

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** October 22, 2012  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Alaimo Property Acquisition

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**RECOMMENDATION**

AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), one state grant agreement and one federal subgrant agreement with the California Wildlife Conservation Board (WCB) for state and federal funds for acquisition of the Alaimo Property (APN 094-100-011; 6110 Kirker Pass Road, Pittsburg CA, 94565).

**DISCUSSION**

**Overview of Property and Potential Acquisition:**

The Alaimo property (*Property*) totals 2.3 acres and is located at 6110 Kirker Pass Road, Pittsburg CA, 94565. Photos and maps showing the Property, its location and condition are provided in the attached Pre-Acquisition Assessment.

The Property is currently owned by Angelo J. Alaimo & Gloria Alaimo, Trustees. East Bay Regional Park District (EBRPD) and the Sellers (Angelo J. Alaimo & Gloria Alaimo, Trustees) have reached agreement on the purchase of the Property. EBRPD commissioned an appraisal of the Property which was completed June 15, 2012. The fair market value of the Property is \$185,000.

EBRPD’s purchase is contingent on support from the Conservancy.

CONTINUED ON ATTACHMENT: YES  
ACTION OF BOARD ON: October 22, 2012  
OTHER \_\_\_\_\_

APPROVED AS RECOMMENDED: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

     UNANIMOUS  
     AYES:  
     NOES:  
     ABSENT:  
     ABSTAIN:

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

ATTESTED \_\_\_\_\_  
CATHERINE KUTSURI, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY

BY: \_\_\_\_\_, DEPUTY

**Proposed Funding Plan:** The proposed funding plan for the acquisition of the Property is provided in Table 1 below. None of the Conservancy’s own funds are proposed.

**Table 1. Proposed Funding for Purchase of Property**

Source	Total
EBRPD	\$18,500
Federal Section 6 HCP Land Acquisition Grant	\$83,250
WCB Proposition 84 Grant (NCCP allocation)	\$83,250
<b>Total</b>	<b>\$185,000</b>

**Would Acquisition of the Property Help the Conservancy Achieve the Conservation Goals of the HCP/NCCP?** Yes. Conservancy staff prepared a Pre-Acquisition Assessment of the Property to examine and document the biological resources and restoration potential on the Property and to assess the ability of the Property to meet the conservation requirements of the HCP/NCCP. The following excerpts from the Pre-Acquisition Assessment provide a summary of the Property (the full report is attached). Table 2 provides a summary of the collective acres of land cover that would be protected by this acquisition.

The Alaimo property (Property) is located in the Kirker Creek Watershed in the northwest portion of the inventory area. The Property consists of one parcel totaling approximately 2.3 acres. The Property is approximately 1.5 miles south of Pittsburg. The Property is irregularly shaped, and has an approximate maximum width of 240 feet and an estimated length of 1,150 feet. The northern edge is bound by dedicated open space associated with the Keller Canyon Landfill. The southern edge is bound by Kirker Pass Road. The site is directly north of the Affinito property (acquired recently by EBRPD in partnership with the Conservancy), and adjacent to the eastern border of the Land Waste Management property (which was also acquired recently by EBRPD in partnership with the Conservancy). The Thomas North property, which is about to be purchased by EBRPD in partnership with the Conservancy, lies approximately 2000 feet east and downstream.

The entire Property is located in acquisition analysis Zone 1 which encompasses all undeveloped and unprotected lands in the northwest corner of the inventory area. Within Zone 1, the Property lies within subzone 1c. Subzone 1c is designated as a high priority for acquisition for the HCP/NCCP Preserve System. High priority Zone 1 acquisitions are of critical importance to the HCP because they support high quality habitat for several key species including California tiger salamander, and California red-legged frog; include rare habitat found nowhere else; and serve a critical connectivity function. Restoration within the Kirker Creek watershed is also a high priority for the Conservancy, due in part to the anticipated impacts of HCP/NCCP covered activities elsewhere in the watershed and the importance of demonstrating to state wetland permitting agencies that the Conservancy is implementing a watershed approach to mitigation and restoration.

