Grantor may seek specific performance of the Grant and may require Successor Grantee to convey a conservation easement over the Property in favor of Grantor (or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and which is willing and financially able to assume all of the obligations and responsibilities of Successor Grantee), and to pay a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum granted to Grantee pursuant to the Agreement, together with interest thereon as provided in the Agreement.

5. Pursuant to Section 8 of the Agreement, if Successor Grantee is a nonprofit organization and the existence of Successor Grantee is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the State of California. However, prior to that termination, upon approval of Grantor, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant

to this section shall be recorded and shall set forth the executory interest and right of entry on the part of the State of California.

6. Pursuant to Section 9.1 of the Agreement, the Grant shall remain in full force and effect from and after the close of escrow for the acquisition of the Property.

7. Pursuant to Section 10.3 of the Agreement, the Grant shall be binding upon Grantee and all designees, successors and assigns of Grantee (including, upon its acquisition of the Property, Successor Grantee).

8. Pursuant to Section 11 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, Grantor, Grantee and Successor Grantee 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. Grantor shall be entitled to the share of the Award, which equals the ratio of the Grant Funds provided by Grantor to the purchase price Successor Grantee 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. Grantee, Successor Grantee 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 Grant Agreement for Acquisition of Fee Interest by and between WCB, Grantee and Successor Grantee that commenced _____, 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.

GRANTEE: EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
John Kopchik

Title: Executive Director

Date: _____

SUCCESSOR SUBGRANTEE: EAST BAY REGIONAL PARK DISTRICT

By: _____
Robert E. Doyle

TITLE: General Manager

Date: _____

George W. Bo-Linn, MD
Chief Program Officer, San Francisco Bay Area Program and Betty Irene Moore School of Nursing

George.Bo-Linn@moore.org
(650) 213-3160

VIA ELECTRONIC MAIL

August 23, 2010

Mr. John Kopchik, Executive Director
East Contra Costa County Habitat Conservancy
651 Pine Street, North Wing, 4th Floor
Martinez, CA, CA 94553
Email: jkopc@cd.cccounty.us

Re: Grant Award Letter Agreement for East Contra Costa County Habitat Conservancy (#2571)

Dear Mr. Kopchik:

On behalf of the Gordon and Betty Moore Foundation (the "Foundation"), it is a pleasure to inform you that the East Contra Costa County Habitat Conservancy ("ECCCHC") has been awarded a grant in the amount of $2,250,000 (Two Million Two Hundred Fifty Thousand Dollars) ("Grant"). This grant to the East Contra Costa County Habitat Conservancy will support the protection of the 1,021-acre Souza III Property, a key step in preserving a critical grassland habitat and wildlife corridor, and will fund a research project to advance the science related to wind turbine and wildlife interactions.

This Grant is to be used to achieve the outcomes and/or outputs described in Attachment 1 (collectively "Purposes"), in accordance with the payments and requirements plan in Attachment 2, and the budget in Attachment 3 (the "Budget"). This grant award letter agreement (including all attachments), is collectively referred to as the "Grant Agreement."

By signing this Grant Agreement, ECCCHC agrees to the following terms in connection with the Foundation's Grant:

1. Payments and Funding Requirements:

(a) Payment Disbursements: Grant funds will be disbursed according to the schedule in Attachment 2, subject to the conditions of this Grant Agreement. If an escrow account has been opened by the time of the first scheduled payment, the ECCCHA will provide the Foundation with written instructions to transfer the Grant funds directly into the escrow account. If the escrow account has not been opened by the time of the first scheduled payment, the ECCCHA will maintain the Grant funds in a segregated interest-bearing account until such time as an escrow account is open.

(b) Wire Transfer Funds: Grant funds will be paid by the Foundation in US Dollars via wire transfer. ECCCHC will provide the Foundation with funding instructions from its financial institution, and will advise its financial institution that the Foundation's ordering bank will be The Northern Trust Company. If the Grant funds need to go through an intermediary bank(s), ECCCHC will provide this information to the Foundation in the requisite order, with the receiving bank listed last. ECCCHC will provide all necessary bank codes, account numbers and account names for each institution to Blake Barthold, Accountant, at Blake.Barthold@moore.org, along with the name and telephone number of a contact at your organization who can answer questions regarding the banking information supplied.

