



*EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY*

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

REGULAR MEETING

Wednesday, January 23, 2013

9:00 a.m.

City of Clayton
Hoyer Hall in Clayton Community Library
6125 Clayton Road
Clayton, Ca 94517

AGENDA

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

Closed Session

CS1) Conference with Legal Counsel – Anticipated Litigation

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

CS2) Conference with Real Property Negotiators

Property: APN 080-070-014; 6041 Morgan Territory Road,
Clayton, CA

Agency Negotiators: John Kopchik and Abigail Fateman

Negotiating Parties: Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

CS3) Conference with Real Property Negotiators

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

Agency Negotiators: John Kopchik and Abigail Fateman

Negotiating Parties: Conservancy and Ronald Nunn Family LP

Under negotiation: Price and payment terms

9:45 a.m. Open Session

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

1) Introductions.

2) Report on any actions taken in Closed Session.

- 3) **Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 4) Consider **APPROVING** the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of October 22, 2012.
- 5) Consider the following Governing Board administrative matters:
 - a) **WELCOME** new Board Members and **CONFIRM** Conservancy Chair and Vice Chair for 2013.
 - b) **DETERMINE** Governing Board meeting time and locations in 2013.
 - c) **APPROVE** awarding a certificate to Assemblymember Jim Frazier to honor his service on the Governing Board of the East Contra Costa County Habitat Conservancy.
- 6) Consider the following actions related to HCP/NCCP Mitigation Fees:
RECEIVE presentation from Robert Spencer of Urban Economics on the East Contra Costa County HCP/NCCP Mitigation Fee Audit (December 2012) and HCP Fee Burden Analysis (December 2012). **REVIEW** and **DISCUSS** this matter and **ACCEPT** public comment on it. **SCHEDULE** an action on this matter for the next Conservancy Board meeting.
- 7) Consider **DETERMINING** representation on Public Advisory Committee (PAC) for 2013
- 8) Consider **APPOINTING** one Conservancy Board Member as the primary representative and one as the alternate to the East County Water Management Association Governing Board.
- 9) Consider **AUTHORIZING** the Executive Director to sign the sub-grant agreement with the Contra Costa Water District to receive \$650,000 awarded for land acquisition and habitat restoration through the Integrated Regional Water Management Plan (IRMWP) grant process.
- 10) Consider **APPROVING** the 2013 Conservancy Work Plan.
- 11) Consider the following actions related to legislative matters:
 - a) **ADOPT** the 2013 Legislative Platform;
 - b) **ADOPT** Resolution 2013-01 to support working together with agencies from across California to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$47 million to \$80 million in the Fiscal Year 2014 Interior and Related Agencies Appropriations bill;
 - c) **AUTHORIZE** the Chair or staff, as appropriate, to communicate items on the Platform to relevant members and staff of the U.S Congress and the California Legislature, relevant federal and state agencies, potential advocacy partners and others;

- d) **AUTHORIZE** payment of \$5,000 as membership dues for the California Habitat Conservation Planning Coalition in 2013
- 12) Consider the following actions related to Conservancy finances:
- a) **APPROVE** the 2013 Conservancy Budget.
 - b) **AUTHORIZE** staff to execute annual contracts for on-going consulting services with:
 - **ICF Jones and Stokes:** not to exceed \$289,000 for the term from January 1, 2013 through December 31, 2013;
 - **H.T. Harvey and Associates:** not to exceed \$260,000 for the term from January 1, 2013 through December 31, 2013;
 - **Restoration Resources:** not to exceed \$50,000 for the term from January 1, 2013 through December 31, 2013;
 - **Thunder Mountain Enterprises:** not to exceed \$50,000 for the term from January 1 2013 through December 31, 2013;
 - **Monk and Associates:** not to exceed \$50,000 for the term January 1, 2013 through December 31, 2013.
 - c) **AUTHORIZE** staff to execute a contract for legal services with Resources Law Group not to exceed \$90,000 for a term from January 1, 2013 through December 31, 2013.
- 13) Consider the following actions related to land acquisition:
- a) **AUTHORIZE** staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”) and a federal subgrant agreement with the California Wildlife Conservation Board (WCB) for federal funds for acquisition of the Adrienne Galvin Property (APN 080-070-014; 6041 Morgan Territory Road, Clayton, CA, 94517).
 - b) **AMEND** the authorization approved on October 22, 2012 related to the acquisition of the Alaimo Property (APN 094-100-011; 6110 Kirker Pass Road, Pittsburg CA, 94565) to substitute federal grant funds for the portion of the acquisition that was to have been funded with state grant funds.
- 14) Consider **AUTHORIZING** staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project 196,920.27.22.
- 15) Consider **AUTHORIZING** staff to execute a Participating Special Entity Agreement with Pacific Gas and Electric Company for the Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project.
- 16) Consider **AUTHORIZING** the Executive Director to send a letter to the East Bay Regional Park District (EBRPD) approving the sale and conveyance of 1.8 acres of land and 2.88 acres of access/maintenance easement from lands previously acquired for the HCP/NCCP Preserve System to Contra Costa County as needed for the construction and operation of the Vasco Road Safety Project.

17) Adjourn and. Next regular meeting TBA.