In addition to supporting conservation targets, this Property supports the HCP/NCCP goals of restoration of grassland, streams, riparian habitat and protection of long, contiguous reaches of stream. Due to the location of the site (surrounded by protected lands, including

Conservancy preserves), historic relocation of Hess Creek, associated erosion issue occurring immediately downstream of the site, and that the fact that the Conservancy has already pursued stream and wetland restoration in the upper reaches of this stream system, the Property presents a good restoration opportunity for the Conservancy. The presence of riparian vegetation on the project site, as well as up and downstream of the site indicates that the site may be capable of supporting not only a stream restoration project, but riparian restoration as well. Finally, acquisition and restoration of the Property provides an opportunity to enhance connectivity among preserved lands within and outside of the inventory area.

**Table 2. Land Cover Types on Property**

<b>Land Cover Type (acres)</b>	<b>Alaimo</b>	<b>HCP Land Acquisition Requirements (acres)</b>	<b>Percent of Land Acquisition Requirements</b>
Annual grassland	0.22	16,500	0.0%
Alkali grassland	0.03	1,250	0.0%
Riparian	0.41	70	0.6%
Urban	1.67 <sup>1</sup>	N/A	
Intermittent stream	268	2,112	12.7%

<sup>1</sup> While the site is currently dominated by the urban land cover type, restoration would increase the amount of grassland, alkali grassland, riparian, and stream contributed to the Preserve System by this site.

Because this acquisition would help achieve the HCP/NCCP land acquisition requirements for annual grassland, alkali grassland, riparian, and streams; help achieve the specific HCP/NCCP requirements for Subzone 1c; close a gap in open space protection; provide suitable habitat for several covered species; provide good stream and riparian restoration opportunities; and add to the corridor between Black Diamond Mines Regional Preserve and the Concord Naval Weapons Station, staff finds that acquisition of the Property will help the Conservancy to achieve the conservation goals of the HCP/NCCP.

**Deadline:** The parties hope the transaction can close by January 31, 2013. 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 its grant funds to cover \$166,500.

**Future Conservancy actions:** The Board would need to approve a Management Plan(s) that covers the Property and funding agreements for management. The Conservancy would also need to develop plans for restoring the property and secure/appropriate necessary funding.

**Agreements:** The Funding Agreement with EBRPD and the Grant and Subgrant Agreements with WCB would follow the general form shown in the attached templates, with funding amounts matching the Funding Plan described above.

**Reasons for recommendation:** Staff recommends the purchase of the Property for the following reasons:

- The Property has demonstrated willing sellers. Land acquisition under the HCP/NCCP is on a willing seller basis and must seize opportunities when presented.
- The Property is located in a high priority acquisition subzone and its preservation would help the Conservancy meet a number of the more challenging restoration requirements of the HCP/NCCP, including requirements for restoration of streams and riparian habitat.
- The Property presents substantial restoration possibilities and is located in an area where restoration could build on the Conservancy's prior projects and support regional wetlands permitting objectives of the Conservancy.
- Acquisition of the Property will remove the potential for a private in-holding surrounded by protected natural lands to disturb adjacent habitat and natural functions. Management of the larger area will be simplified and constraints reduced.
- The Property is located in an area eligible for funding from the Conservancy's approved federal Section 6 grants and is also eligible for WCB funding. The property can be acquired to meet the goals of the HCP/NCCP without expenditure of the Conservancy's own funds.
- The HCP/NCCP conservation requirements have a time element and all of the grant funds 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 HCP/NCCP conservation requirements, staff believes it is prudent for the Conservancy to act affirmatively.

**Attachments:**

- Pre-Acquisition Assessment for Alaimo
- Templates of EBRPD Funding Agreement, WCB Subgrant Agreement (federal), WCB Grant Agreement (state)

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



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

## SITE IDENTIFICATION

**Site Name:** Alaimo

**Site Address/location:** 6110 Kirker Pass Road, Pittsburg, CA 94565

**Property APN(s) #:** 094-100-011

**Size of Parcel(s):** The overall size of the property is approximately 2.3 acres

**Agency proposed to purchase and own property:** East Bay Regional Park District (EBRPD)

**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 Parcels (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4)
- Ownership of Adjacent Property (Figure 5)

## LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

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

The Alaimo property (Property) is located in the Kirker Creek Watershed in the northwest portion of the inventory area. The Property consists of one parcel totaling approximately 2.3 acres. The Property is approximately 1.5 miles south of Pittsburg. The Property is irregularly shaped, and has an approximate maximum width of 240 feet and an estimated length of 1,150 feet. The northern edge is bound by dedicated open space associated with the Keller Canyon Landfill. The southern edge is bound by Kirker Pass Road. The site is directly north of the Affinito property (acquired recently by EBRPD in partnership with the Conservancy), and adjacent to the eastern border of the Land Waste Management property (which was also acquired recently by EBRPD in partnership with the Conservancy). The Thomas North property, which is about to be purchased by EBRPD in partnership with the Conservancy, lies approximately 2000 feet east and downstream.

Hess Creek, a tributary to Kirker Creek, is an intermittent stream that flows east-northeast immediately adjacent to the northern edge of the Property. The Conservancy's Upper Hess Creek Restoration Project is located upstream of this reach on the Land Waste Management property. Until recently, the site supported several temporary buildings and considerable debris. All structures and debris have been removed from the site and previously developed areas are now only gravel. As part of the previous development, the reach of Hess Creek that runs through the Property was realigned to its current location, immediately north of the Property.

The terrain north of Kirker Pass Road is generally described as moderately to steeply up sloping from Kirker Pass Road. The Property is one of the few areas north of Kirker Pass Road that has relatively flat topography, with elevations between 475 and 500 feet above sea level. This level surface is partly due to the previous filling of much of the site and relocation of Hess Creek.

The entire Property is located in acquisition analysis Zone 1 which encompasses all undeveloped and unprotected lands in the northwest corner of the inventory area. Within Zone 1, the Property lies within subzone 1c. Subzone 1c is designated as a high priority for acquisition for the HCP/NCCP Preserve System. High priority Zone 1 acquisitions are of critical importance to the HCP because they support high quality habitat for several key species including California tiger salamander, and California red-legged frog; include rare habitat found nowhere else; and serve a critical connectivity function. Restoration within the Kirker Creek watershed is also a high priority for the Conservancy, due in part to the anticipated impacts of HCP/NCCP covered activities elsewhere in the watershed and the importance of demonstrating to state wetland permitting agencies that the Conservancy is implementing a watershed approach to mitigation and restoration.

Within Zone 1, specific targets exist for land cover and species habitat. The parcel currently contains 0.22 acres of grassland land cover which would contribute to land cover acquisition targets for subzone 1c and to the overall acquisition requirement for grassland. The presence of alkali grasslands also contributes to zone-specific and preserve-wide acquisition targets. While the site is currently dominated by the urban land cover type, restoration would increase the amount of grassland, alkali grassland, riparian and stream habitat contributed to the Preserve System by this site.

In addition to supporting conservation targets, this Property supports the HCP/NCCP goals of restoration of grassland, streams, riparian habitat and protection of long, contiguous reaches of stream. Due to the location of the site (surrounded by protected lands, including Conservancy preserves), historic relocation of Hess Creek, associated erosion issue occurring immediately downstream of the site, and that the fact that the Conservancy has already pursued stream and wetland restoration in the upper reaches of this stream system, the Property presents a good restoration opportunity for the Conservancy. The presence of riparian vegetation on the project site, as well as up and downstream of the site indicates that the site may be capable of supporting not only a stream restoration project, but riparian restoration as well. Finally, acquisition and restoration of the Property provides an opportunity to enhance connectivity among preserved lands within and outside of the inventory area.

**II. Land Cover Types (Figure 4)**

<b>Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)</b>	<b>Area (acres)</b>
<b>Terrestrial Land Cover Types</b>	
Annual grassland	0.22
Alkali grassland	0.03
Riparian	0.41
Urban	1.67 <sup>1</sup>
<b>Total area of terrestrial land cover</b>	<b>2.33</b>

**III. Streams (Figure 4)**

<b>Stream</b>	<b>Length (linear feet)</b>
Intermittent stream	268
<b>Total streams (linear feet)</b>	<b>268</b>

**IV. Proximity to Development (see Figure 1)**

<b>Type of Development (urban, suburban, rural, commercial, etc)</b>	<b>Distance from Site (miles)</b>	<b>General description of development and influence on site.</b>
On-site rural development	On site	The Property mostly consists of a flat, graveled area. All debris and structures have been removed.
Urban development	approximately 1.5 miles	Urban development in the City of Pittsburg is approximately 1.5 miles away, traveling northeast on Kirker Pass Road. This does not directly affect the Property.
Road/highway	Immediately south of the site	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 may hinder wildlife movement off of the Property to the south.