(c) Use of Grant Funds: ECCCHA will use the Grant funds solely for the acquisition of the Souza III Property and research as identified in Attachment 1. In the event that the land acquisition of the Souza III Property does not occur by December 30, 2010, ECCCHA will return all Grant funds, plus any interest earned thereon, to the Foundation by January 15, 2011, unless the Foundation agrees in writing to extend the term of the Grant Agreement to accommodate a later acquisition date. ECCCHC understands that this Grant is not a "gift," and understands and agrees that funds are being granted to ECCCHC to pursue the Purposes outlined in this Grant Agreement.

(d) Treatment of Interest: Any interest earned on the Grant funds by ECCCHC from the investment of such funds should be used by ECCCHC to cover project-related activities supporting the Purposes of the Grant.

(e) Right to Curtail or Terminate Grant: The Foundation reserves the right to curtail or terminate the Grant if at any time the Foundation determines that the Grant Purposes or terms and conditions of the Grant Agreement are not being met or are unlikely to be met. The

Foundation will endeavor to give ECCCHC reasonable written notice prior to curtailment or termination to discuss the Foundation's concerns, but the determination to continue, curtail or terminate the Grant will remain in the Foundation's sole discretion. Any unspent or uncommitted funds as of the date of the Foundation's notice must be repaid to the Foundation.

2. Reporting and Notifications:

(a) Grant Reports: ECCCHC will deliver a written report(s) to the Foundation (each a "Grant Report"), according to the schedule in Attachment 2. The Grant Report will contain a detailed narrative report and financial report. Grant Reports will be submitted to the Foundation, by electronic mail where possible, to the attention of Gary Knoblock, Program Officer (gary.knoblock@moore.org) and Grants Administration, (GrantsAdmin@moore.org).

(b) Narrative Reports: The narrative report should describe what was accomplished by this Grant as of the date of the Grant Report, outlining the activities that were undertaken by ECCCHC, the strategic choices that were made as a result of the Grant, and achievement of Grant Purposes described in Attachment 1. In addition, the narrative report should also include an accounting for grant expenditures, a copy of the final deed and close of escrow documentation. The research results and publishable manuscript will serve as the final narrative report.

(c) Financial Reports: The financial report should reflect the expenditures of the Grant funds, and any income earned thereon, in accordance with the Budget, as of the end of the reporting period and cumulative across the Grant term in US Dollars. The financial reports should include an analysis of Budget versus actual spending by outcome or output at the level of detail contained in the Budget, and include a narrative explanation of the Budget variances. Total project spending, in addition to Foundation Grant spending, will also be provided. In addition, the financial reports must include proposed Budget revisions for future years, if applicable.

(d) Grant Report Follow-up: The Foundation may request in-person meetings with ECCCHC to discuss details of the Grant Report, and if any Reports are deemed inadequate in the Foundation's reasonable discretion, the Foundation may require additional supporting documentation or clarifications to the Grant Report prior to release of the next scheduled payment. Upon completion of the Grant, ECCCHC will submit a Final Grant Report according to the schedule in

Attachment 2. If any funds are remaining to be expended after the reporting period, ECCCHC will submit one or more additional Grant Reports until all Grant funds are expended in full or the Grant is otherwise closed.

(e) Notification for Collaborative Projects: ECCCHC will notify the Foundation in writing of any substantive issues or concerns that may develop between ECCCHC, other Foundation grantees and/or other ECCCHC partners that have the potential to significantly impair or impact the Purposes, progress or schedule of this Grant.

(f) Notification of Change in Key Personnel, and Succession Approval as a Condition to Funding: ECCCHC will notify the Foundation immediately of any change in ECCCHC's executive staff, key Grant staff or consultants responsible for achieving the Grant Purposes. In addition, the Foundation must be notified of any pending changes in the employment or project participation status of John Kopchik, Executive Director. The Foundation reserves the right to terminate the Grant if any of the aforementioned individuals or other key personnel leave the project during the term of the Grant.

(g) Close of Escrow: Upon closing escrow, ECCCHA will provide the Foundation with written verification that the acquisition closed, and a copy of the final deed.