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

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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Governing Board Meeting Record for October 22, 2012.**

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of October 22, 2012.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED _____
OTHER _____

VOTE OF BOARD MEMBERS

__ UNANIMOUS
AYES:
NOES:
ABSENT:
ABSTAIN:

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

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

BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Monday, October 22, 2012
City of Brentwood

The Board convened the meeting at 2:00 p.m. and announced adjournment to closed session.

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

Governing Board members in attendance were:

Joel Bryant	City Council, City of Brentwood
Hank Stratford	City Council, City of Clayton
Federal Glover	Contra Costa County Board of Supervisors
Salvatore Evola	City Council, City of Pittsburg

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

Joe Ciolek	Agricultural-Natural Resources Trust of Contra Costa County
Seth Adams	Save Mount Diablo
Stephanie Jentsch	U.S. Fish and Wildlife Service
Jim Gwerder	Souza Realty and Development
Nancy Wenninger	East Bay Regional Park District

Conservancy Staff members in attendance were:

Catherine Kutsuris	Secretary of the Conservancy
Chris Beale	Resources Law Group, Conservancy Attorney
John Kopchik	Conservancy Staff
Krystal Hinojosa	Conservancy Staff
Abigail Fateman	Conservancy Staff

- 2) Report on any actions taken in Closed Session. The Chair announced there were no actions to report.**
- 3) Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item). There were no public comments.
- 4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of August 20, 2012.** The meeting record was approved. (4-0, Bryant, Evola, Glover, Stratford)
- 5) Consider ACCEPTING update from staff on the October 2, 2012 Public Workshop: East Contra Costa County Habitat Conservation Plan/Natural Community**

Conservation Plan (HCP/NCCP) Amendment Ideas and Suggestions. Mr. Kopchik provided an overview of the workshop and summarized points in the staff report. Supervisor Glover thanked staff for the hosting the workshop. The Board accepted the update. (4-0, Bryant, Evola, Glover, Stratford)

- 6) **Consider ACCEPTING update from staff on the October 10, 2012 Public Meeting Introducing the U.S. Army Corps of Engineers' new Regional General Permit related to the HCP/NCCP.** Mr. Kopchik provided an overview of the meeting, including a recap on the presentations by the U.S Army Corps of Engineers. He mentioned attendance by the Water Board. Mr. Evola stated that he was impressed with the meeting attendance, as a large cross section of agencies and interested parties were in attendance, and he thanked staff for their effort to organize and facilitate the meeting. The Board accepted the update. (4-0, Bryant, Evola, Glover, Stratford)
- 7) **Consider ACCEPTING update on the Periodic Fee Audit being conducted by a team led by Willdan Financial Services.** Mr. Kopchik introduced Bob Spencer from Willdan Financial Services and stated that a letter had been received from Discovery Builders on this item and provided to Board Members. Mr. Spencer spoke regarding the scope of work and indicated that Willdan intends to take a bottom up approach by looking at the HCP cost model, funding plan and address the mitigation fee act, including preparing a cost burden analysis. Mr. Spencer went on to say that he has worked on over 100 fee studies with experience producing similar reports for other Habitat Conservation Plans. Mr. Evola asked Mr. Spencer if he reviewed the letter from Discovery Builders on this agenda item. Mr. Evola stated he wanted to ensure that the work would be addressing the items raised in the letter. Mr. Spencer stated he had reviewed the letter and that he believed the planned work will address all the concerns. His team's analysis will not be a peer review of the EPS but will be an independent fee audit, the work will include a Nexus study to support findings and the aggregate cost burden analysis will be performed. The Board accepted the update. (4-0, Bryant, Evola, Glover, Stratford)
- 8) **Consider APPROVING Resolutions No: 2012-02 related to Conservancy grant applications which AUTHORIZE Conservancy staff to:**
 - i. **Submit grant applications to the California Department of Fish and Game (CDFG) for the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (maximum total request: \$165,000); and**
 - ii. **Enter into a grant agreement to accept such grant funds as are approved by CDFG.**

Mr. Kopchik provided background on the grant applications. He stated that if grant funds were received, they will be used on restoration and enhancement opportunities on the Ang Property. The Board approved Resolution No. 2012-02 and the staff recommendation. (4-0, Bryant, Evola, Glover, Stratford)