**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

<sup>1</sup> While the site is currently dominated by the urban land cover type, restoration would increase the amount of grassland, alkali grassland, riparian, and stream contributed to the Preserve System by this site.

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

<i>Sub-Zone Requirement</i>	<i>Total Requirement</i>	<i>Contribution by this Acquisition (acres)<sup>2</sup></i>	<i>Percentage of Requirement Met by Acquisition</i>
Zone 1 total area	3,150	0.66	0.02%
Annual Grassland in Sub-zone 1b/1c	1,450	0.22	0.02%

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

<i>Land-Cover Requirement</i>	<i>Total Requirement (acres)</i>	<i>Contribution by this Acquisition (acres)<sup>2</sup></i>	<i>Percentage of Requirement Met by Acquisition</i>
Preserve-wide Annual Grassland	16,500	0.22	0.00%
Preserve-wide Alkali Grassland	1,250	0.03	0.00%

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

<i>Jurisdictional Wetland and Waters Requirement</i>	<i>Total Requirement (acres)</i>	<i>Contribution by this Acquisition (acres)<sup>2</sup></i>	<i>Percentage of Requirement Met by Acquisition</i>
Riparian woodland/ scrub	70	0.41	0.6%
Preserve-wide Intermittent stream (feet)	2,112	268	12.7%

**VI. Site Conformance with Preserve Design Principles**

The following is a subset<sup>3</sup> of conservation biology principles 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 principles may be applicable or be evaluated at this time.

<sup>2</sup> While the site is currently dominated by the urban land cover type, restoration would increase the amount of grassland, alkali grassland, riparian, and stream contributed to the Preserve System by this site.

<sup>3</sup> 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.

- **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.

Though very small (~2.3 acres), the property is surrounded by protected natural lands (with the exception of Kirker Pass Road) and has the potential to contribute habitat for covered species, particularly those species associated with streams and riparian land cover. Given the surrounding land ownership and uses, species disturbance from neighboring lands will be limited.

The Property's northern border abuts dedicated open space associated with the Keller Canyon Landfill. To the west is the Land Waste Management property acquired recently by EBRPD in partnership with the Conservancy. The Property provides an opportunity to remove an in-holding in an area otherwise dominated by protected natural lands, as well as an opportunity to further enhance connectivity among preserved lands within and outside of the inventory area. The Property lies in between planned open space on Detachment Concord (aka Concord Naval Weapons Station) and Black Diamond Mines Regional Preserve and could be a link in protecting a corridor between the two.

The Property is approximately 1.5 mile away from existing development, and 1 mile from the City of Pittsburg Urban Limit Line. Urban development has not yet progressed to the edge of the Urban Limit Line (though a development proposal is being reviewed by the City of Pittsburg for land north of the Property), and no other urban areas abut the Property. The Property is bound to the south by Kirker Pass Road, a four-lane divided road with concrete median barrier, which may pose a barrier to wildlife movement off the site to the south.

The terrain north of Kirker Pass Road is generally described as moderately to steeply up sloping from Kirker Pass Road. The Property is one of the few areas north of Kirker Pass Road that has relatively flat topography, with elevations between 475 and 500 feet above sea level. This level surface is partly due to the previous filling of much of the site and relocation of a portion of Hess Creek. The site supports annual grassland (9.4%), alkali grassland (1.29%), riparian (17.6%), and 0.05 mile of stream.