3. Grant Modifications: The terms and conditions of this Grant Agreement may not be amended or modified, except as agreed to by the parties in writing. Any change in the Purposes for which Grant funds are spent must be approved in writing by the Foundation before implementation. Moreover, ECCCHC must obtain the prior written approval of the Foundation for any Budget modification that results in a variance to any annual expense category sub-total or annual output or outcome total in the Budget greater than 20 percent, whether or not the requested variance will affect the Grant Purposes. Annual sub-totals refer to the expense categories present in the Budget and may include any or all of the following: Personnel, Consultants & Contractors, Sub-grants, Scholarships & Awards, Other Direct Expenses, and Equipment & Capital Expenditures. In addition, no reallocation of Grant funds may be made to a category of Overhead or Indirect Costs.

4. Maintenance of Financial Records: ECCCHC will maintain its financial books and records in such a fashion that it can provide the Foundation with sufficient detail to substantiate all expenditures related to the Grant. ECCCHC will make such books and records available to the Foundation at reasonable times. ECCCHC will keep copies of all books and records and all

reports to the Foundation for at least four years after completion of the use of Grant funds.

5. Selection of Entities by ECCCHC: With respect to the identification, selection, organization, management and control of any consultants, contractors, subgrantees or other entities ("Entities") to assist (either individually or collectively) in carrying out the Purposes of the Grant, ECCCHC retains full discretion and control over these Entities, acting completely independently of the Foundation. There is no agreement, written or oral, by which the Foundation may cause ECCCHC to choose or otherwise manage any of these Entities.

6. Compliance with Laws:

   (a) ECCCHC agrees to comply fully with all laws and regulations (federal, state and local) applicable to any of its activities associated with this Grant.

   (b) ECCCHC specifically agrees to comply with provisions of the United States Internal Revenue Code ("Code") and regulations applicable to ECCCHC as a tax exempt organization. This Grant is not earmarked for lobbying (within the meaning of Section 4945(d)(1) of the Code). Neither ECCCHC nor the Foundation has entered into any agreement, written or oral, nor made any representation to the effect that any portion of the funds to be provided under this Grant may be earmarked for lobbying. ECCCHC will not use any portion of the Grant funds to influence the outcome of any specific election for candidates to public office or to carry on any voter registration drive except as provided in Section 4945(f) of the Code.

7. Publicity and Acknowledgements:

   (a) Foundation Reporting and Website Publication: The Foundation may include basic information about this Grant in its periodic public reports, once the Foundation receives a fully-executed Grant Agreement. Additionally, information will be posted on the Foundation's website immediately following receipt of the fully-executed Grant Agreement, unless the parties make alternative arrangements.

   (b) Publicity and Acknowledgements by ECCCHC: All press releases, announcements, publicity or other references to the Gordon and Betty Moore Foundation concerning the Grant, including use of the Foundation's logo must be approved in advance by the Foundation's Communications Department (communications@moore.org or 650-

213-3000). Additionally, ECCCHC agrees to obtain advance written approval from the Foundation's Communications Department of any communication that may reasonably be understood to represent the views of the Foundation and to provide the Foundation with reasonable opportunity to review, comment and approve the communication in advance.

(c) Pre-approved Attribution Language: ECCCHC may use the following standard language in making attributions for funding without prior approval of the Communications Department. However, all other references to the Foundation in press releases or other Grant publicity will require advance written approval of the Foundation's Communications Department:

(i) About the Gordon and Betty Moore Foundation:
"The Gordon and Betty Moore Foundation, established in 2000, seeks to advance environmental conservation and cutting-edge scientific research around the world and improve the quality of life in the San Francisco Bay Area. For more information, visit www.moore.org."

(ii) Attribution for full Grant funding:
"This (research, publication, project, Web site, report, etc.) is funded by the Gordon and Betty Moore Foundation."

(iii) Attribution for partial Grant funding:
"This (research, publication, project, Web site, report, etc.) is funded in part by the Gordon and Betty Moore Foundation."