- 9) **Consider AUTHORIZING staff to execute a contract amendment for on-going consulting services with ICF Jones and Stokes to increase the payment limit by \$20,000, from \$280,000 to \$300,000.** Mr. Kopchik provided background on the request for the contract amendment including stating recent meetings with the Water Board have prompted a request for the Conservancy to begin drafting a programmatic 401 certification. The Board authorized staff to execute the contract amendment. (4-0, Bryant, Evola, Glover, Stratford)
- 10) **Consider AUTHORIZING 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).** Mr. Kopchik provided background on the acquisition, including a slideshow presentation. He stated that a letter had been received from Discovery Builders on this item and provided to Board Members. The Board took public comment. Seth Adams of Save Mount Diablo stated that proposed acquisition is completely surrounded by conserved land and its preservation will positively impact water quality and habitat values inside and outside of the acquisition. He stated the price of small rural properties had come down significantly in recent years and this acquisition is an inexpensive purchase opportunity. Nancy Wenninger of the East Bay Regional Park District commented on the Discovery Builders, Inc. letter. She stated that the property was appraised by a credible appraiser and that public agencies cannot pay more than the fair market value. The appraiser determines price based on the highest and best use of land. They look at zoning, location, access, etc. It was determined that a single family residence with an accessory business is the highest and best use. The comparable sales were the basis for the appraised value. She stated that appraisals are reviewed on several levels at the Park District before they can make an offer. The Park District vows to maintain integrity in spending of public money. That is why they are careful with the appraisal process. The Board had no comments. Chair Joel Bryant thanked Seth Adams and Nancy Wenninger for attending the meeting and providing comments on this item. The Board approved the staff recommendation. (4-0, Bryant, Evola, Glover, Stratford)
- 11) **Consider ACCEPTING update on Habitat Restoration and Maintenance Activities.** John Kopchik provided an update and Abigail Fateman showed a slideshow presentation.
- 12) **Adjourn and thank Mr. Frazier for his service on the Conservancy’s Governing Board. The next regular meeting was at that time scheduled for December 13, 2012 at 8am at the City of Clayton.** The Board asked staff to include an item on the next agenda approving a certificate for Mr. Frazier. The Board adjourned the meeting.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Determine Administrative Matters for 2013

RECOMMENDATION

- a) **WELCOME new Board Members and CONFIRM Conservancy Chair and Vice Chair for 2013.**
- b) **DETERMINE Governing Board meeting time and locations in 2013.**
- c) **APPROVE awarding a certificate to Assemblymember Jim Frazier to honor his service on the Governing Board of the East Contra Costa County Habitat Conservancy.**

DISCUSSION

Item A: In January 2009, the Conservancy Governing Board established a protocol for rotating the Chair and Vice Chair positions. These positions rotate alphabetically by jurisdiction, starting in 2009 with Clayton as Chair and County as Vice Chair. In 2012, Brentwood provided the Chair and Clayton the Vice Chair. For 2013, the Chair of the Governing Board will be the Clayton City Council representative to the Board (Council Member Hank Stratford is Clayton’s primary representative) and the Vice Chair will be the County representative to the Board (Supervisor Mary Piepho is County’s primary representative). In January 2014, these positions will rotate again with the County representative as Chair and the Oakley representative as Vice Chair.

Item B: The Joint Powers Agreement (JPA) forming the Conservancy requires the Governing Board to set a regular meeting schedule. The Governing Board also previously directed that the meeting location rotate among the jurisdictions. Due to scheduling conflicts this year, staff has provided several new potential options for meeting dates in 2013.

CONTINUED ON ATTACHMENT: No
ACTION OF BOARD ON: January 23, 2013
OTHER _____

APPROVED AS RECOMMENDED: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Potential meeting dates and times are outlined below:

Proposed Schedule	Dates	Time
1st Wednesday of every third month	March 6, June 5, September 4, December 4	1:30pm – 3:30pm
2nd Wednesday of every third month	March 13, June 12, September 11, December 11	early am or early lunch
3rd Wednesday of every third month	March 20, June 19, September 18, December 18	4pm - 6pm
1st Thursday of every third month	March 7, June 6, September 5, December 5	4pm - 6pm
3rd Monday of every third month	March 18, June 17, September 16, December 16	2pm-4pm
4th Monday of every third month	March 25, June 24, September 23, December 23	3pm-5pm

The meeting location is proposed to rotate locations as outlined below:

Month	Location
March	City of Pittsburg
June	City of Oakley
September	City of Clayton
December	City of Brentwood

We recommend that Board Members discuss and determine regular meeting times and locations.

Item C: Assemblymember Jim Frazier represented the City of Oakley on the Conservancy Governing Board until his election to California Assembly. To recognize his contributions to the Conservancy and to the goals of conserving natural resources and promoting economic development, it is recommended that the Board approve awarding a certificate to Mr. Frazier honoring his service.

**East Contra Costa County Habitat Conservancy
Governing Board
2013 Roster**

Representative	Agency
Council Member Joel Bryant	City of Brentwood
Council Member Erick Stonebarger*	City of Brentwood
Council Member Hank Stratford	City of Clayton (Chair)
David Shuey*	City of Clayton
Supervisor Mary Piepho	Contra Costa County (Vice Chair)
Supervisor Federal Glover*	Contra Costa County
Council Member Randy Pope	City of Oakley
Council Member Diane Burgis*	City of Oakley
Council Member Salvatore Evola	City of Pittsburg
Council Member Pete Longmire*	City of Pittsburg
Council Member Ben Johnson**	City of Pittsburg

*Alternate

** Pre-designated replacement for the City of Pittsburg's Board Member and Alternate

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update on Periodic Fee Audit

RECOMMENDATION

RECEIVE presentation from Robert Spencer of Urban Economics on the East Contra Costa County HCP/NCCP Mitigation Fee Audit (December 2012) and HCP Fee Burden Analysis (December 2012). REVIEW and DISCUSS this matter and ACCEPT public comment on it. SCHEDULE an action on this matter for the next Conservancy Board meeting.