The Property is located in the Kirker Creek Watershed. Hess Creek, a tributary to Kirker Creek, is an intermittent stream that flows north-northeast immediately north of the project site. Acquiring the Property will allow the Conservancy to realign and restore the Hess Creek channel, and increase the amount of contiguous reaches of stream protected in the inventory area as well as the amount of protected stream in the Kirker Creek Watershed. The Conservancy's Upper Hess Creek Restoration Project is located upstream of this reach, and acquisition of this reach would support the Conservancy's goals of restoration in this watershed.

The benefit of the site is largely in its restoration opportunities. Existing management needs are relatively minor, but it is also expected that once restored, site conditions and characteristics will allow implementation of desired management approaches.

## 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 was previously utilized in connection with a retail firewood operation. The site previously contained a dilapidated barn and mobile home structures. All structures have been removed from the site.

Local zoning is for General Agriculture.

A Deed Reserving Easement on the site allows access to the Property by successors in interest of the Affinito site, now owned by EBRPD (also Conservancy Preserve) to maintain or replace an existing water well and pump. The well and pump are the primary source of water for the Affinito property and controlling land management surrounding the well is a benefit of acquiring the Alaimo property.

**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:**

A gravel driveway from Kirker Pass Road provides access to the Property.

The Property is not located within an urban service area and as such, no sanitary sewer or municipal treated water is available on the Property. The Property does have a reportedly functional well in west part of the site, but the well is not permitted and is not currently operational. The site has a second well located at the driveway, but the water rights of this well are associated with the Affinito preserve. Electrical service is extended into property, but the only permitted use is for the Affinito well.

No buildings are present on the site. No other structures are present excepting infrastructure associated with both wells (the well casing of the non-permitted well is still in place, but all other components have been removed). The majority of the site (1.67 acres) is covered with gravel and is currently considered urban.

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

Land cover mapping conducted for the site (Figure 4 in Appendix B) does not include any ruderal land cover. The portion of the property covered with gravel 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.):**

There are no known hazards reported on-site; however, a physical inspection of the premises suggests that there may be minor amounts of hydrocarbon contaminants in the soil. A Phase One environmental site assessment will be conducted prior to acquisition and acceptable results of that analysis is a condition of purchase.

**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 northern edge is bound by dedicated open space associated with the Keller Canyon Landfill. The southern edge is bound by Kirker Pass Road. The site is directly north of the Affinito preserve, and adjacent to the eastern border of the Land Waste Management property acquired recently by EBRPD in partnership with the Conservancy. The Thomas North property, which is about to be purchased by EBRPD in partnership with the Conservancy, lies approximately 2000 feet east and downstream. In summary, the site is surrounded by open space with the exception of Kirker Pass Road.

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 immediate area although urban development is located approximately 1.5 miles from the Property.

**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.

The principal source of water for the subject property is from Hess Creek. The site does support a functioning well, but the water rights of the well are associated with the Affinito site. As this site and Affinito would both become part of the Preserve System, it is likely that water needs for the site could be addressed using the Affinito well.

The site may be affected in the future by construction of the Kirker Pass Truck Climbing Lane project, a covered activity in the HCP/NCCP. This project is not currently funded or designed, but it is foreseeable that the County could construct it sometime in the next 25 years. If this project were constructed, it would likely require some of the land on the Property. The County would have to compensate EBRPD and the Conservancy for such loss of Preserve System lands.

**Appendices:**

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

## Appendix A



Photo 1: Looking west across the Property toward the valley where the Conservancy' Upper Hess Restoration Project was performed.



Photo 2: Looking east across the Property



Photo 3: Looking west at a headcut on Hess Creek at the east end of the Property



Photo 4: Looking west-northwest, upstream on realigned Hess Creek along the northern side of the Property