(d) Logo: The Foundation encourages the use of its logo in connection with Grant Publicity. Various file formats may be obtained by contacting the Foundation's Communications Department at communications@moore.org or 650-213-3000. Supported uses of the logo include presentation materials, papers, symposia and conference brochures; use of the logo for promotional materials or commercial use (e.g., caps, jackets, mugs, tote bags, etc.) are not permitted. ECCCHC may use the Foundation logo in connection with Pre-Approved Attribution Language without the prior approval of the Communications Department. ECCCHC will obtain the Foundation's advance written approval from the Communications Department for all other uses of its logo.

8. Information and Data Sharing: The parties understand that a material condition of this Grant Agreement is that ECCCHC makes the data, research, knowledge and other information developed with any Grant funds freely

accessible to the Foundation, other grantees of the Foundation and the public generally. In addition, ECCCHC will make such data, research, knowledge and other information available consistent with the Gordon and Betty Moore Foundation Data Sharing Philosophy (obtained by selecting "Newsroom" and then "Publications" from the Foundation website, www.moore.org).

9. Grantee's Tax Exempt Status: By entering into this Grant Agreement, ECCCHC confirms that its tax-exempt status has not been revoked or modified, and agrees to maintain this status during the term of the Grant. ECCCHC will notify the Foundation immediately of any change in ECCCHC's tax-exempt status or its non-private foundation status. ECCCHC has a reasonable basis for determining it will not fail to qualify as a public charity within the meaning of the Code during the term of the Grant.

10. No Promise of Future Funding: ECCCHC acknowledges that the Foundation and its representatives have made no actual or implied promise of funding except for the amounts specified by this Grant Agreement. However, the foregoing is not intended to prohibit the Foundation from providing a future grant to ECCCHC, if the Foundation in its sole discretion determines that a future grant is appropriate.

11. Miscellaneous Provisions: This Grant Agreement supersedes any prior oral or written understandings or communications between the parties and constitutes the entire agreement between the parties with respect to the subject matter. Any dispute arising from or related to this Grant Agreement will be resolved by the laws of and in the State of California.

12. Effective Date: Upon the full execution of this Grant Agreement, the effective date of this Grant Agreement is the date that the Grant was approved, July 15, 2010, notwithstanding the later date of this letter and execution by the parties. Grant funds may not be used to support activities conducted prior to the effective date of the agreement.

If this Grant Agreement correctly sets forth your understanding of the terms of this Grant, please indicate your organization's agreement to its terms by having an authorized officer of ECCCHC sign a copy of this letter and return it to the Foundation to the attention of Grants Administration, by electronic mail if possible to (GrantsAdmin@moore.org), or by fax (866-913-8929). We will arrange for the payment of the Grant, by wire transfer within two weeks of our receipt of the countersigned copy of this Grant Agreement and subject to completion of any contingencies in Attachment 1. To facilitate your receipt of the funds, please complete the attached Request for Wire Transfer form and return it with your signed Grant Agreement.

Mr. John Kopchik, Executive Director
East Contra Costa County Habitat Conservancy
August 23, 2010

Congratulations on your Grant. On behalf of the Foundation, I extend every good wish for the success of Expanding Mount Diablo conservation area and wildlife linkages through acquisition of the Souza III properties.

Best regards,

George W. Bo-Linn, MD
Chief Program Officer, San Francisco Bay Area
Program and Betty Irene Moore School of
Nursing

cc: Raymond Wong, Accountant
Email: rwong@cd.cccounty.us

Attachments 1, 2 and 3
Enclosure (Request for Wire Transfer Form)

AGREED AND ACCEPTED for East Contra Costa County Habitat Conservancy:

By: _____

Title: Executive Director

Date: September 17, 2010

ATTACHMENT 1
GRANT OUTCOME PLAN (#2571)

Outcome 1: Permanent protection of the Souza III property, 1,021 acres of critical wildlife linkages and habitat combined with the leveraging of public funds that together accelerate progress in establishing a 30,000 acre expansion of the network of conservation lands in the Mount Diablo landscape.