DISCUSSION

The Board has considered the matter of periodic fee audit and adjustment of the HCP/NCCP mitigation fees at a number of meetings over the prior two years. The Board originally approved a recommendation related to changes to HCP/NCCP mitigation fees on July 22, 2011, after first considering the item on March 21, 2011. On May 10, 2012, after Pittsburg City Council consideration of the Conservancy’s 2011 fee recommendations generated concern and comment, the Conservancy Board considered detailed, critical comment on fee changes and response from staff and the original economic team. On July 26, 2012, the Conservancy Board determined to commission a new Periodic Fee Audit and directed staff to solicit proposals. On August 20, 2012, the Board approved the selection of a team assembled by Willdan Financial services to perform the Periodic Fee Audit, including the information necessary to support the nexus findings the participating cities and the County may make under the Mitigation Fee Act and a fee burden analysis. At the October 22, 2012 Board meeting the Board received an update from Robert Spencer of Urban Economics, who is leading the Willdan team. The Willdan team has completed the East Contra Costa County HCP/NCCP Mitigation Fee Audit (December 2012) and HCP Fee Burden Analysis (December 2012). Staff posted these materials on the Conservancy website and notified the Conservancy mailing list on December 22, 2012.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

I HERBY 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

Robert Spencer will be present at the January 23 Board meeting to present the Mitigation Fee Audit Report and Fee Burden Analysis and answer questions. Both items are attached. The Fee Audit includes an Executive Summary which provides a concise summary of the results of the audit.

Staff recommends that the Board review and discuss this matter, accept public comment on it and schedule an action for the next Conservancy Board meeting. The fee adjustment issue is a major issue for the Conservancy, its partners and the public. Staff believes additional time to consider the matter is warranted. Staff proposes to perform additional work during this period that may be helpful to the Board's subsequent action, including:

- Further discussion with stakeholders and interested public agencies;
- Additional analysis on the policy implications of the conclusion in the Audit that the development fees under the Maximum Urban Development Area Scenario are significantly less than the fees calculated for the Initial scenario. There was a minor difference in fees for the two scenarios in the HCP. The HCP identified the higher of the two fees (the fee for the Initial Scenario) as the appropriate fee to use because that way adequate funding would be assured (a requirement for permit issuance) and because the reason for having two scenarios is that there is uncertainty that the Maximum scenario will be reached. This was a minor point before when the fee difference was small but is more significant now. Staff would like time to perform additional analysis of this issue and to discuss it with the wildlife agencies.
- Continued review of the issues raised at the October 2 workshop regarding ideas for Plan Amendment. The 2012 Fee Audit is a starting point for responding to these issues, but additional work remains.

Attachments:

- East Contra Costa County HCP/NCCP Mitigation Fee Audit (December 2012)
- Memorandum- HCP Fee Burden Analysis (December 2012)

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2013 Public Advisory Committee

RECOMMENDATION

DETERMINE representation on Public Advisory Committee (PAC) for 2013.

DISCUSSION

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

The Board action initiating the PAC requires the composition of the PAC to be reviewed annually. The most recent action taken by the Board related to representation on the PAC was on July 26, 2012 when the Board appointed a new representative to the PAC to fill the vacancy in the rural and suburban resident category.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: January 23, 2013
OTHER _____

APPROVED AS RECOMMENDED: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Staff believes the current PAC composition is appropriate and recommends that the composition be unchanged in 2013. Consideration and determination by the Board is requested.

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

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

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

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

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

Private landowners and/or agriculturalists, or their representatives

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

People representing suburban and rural residents of the Plan area

- Dick Vrmeer (resident of Brentwood)
- Sharon L. Osteen (Resident of Clayton)
- Kelly Davidson (Clayton)

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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Appoint a Board Member to the East County Water Management Association Governing Board.**

RECOMMENDATION

APPOINT one Conservancy Board Member as the primary representative and one as the alternate to the East County Water Management Association.

DISCUSSION

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

As an official member of ECWMA, the Conservancy needs to appoint a Board Member to the ECWMA Governing Board. In May 2011, the Conservancy Board appointed Jim Frazier as the primary representative and Hank Stratford as the alternate. Since Mr. Frazier is no longer on the Board, a new appointment is needed.

Additional Background: The East County Water Management Association (ECWMA) is a Joint Exercise of Powers Authority formed in 1997 by eleven member agencies: Cities of Brentwood, Antioch, and Pittsburg; Contra Costa County Water Agency (which is overseen by the County

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON:: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Board of Supervisors), Byron-Bethany Irrigation District, Delta Diablo Sanitation District, Contra Costa County Sanitation District 19, Diablo Water District, East Contra Costa Irrigation District, Ironhouse Sanitary District and Contra Costa Water District (CCWD). These agencies came together to form the ECWMA in order to facilitate communication, cooperation and education between member agencies regarding matters affecting the existing and potential water supplies of eastern Contra Costa County. The East Contra Costa County Habitat Conservancy joined ECWMA in 2011. The ECWMA Governing Board does not have a regular meeting schedule. The member agencies typically meet periodically at the staff level to coordinate activities to provide long-term water supplies and treatment facilities in a cost effective, reliable, implementable, and cooperative manner while maintaining institutional independence. The ECWMA Board typically meets two times a year.