Photo 5: Looking northwest at riparian vegetation as west end of the Property



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

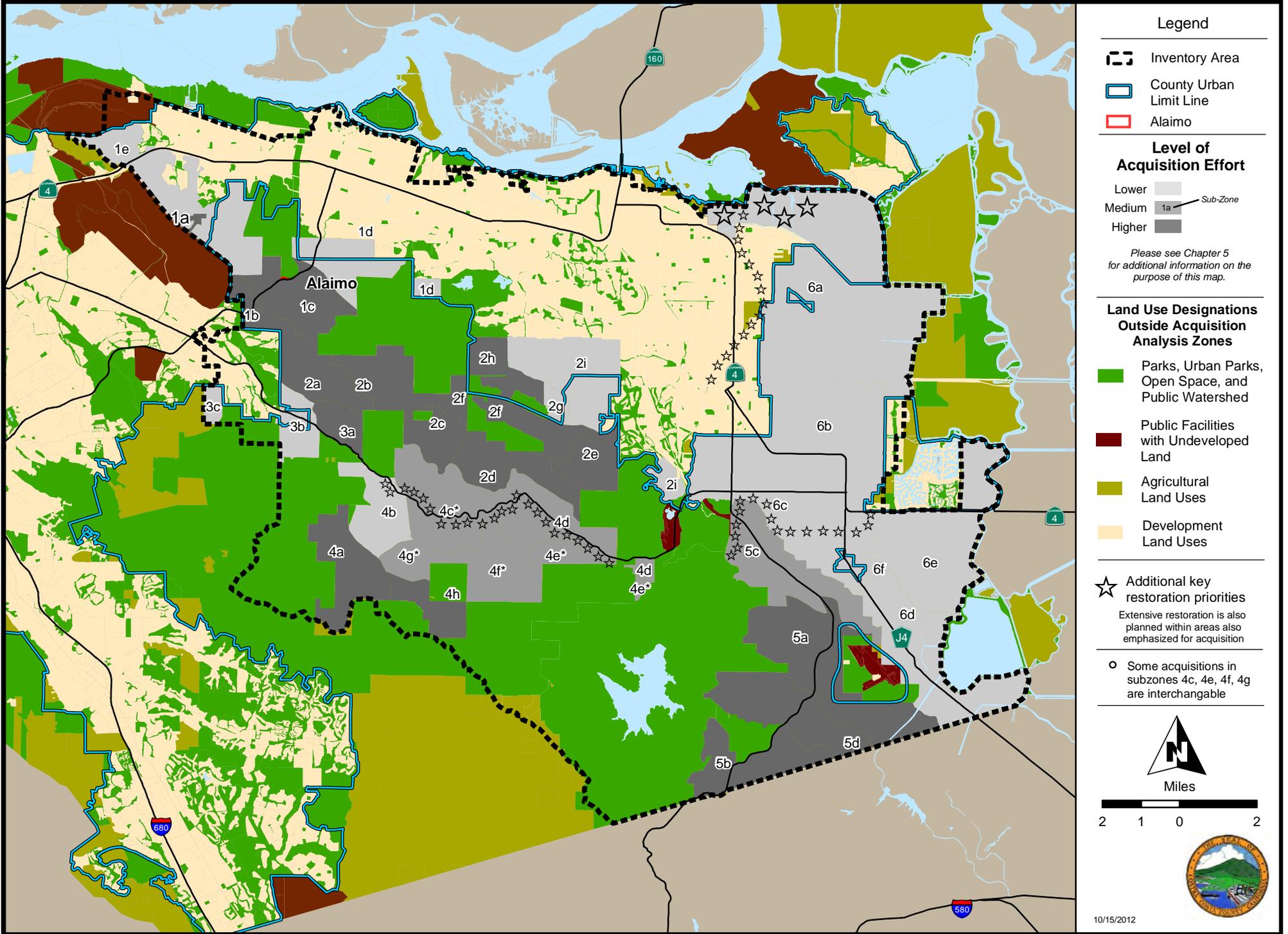


Figure 3: Alaimo parcel - May 2011 Orthophotography



Legend

 Alaimo



Feet  
0 100 200



Figure 4. Alaimo parcel - Terrestrial and Aquatic Land Covers Types

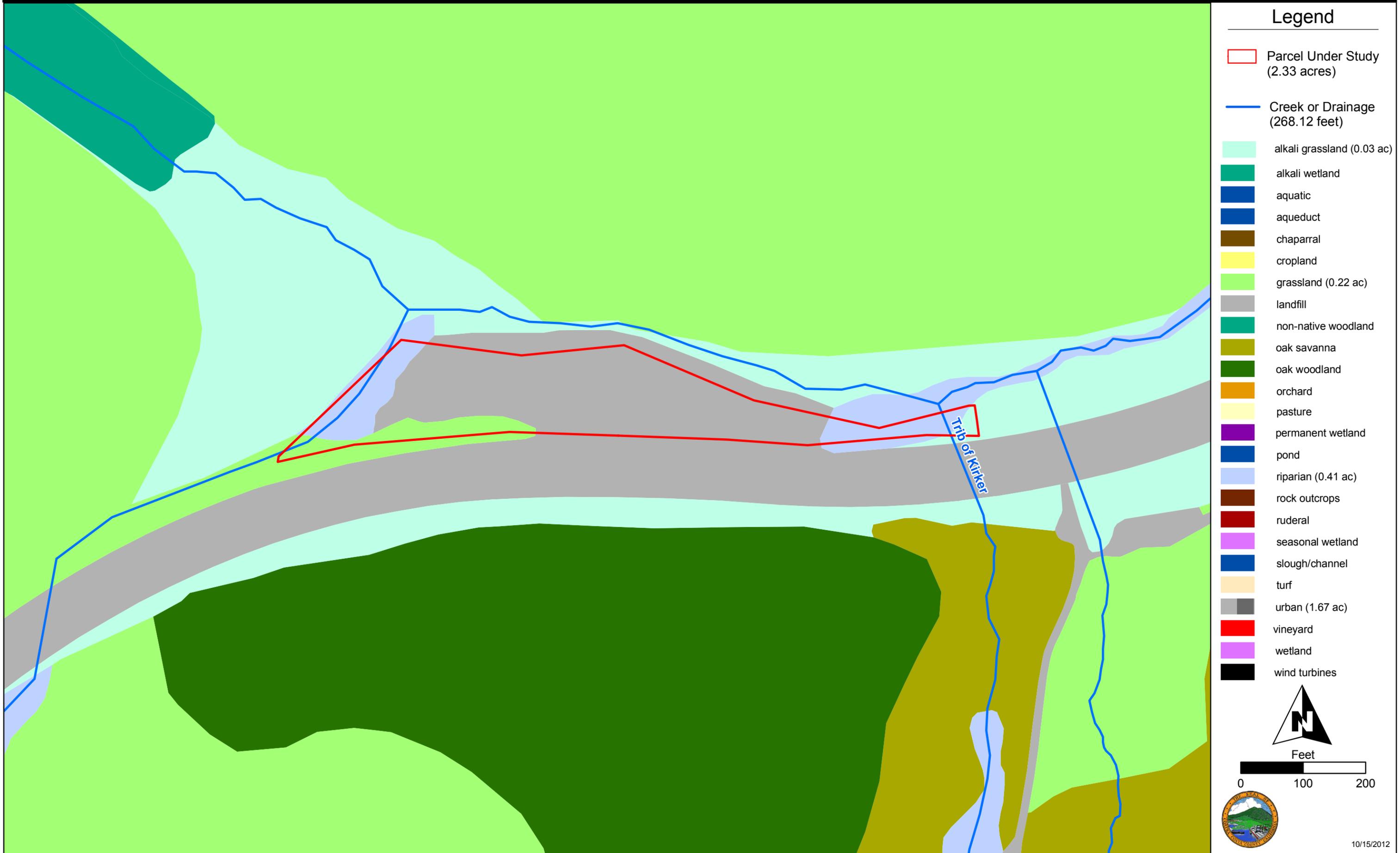
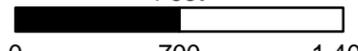


Figure 5: Alaimo parcel - Neighborhood



**Legend**

 Parcels Under Study

  
Feet  
  
0 700 1,400



10/15/2012

**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:

East Bay Regional Park District  
2950 Peralta Oaks Ct.  
Oakland, CA 94605  
Attention: Land Acquisition Manager  
Facsimile: (510) 569-1417

If to Conservancy:

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:** \_\_\_\_\_ )  
 )

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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            )  
  )  
COUNTY OF \_\_\_\_\_        )        ss

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, 4<sup>th</sup> 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, 4<sup>th</sup> 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, 4<sup>th</sup> 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  
1807-13<sup>th</sup> 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, 12<sup>th</sup> 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 title], (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**