Expected Date: 9/30/2010

Output	*Activities / Indicators*	*Expected Completion Date*	*Monitor Check (x)*	*Progress*	*% Complete / Actual Completion Date*
1. Acquisition of fee title to 1,021 acre Souza III property and leverage significant federal funds.	Remaining funds transferred to escrow, close escrow, send copy of final deed.	9/30/10	x		
2. Incorporation of the Souza III property into the regional preserve system through permanent deed restriction.	Form of deed restriction is approved by wildlife agencies and recorded by EBRPD.	12/31/10	x		
3. Preparation of Preserve Management Plan and initial management actions to enhance habitat (This output is being funded by non Foundation sources.)	Conservancy and EBRPD complete draft of the Preserve Management Plan, receive input from wildlife agencies and public and publish Final Plan.	9/30/11			

ATTACHMENT 1
GRANT OUTCOME PLAN (#2571)

Outcome 2: Improved scientific understanding of wind turbine impacts on birds and/or bats that will help reduce conflict between wind energy production and conservation of native species.

Expected Date: 6/30/2012

Output	*Activities / Indicators*	*Expected Completion Date*	*Monitor Check (x)*	*Progress*	*% Complete / Actual Completion Date*
Complete design and implementation of research project designed to result in publication in a peer-reviewed journal.					
1. Finalize the gap analysis (including feasibility assessment) for potential research projects and draft scope of work.	Finalize the gap analysis. Conduct a feasibility analysis of potential research projects. Secure Foundation input and final approval of research project.	10/31/2010			
2. Secure a primary investigator (PI) for research and finalize scope of work with input from PI.	Identify a PI. Update and finalize the scope of work based on input and feedback from the PI.	12/30/2010			
3. Update Foundation.	Update Foundation on finalized research scope of work and PI selection.	12/30/2010			
4. Conduct study.	Implement the scope of work.	4/30/12			
5. Publish results of the research project.	Write up the report. Identify one or more publications for publishing. Submit the report for publication.	9/30/12	x		

ATTACHMENT 2
GRANT PAYMENTS AND REQUIREMENTS PLAN (#2571)

Year	*Payment Amount*	*Projected Payment Date*	*Financial Rpt Due*[1]	*Narrative Rpt Due*	*Other Scheduled Activities or Events*	*Scheduled Meeting Date*	*Conditions for Payment / Other*
2010	$2,250,000	9/1/10					Foundation receipt of fully signed Grant Agreement
2012			9/30/12	9/30/12			Final Narrative and Financial Grant Reports (The reports should include an accounting for grant expenditures, a copy of the final deed and close of escrow documentation. The research results and publishable manuscript will serve as the final narrative report.)

[1] Financial Report should include budget vs. actual according to Budget Plan Attachment

ATTACHMENT 3
BUDGET (#2571)

	Foundation	OTHER	TOTAL
Summary by Output			
Outcome 1			
Output 1	$2,000,000	$3,300,400	$5,300,400
Output 2	$0	$0	$0
Output 3	$0	$100,000	$100,000
Outcome 2			$0
Output 1	$250,000	$15,000	$265,000
Total	$2,250,000	$ 3,415,400	$5,650,400

Summary by Year			
Year 1	$2,075,000	$3,405,400	5,650,400
Year 2	$175,000	$10,000	$185,000
Total	$2,250,000	$3,415,400	$5,650.400

Summary by Expense			
Outcome 1			
Personnel Salaries	$0	$0	$0
Consultant and Contractor Fees	$0	$100,000	$100,000
Sub-Grants	$0	$0	$0
Fee title acquisition	$2,000,000	$3,300,400	$5,300,400
Equipment & Expenditures	$0	$0	$0
Indirect Costs	$0	$0	$0
Outcome 2			
Personnel Salaries	$0	$15,000	$15,000
PI and Other Consultant and Contractor Fees	$232,000		$232,000
Equipment, Publication, Travel and Other Direct Expenses	$18,000	$0	$18,000
Indirect Costs	$0	$0	$0
Sub-Grants	$0	$0	$0
Total	$2,250,000	$3,415,400	$5,665.400

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

DATE: October 19, 2011

TO: Governing Board

FROM: Conservancy Staff

SUBJECT: **Conservancy Grant Applications**

RECOMMENDATION

APPROVE Resolutions No: 2011-04, 2011-05, 2011-06 related to Conservancy grant applications which AUTHORIZE Conservancy staff to:

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

DISCUSSION

The California Department of Fish and Game (CDFG) administers grants from CDFG's Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) Program. CDFG offers these grants to eligible applicants on an annual basis for high priority tasks urgently needed to implement approved NCCP's. The Conservancy has applied for and received LAG grants several times in the past. CDFG solicited concept proposals in the last several weeks and tentatively approved three grants to the Conservancy totaling $165,000.