In recent years the ECWMA has become the coordinating body for the development and implementation of the East Contra Costa County Integrated Regional Water Management Plan (IRWMP). An IRWMP is a required document for a region to apply for and receive State grants that are funded through Proposition 50 and Proposition 84. It is expected that future bond funding will require regions to have such plans. The Conservancy has benefited from past grant rounds awarded to the East County Region. \$2,150,000 has been awarded to Conservancy projects through ECWMA in prior grant rounds.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Sub-grant agreement with Contra Costa Water District related to the Integrated Regional Water Management Plan Proposition 84 Grant

RECOMMENDATION

AUTHORIZE the Executive Director to sign the sub-grant agreement with the Contra Costa Water District to receive \$650,000 awarded for land acquisition and habitat restoration through the Integrated Regional Water Management Plan (IRMWP) grant process.

DISCUSSION

The Conservancy has been awarded \$650,000 to fund land acquisition and habitat restoration activities in the western portion of the HC/NCCP Plan Area through the Integrated Regional Water Management Plan grant process. The Conservancy applied for funding as part of the East County Water Management Association, a coalition of agencies in the east county region. The Contra Costa Water District (CCWD) acted as the grant administrator for the group’s proposal and as such all money is awarded to CCWD and distributed to the other participating agencies through sub-grant agreements. To access the awarded funds, the Conservancy must enter into a sub-grant agreement with the Contra Costa Water District. The sub-grant agreement (attached) allows CCWD to bill the Conservancy for administrative expenses associated with the grant up to \$20,000. Administrative costs will be tracked and the Conservancy will reimburse CCWD for their time from the grant funds. It is anticipated the Conservancy’s match requirements will be fulfilled through the Conservancy’s non-state grant funds.

Staff recommends that the Board authorize the Executive Director to approve minor changes to the language of the sub-grant agreement as the template is finalized through a three-agency review process and to sign the final sub-grant agreement.

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON:: January 23, 2013 APPROVED AS RECOMMENDED: _____
 OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

**IMPLEMENTATION AGREEMENT
BETWEEN CONTRA COSTA WATER DISTRICT, EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY, AND
DELTA DIABLO SANITATION DISTRICT
Proposition 84 Integrated Regional Water Management Grant**

Through this Implementation Agreement by and between Contra Costa Water District (“CCWD”), a special district existing under the laws of the State of California, East Contra Costa County Habitat Conservancy (“Conservancy”), a joint exercise of powers authority formed by the Cities of Brentwood, Clayton, Oakley and Pittsburg and Contra Costa County, and Delta Diablo Sanitation District (“DDSD”), a special district existing under the laws of the State of California, the parties hereby agree as follows:

Recitals:

- A. WHEREAS, on behalf of DDSD and Conservancy (collectively referred to as “Participants”) both public agencies located in the East Contra Costa County Integrated Regional Water Management (IRWM) region, CCWD applied for a Proposition 84 Integrated Regional Water Management Grant from the State of California, Department of Water Resources (“DWR”), to help fund the implementation and operation of various regional water conservation, water recycling, ecosystem restoration, green infrastructure, and flood management-watershed projects; and
- B. WHEREAS, on August 16, 2011, pursuant to said application, DWR awarded CCWD a grant for \$1,775,000 in State funding (the “State Grant”) for two projects in the application. DDSD will be the recipient of \$1,125,000 in State Grant funds, by and through CCWD, and will be responsible for the applicable project cost-matching up to \$375,000 required under the State Agreement (defined below). Conservancy will be the recipient of \$650,000 in State Grant funds, by and through CCWD, and will be responsible for the applicable project cost-matching up to \$218,000 required under the State Agreement. The grant period extends from August 16, 2011 (the date of the Letter of Conditional Award) through December 31, 2014, when grant closeout activities are expected to be completed; and
- C. WHEREAS, the process by which the State Grant will be disbursed by DWR to CCWD is set forth in and governed by that certain Grant Agreement to be entered into by and between DWR and CCWD titled **Agreement No. 4600009720** (the “State Agreement”), which will be in substantial conformity with the most recent version of that agreement, attached hereto and incorporated herein as Attachment A to this Implementation Agreement. CCWD shall attach and incorporate the final State Agreement as Attachment A. Disbursement of the State Grant will operate on a reimbursement basis, in that each discrete project and all eligible administration costs will be reimbursed by DWR after the cost has been incurred and a request for reimbursement has been prepared and submitted to DWR by CCWD. CCWD, DDSD, and Conservancy agree to cooperate in fulfilling the obligations under the

State Agreement for disbursement of the State Grant to CCWD, which will in turn disburse the State Grant for each specified project; and

- D. WHEREAS, the process by which reimbursement requests will be submitted to CCWD, and how CCWD will in turn request reimbursement from DWR and disburse the State Grant to DDS and Conservancy, will be governed by this Implementation Agreement; and
- E. WHEREAS, this Implementation Agreement will ensure that matching funds are committed by DDS and Conservancy and all pertinent conditions under the State Agreement are satisfied. this Implementation Agreement is intended to protect CCWD from liability for executing the State Agreement on behalf of DDS and Conservancy; this Implementation Agreement shall be fully executed prior to when DDS and Conservancy will be entitled to submit its first reimbursement request to CCWD and before CCWD will in turn be required to disburse the applicable portion of the State Grant to DDS and Conservancy; and
- F. WHEREAS, CCWD will provide all necessary financial and project management services associated with implementing this Implementation Agreement and the State Agreement, including, but not limited to: assisting with developing the State Agreement and the Implementation Agreement and their various exhibits; coordinating with DDS and Conservancy; organizing submittals to DWR; serving as a point of contact for DWR's grant manager; developing State Grant reimbursement requests; tracking State Grant reimbursements from DWR and distributions of the State Grant to DDS and Conservancy; and providing other support tasks as necessary; provided, however, that such CCWD services will be reimbursed by the State Grant up to the maximum amount budgeted or available for these purposes based on actual staff time for costs incurred, not to exceed \$20,000.00 per Participant as of August 2011.