**SUBGRANTEE  
EAST CONTRA COSTA COUNTY HABITAT  
CONSERVANCY**

By: \_\_\_\_\_  
John P. Donnelly, Executive Director

By: \_\_\_\_\_  
(John Kopchik)

Title: Executive Director

Date: \_\_\_\_\_

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 ECC NCCP/HCP commits the ECCCHC to ensuring the preparation and implementation of Preserve Management Plans for acquired lands and sets forth standards for such management. Section 8.6.2 of the ECC NCCP/HCP provides the ECCCHC with the ability to cooperate with other entities such as EBRPD to acquire and manage lands pursuant to the ECC NCCP/HCP

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

Subgrantee and Successor Subgrantee hereby 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)

**ASSURANCES - CONSTRUCTION PROGRAMS**

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

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

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

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

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

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

**ASSURANCES - CONSTRUCTION PROGRAMS**

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

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

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

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

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
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11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

**EXHIBIT E**

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

**EXHIBIT F**  
(WCB Logo)



**EXHIBIT G**

(Notice of Unrecorded Grant Agreement)

**RECORDING REQUESTED BY:**

)  
East Contra Costa County Habitat Conservancy)  
651 Pine Street, 4<sup>th</sup> 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 (“SJM SHCP”) 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.

Conservancy

**SUBGRANTEE:**

East Contra Costa County Habitat

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, 4<sup>th</sup> 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, 4<sup>th</sup> 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, 12<sup>th</sup> 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.

3.6 Grantee shall have provided WCB with a written commitment by Grantee and Successor Grantee 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 F**.

3.7 Grantee and Successor Grantee 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 Grantee, 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 Application and the Federal Grant Agreement. The Certification shall be attached to this Agreement as **Exhibit E**.

#### 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
- Exhibit E** – Certification
- Exhibit F** – Management Commitment

## 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

GRANTEE:  
EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY

By: \_\_\_\_\_  
John P. Donnelly

By: \_\_\_\_\_  
John Kopchik

Title: Executive Director

Title: Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SUCCESSOR GRANTEE  
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)



**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 GRANTEE: EAST BAY REGIONAL PARK DISTRICT

By: \_\_\_\_\_  
Robert E. Doyle

TITLE: General Manager

Date: \_\_\_\_\_

## EXHIBIT E

### 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 Grantee and Successor Grantee, respectively, under the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit E** forms a part. Grantee and Successor Grantee hereby certifies to the Wildlife Conservation Board (WCB) as follows:

Successor Grantee'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 Grant 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 Agreement.

Grantee and Successor Grantee make this Certificate with the understanding that if WCB enters into the Agreement and grants funds (as defined in the Agreement) to Grantee and Successor Grantee, WCB will do so in reliance on this Certificate.

Dated: \_\_\_\_\_, 20\_\_\_\_\_

#### GRANTEE

East Contra Costa County Habitat Conservancy

By: \_\_\_\_\_

Print Name: John Kopchik

Title: Executive Director

#### SUCCESSOR GRANTEE

East Bay Regional Park District

By: \_\_\_\_\_

Print Name: Robert E. Doyle

Title: General Manager

**EXHIBIT F**  
**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 Grantee and Successor Grantee, respectively, under the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit F** 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 ECC NCCP/HCP commits the ECCCHC to ensuring the preparation and implementation of Preserve Management Plans for acquired lands and sets forth standards for such management. Section 8.6.2 of the ECC NCCP/HCP provides the ECCCHC with the ability to cooperate with other entities such as EBRPD to acquire and manage lands pursuant to the ECC NCCP/HCP

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

Grantee and Successor Grantee 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 Grant:

*“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 Agreement, Grantee and Successor Grantee 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.

Grantee and Successor Grantee make this Commitment with the understanding that if WCB enters into the Agreement and grants funds (as defined in the Agreement) to Successor Grantee, WCB will do so in reliance on this Commitment.

Dated: \_\_\_\_\_, 20\_\_\_\_\_

GRANTEE

East Contra Costa County Habitat Conservancy

By:\_\_\_\_\_

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR GRANTEE

East Bay Regional Park District

By:\_\_\_\_\_

Print Name: Robert E. Doyle

Title: General Manager