In order to enter into an agreement to receive grant funding, CDFG requires an approved resolution from the Conservancy's Governing Board. The procedures established by CDFG require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the CDFG to implement the critical activities related to the NCCP Program.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: October 19, 2011 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 LAG proposals for 2011 will go toward funding key implementation tasks that are part of the 2011 Conservancy Work Plan, and will be part of the proposed 2011 Work Plan, including: monitoring and adaptive management of constructed wetland and riparian restoration projects ($50,000), preserve management planning ($75,000), and baseline inventory of special status plant populations and wetlands in the preserve properties ($40,000). These projects would be awarded as three separate funding agreements, and CDFG prefers a separate resolution for each agreement. Please find three proposed resolutions attached.

Attachments: Resolution 2011-04, Resolution 2011-05, Resolution 2011-06

Resolution No: 2011-04

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY AUTHORIZING THE APPLICATION AND ACCEPTANCE OF GRANT FUNDS FOR URGENT NATURAL COMMUNITY CONSERVATION PLAN IMPLEMENTATION TASK OF MONITORING AND ADAPTIVE MANAGEMENT OF CONSTRUCTED WETLAND AND RIPARIAN PROJECTS IN EASTERN CONTRA COSTA COUNTY

WHEREAS, certain local assistance grant funds are made available annually on a competitive basis by the California Department of Fish and Game for Natural Community Conservation Planning (NCCP) Program urgent implementation tasks; and

WHEREAS, the grants are awarded pursuant to guidelines established by the California Department of Fish and Game for determination of project eligibility for funds; and

WHEREAS, said procedures established by the California Department of Fish and Game require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the California Department of Fish and Game to implement urgent activities related to the NCCP Program.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy approves the filing of an application for local assistance for the above project in the amount of $50,000.

IT IS FURTHER RESOLVED that the East Contra Costa County Habitat Conservancy appoints the Executive Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved by the following vote on October 19, 2011.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director

Resolution No: 2011-05

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY AUTHORIZING THE APPLICATION AND ACCEPTANCE OF GRANT FUNDS FOR URGENT NATURAL COMMUNITY CONSERVATION PLAN IMPLEMENTATION TASK OF PRESERVE MANAGEMENT PLANNING IN EASTERN CONTRA COSTA COUNTY

WHEREAS, certain local assistance grant funds are made available annually on a competitive basis by the California Department of Fish and Game for Natural Community Conservation Planning (NCCP) Program urgent implementation tasks; and

WHEREAS, the grants are awarded pursuant to guidelines established by the California Department of Fish and Game for determination of project eligibility for funds; and

WHEREAS, said procedures established by the California Department of Fish and Game require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the California Department of Fish and Game to implement urgent activities related to the NCCP Program.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy approves the filing of an application for local assistance for the above project in the amount of $75,000.

IT IS FURTHER RESOLVED that the East Contra Costa County Habitat Conservancy appoints the Executive Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved by the following vote on October 19, 2011.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director

Resolution No: 2011-06

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY AUTHORIZING THE APPLICATION AND ACCEPTANCE OF GRANT FUNDS FOR URGENT NATURAL COMMUNITY CONSERVATION PLAN IMPLEMENTATION TASK OF BASELINE INVENTORY FOR WETLANDS AND SPECIAL STATUS PLANTS IN EASTERN CONTRA COSTA COUNTY

WHEREAS, certain local assistance grant funds are made available annually on a competitive basis by the California Department of Fish and Game for Natural Community Conservation Planning (NCCP) Program urgent implementation tasks; and

WHEREAS, the grants are awarded pursuant to guidelines established by the California Department of Fish and Game for determination of project eligibility for funds; and

WHEREAS, said procedures established by the California Department of Fish and Game require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the California Department of Fish and Game to implement urgent activities related to the NCCP Program.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy approves the filing of an application for local assistance for the above project in the amount of $40,000.

IT IS FURTHER RESOLVED that the East Contra Costa County Habitat Conservancy appoints the Executive Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved by the following vote on October 19, 2011.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director