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

AGREEMENT

The recitals set forth above constitute an integral part of this Agreement and are incorporated by this reference as if fully set forth herein.

1. Term

This Implementation Agreement will be in effect as long as the State Agreement between CCWD and DWR is in effect. Notwithstanding the date on which this Implementation Agreement is executed, project work performed after August 16, 2011 shall be eligible for reimbursement under the State Agreement. Participants shall abide by the State Agreement and the guidelines located therein.

2. State Grant Share and Match

Delta Diablo Sanitation District's share of the State Grant is \$1,125,000. DDS D's share of the match is 25% of its State Grant share, which is a maximum of \$375,000. Conservancy share of the State Grant is \$650,000. Conservancy's share of the match is 25% of its State Grant share, which is a maximum of \$218,000.

3. Work Plan

To be eligible for State Grant funds, DDS D shall implement the Pittsburg Recycled Water Pipeline Rehabilitation Project in accordance with the Task 1 Work Plan section (Exhibit A) of the State Agreement.

To be eligible for State Grant funds, Conservancy shall implement the Watershed Protection and Restoration Project in accordance with the Task 2 Work Plan section (Exhibit A) of the State Agreement.

4. Reporting and Invoicing

On a quarterly basis, CCWD will prepare a Quarterly Progress Report and Invoice and submit it to DWR according to the terms of the State Agreement. Participants will provide CCWD with the required program data for their project on a quarterly basis in electronic format using the Grant Reporting Template.

Quarterly Progress Reports and Invoices will be submitted according to the schedule shown in Exhibit B of the State Agreement and the following process:

On not less than a quarterly basis, CCWD will request Quarterly Progress Report data. Participants will submit their data and individual invoices electronically to CCWD within five (5) business days.

Within ten (10) business days after CCWD's initial request for Quarterly Progress Report data, CCWD will prepare and distribute a draft Quarterly Progress Report and Invoice to Participants for review and approval, which shall include a detail of CCWD's costs for the quarter.

Participants will provide written corrections or approval to CCWD within five (5) business days of its receipt of CCWD's draft Quarterly Progress Report and Invoice.

Within three (3) business days of receipt of corrections or approval from Participants, CCWD will incorporate the corrections and submit the final approved Quarterly Progress Report and Invoice to DWR pursuant to its obligations under the Implementation Agreement.

If an individual Participant does not meet these reporting deadlines, their data will not be included in the Quarterly Progress Report and Invoice and will be required to wait until the following quarter to submit their data.

Each Participant will continue to report its activities throughout the State Grant period as required by the State Agreement, even if it has expended its share of the grant funds.

Pursuant to the State Agreement with DWR, CCWD will submit Project Completion Reports and a Grant Completion Report Plan within the time period stipulated in the State Agreement.

CCWD is also required to submit Project Performance Reports directly to DWR each year for ten (10) years after the end of the grant period. Participants will work with CCWD to provide the necessary project data for, and review of, these reports consistent with the schedule and process for the Quarterly Progress Reports.

CCWD will not reimburse Participants until it has received the State Grant funds from DWR. In addition, pursuant to the terms of the State Agreement, DWR may withhold a percentage of payment on each quarterly invoice. If this is the case, CCWD may withhold the same percentage from payment on Participants' invoices. CCWD will process Participants' invoice within thirty (30) business days of receipt of State Grant funds from DWR.

5. Communication

All communications relating to the day-to-day activities of the Project shall be exchanged between the project managers or their alternates. The project manager and alternate for Delta Diablo Sanitation District are Jayne Strommer and Dean Eckerson, respectively. The project manager and alternate for Conservancy are Abigail Fateman and John Kopchik, respectively. The project manager and alternate for CCWD are Marie Valmores and Mark Seedall, respectively.

6. Flow Through of Specific Grant Requirements

Participants will comply with all applicable provisions of the Implementation Agreement and State Agreement.

7. Inspection of Records

Pursuant to the State Agreement, DWR is entitled to inspect and make copies of any records pertaining to the program and Participants are required to make available for such inspection accurate records of all costs, disbursements, and documentation as necessary to comply with the requirements of the State Agreement.

8. Indemnification

CCWD shall defend, indemnify, and hold Participants harmless from CCWD's share of any and all liability, actions, claims, costs, and expenses, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors, or omissions of CCWD, its officers, directors, agents, or employees in CCWD's performance under this Implementation Agreement, except to the extent caused by the negligent acts, errors, or omissions of Participants, their officers, agents, or employees.

Participants shall defend, indemnify, hold CCWD harmless from Participants' share of any and all liability, actions, claims, costs, and expenses, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors, or omissions of Participants, their officers, directors, agents, or employees in Participants' performance under this Implementation Agreement, except to the extent caused by the negligent acts, errors, or omissions of CCWD, its officers, agents, or employees.

9. Dispute Resolution

The parties to this Implementation Agreement shall meet promptly to address any dispute that may arise and make a good faith effort to negotiate a resolution. The use by any party of any remedy specified herein for the enforcement of this Implementation Agreement is not exclusive and shall not deprive any party of, or limit the application of, any other remedy provided by law.

10. Governing Law

This Implementation Agreement, its construction, and all work performed under it shall be governed by the laws of the State of California.

11. Severability

If any provision of this Implementation Agreement is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Implementation Agreement shall remain valid and in force and be construed in such a manner so as to affect the original intent of the parties to the maximum extent possible.

12. Amendment

No amendment of this Implementation Agreement shall be valid unless made in writing, signed by the parties to this Implementation Agreement.

13. Entire Agreement

This Implementation Agreement, together with the attachments hereto, constitutes the complete agreement between the parties and supersedes any prior written or oral communications between the parties.

14. Termination

Participants may, at any time and without cause, terminate its participation in this Implementation Agreement by sending a letter to CCWD notifying them of the same. Notwithstanding any other provision of this Implementation Agreement, if an individual Participant terminates its participation in this Implementation Agreement, it shall not under any circumstances be responsible or liable for disrupting or discontinuing the disbursement of the State Grant funds allocated to other agencies as depicted in Exhibit C of the State Agreement.

Upon the effectiveness of a Participant's termination of its participation in this Implementation Agreement, that Participant's remaining allocation of the grant funds, if any, will be redistributed to the remaining Participants in accordance with this Implementation Agreement and the State

Agreement. Any Participant terminating its participation in this Implementation Agreement must continue to comply with the reporting obligations to CCWD, as described in Section 4 of this Implementation Agreement.

This Implementation Agreement will remain in full force and effect as to the Participants that do not terminate their participation in the Implementation Agreement.

15. Successors and Assigns

This Implementation Agreement and all of its provisions shall apply to and bind the successors and assigns of each and every party to this Implementation Agreement.

16. Counterpart Signatures

This Implementation Agreement may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same Implementation Agreement.

IN WITNESS THEREOF, this Implementation Agreement has been executed by the parties hereto:

CONTRA COSTA WATER AGENCY

By: Jerry Brown, General Manager

Dated: _____

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

By: John Kopchik, Executive Director

Dated: _____

DELTA DIABLO SANITATION DISTRICT

By: Gary W. Darling, General Manager

Dated: _____

ATTACHMENT A

**GRANT AGREEMENT BETWEEN THE STATE OF CALIFORNIA (DEPARTMENT OF WATER RESOURCES)
AND
CONTRA COSTA WATER DISTRICT (AGREEMENT NUMBER 4600009720)
INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANTS
CALIFORNIA PUBLIC RESOURCES CODE §75026 ET SEQ.**

THIS AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the Contra Costa Water District, a Special District in the County of Contra Costa, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Grantee", which parties do hereby agree as follows:

1. **PURPOSE.** State shall provide a grant from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 to Grantee to assist in financing projects associated with the East Contra Costa County (ECCC) Integrated Regional Water Management (IRWM) Plan pursuant to Chapter 8 (commencing with Section 79560) of Division 26.5 of the California Water Code (CWC), hereinafter collectively referred to as "IRWM Program."
2. **TERM OF GRANT AGREEMENT.** The term of this Grant Agreement begins on the date this Grant Agreement is executed by State, and terminates on December 31, 2014, or when all of the Parties' obligations under this Grant Agreement are fully satisfied, whichever occurs earlier. Execution date is the date the State signs this Grant Agreement indicated on page 8.
3. **GRANT AMOUNT.** The maximum amount payable by State under this Grant Agreement shall not exceed \$1,775,000. Of this grant amount, not less than \$0 shall be expended to projects that benefit the critical water supply or water quality needs of disadvantaged communities (DAC) in the IRWM effort funded by this Grant Agreement. Of the total grant amount, not less than \$0 shall be expended to urban and agricultural water conservation projects in the IRWM effort funded by this Grant Agreement.
4. **GRANTEE COST SHARE.** Estimated total project costs for this Agreement are \$2,393,000. Grantee shall provide a Grantee Cost Share (Funding Match) in the amount of at least 25% (unless a Disadvantaged Community project waiver is granted) of the total project cost. Grantee's Funding Match is estimated to be \$618,000. Grantee's Funding Match may include cost share performed after September 30, 2008.
5. **GRANTEE'S RESPONSIBILITY.** Grantee shall faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Project Exhibit B (Schedule) and Exhibit C (Budget). Grantee shall comply with all of the terms and conditions of this Grant Agreement and applicable California Public Resources Code (PRC) requirements.
6. **LOCAL PROJECT SPONSOR'S RESPONSIBILITY.** Grantee shall assign Local Project Sponsors to act on behalf of Grantee for the purposes of individual project management, oversight, compliance, and operations and maintenance. Local Project Sponsors shall be assigned in accordance with the participating agencies identified in the ECCC IRWM grant application. Exhibit F identifies Local Project Sponsors. Local Project Sponsors shall also act on behalf of

Grantee in the fulfillment of Grantee responsibilities where specifically specified in this Grant Agreement.

7. BASIC CONDITIONS. State shall have no obligation to disburse money for a project under this Grant Agreement unless and until Grantee has satisfied the following conditions in accordance with the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.
- a) By signing this Grant Agreement, Grantee demonstrates the designated Local Project Sponsors for each project are aware of and comply with the provisions of the Grant Agreement between State and Grantee.
 - b) Grantee demonstrates the availability of sufficient funds to complete the project, as stated in the Grant Award/Commitment Letter, by submitting the most recent 3 years of audited financial statements.
 - c) Grantee complies with PRC §75102 to notify the California Native American tribe (which is on the contact list maintained by the Native American Heritage Commission) of Project Construction if that tribe has traditional lands located within the area of the Project.
 - d) For groundwater management and recharge projects and for projects with potential groundwater impacts, the Grantee must demonstrate compliance with the groundwater compliance options set forth on page 15 of the IRWM Program Guidelines, dated August 2010.
 - e) For the term of this Grant Agreement, Grantee submits timely Quarterly Progress Reports as required by Paragraph 17, "Submission of Reports."
 - f) Grantee submits all deliverables as specified in this Paragraph of this Grant Agreement and Work Plan in Exhibit A.
 - g) Since the Grantee's IRWM region (region) receives water supplied from the Sacramento-San Joaquin Delta (Delta), then the region's IRWM Plan (existing or any future update) must help reduce dependence on the Delta for water supply.
 - h) For each project, prior to the commencement of construction or implementation activities, Grantee shall submit to the State the following:
 - 1) Final plans and specifications certified by a California Registered Civil Engineer as to compliance for each approved project as listed in Exhibit A of this Grant Agreement.
 - 2) Work that is subject to the California Environmental Quality Act (CEQA) and or environmental permitting shall not proceed under this Grant Agreement until the following actions are performed:
 - i. Grantee submits all applicable environmental permits as indicated on the Environmental Information Form to the State,
 - ii. Documents that satisfy the CEQA process are received by the State,
 - iii. State has completed its CEQA compliance review as a Responsible Agency, and
 - iv. Grantee receives written concurrence from the State of Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal. State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (ex. construction or implementation activities) for which it is required. Therefore, the Grantee should get concurrence from DWR on CEQA before beginning any of the work that is subject to CEQA. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Grantee must also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation.

- 3) For each project included in this Grant Agreement a monitoring plan as required by Paragraph 22, "Project Monitoring Plan Requirements."
8. DISBURSEMENT OF GRANT FUNDS. Following the review of each invoice, State will disburse to Grantee the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Grant Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. For each project, funds will be disbursed by State in response to each approved invoice in accordance with the Exhibit C. Any and all money disbursed to Grantee under this Grant Agreement and any and all interest earned by Grantee on such money shall be used solely to pay Eligible Costs.
9. ELIGIBLE PROJECT COST. Grantee shall apply State funds received only to eligible Project Costs in accordance with applicable provisions of the law and Exhibit C. Eligible project costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Work performed after the date of grant award, August 16, 2011, shall be eligible for reimbursement. Reasonable administrative expenses may be included as Project Costs and will depend on the complexity of the project preparation, planning, coordination, construction, acquisitions, implementation, and maintenance. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the project including the portion of overhead and administrative expenses that are directly related to the projects included in this Agreement in accordance with the standard accounting practices of the Grantee.

Advanced funds will not be provided. Costs that are not reimbursable with grant funds cannot be counted as cost share. Costs that are not eligible for reimbursement include but are not limited to:

- a) Costs, other than those noted above, incurred prior to the award date of the Grant.
- b) Operation and maintenance costs, including post construction performance and monitoring costs.
- c) Purchase of equipment not an integral part of a project.
- d) Establishing a reserve fund.
- e) Purchase of water supply.
- f) Monitoring and assessment costs for efforts required after project construction is complete.
- g) Replacement of existing funding sources for ongoing programs.
- h) Travel and per diem costs.
- i) Support of existing agency requirements and mandates (e.g. punitive regulatory agency requirements).
- j) Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to the effective date of the grant award with the State.
- k) Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this Grant Agreement, the State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise eligible costs. However, this will only be allowed as Grantee cost share (i.e. Funding Match)
- l) Overhead not directly related to project costs.

10. METHOD OF PAYMENT. After the disbursement requirements in Paragraph 7 "Basic Conditions" are met, State will disburse the whole or portions of the Grant Amount to Grantee, following receipt from Grantee of an invoice for costs incurred, and timely Quarterly Progress Reports as required by Paragraph 17, "Submission of Reports."

Invoices submitted by Grantee shall include the following information:

- a) Costs incurred for work performed in implementing the IRWM Program or program contracts during the period identified in the particular invoice.
- b) Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for a project during the period identified in the particular invoice for the construction, operation, or maintenance of a project.
- c) Appropriate receipts and reports for all costs incurred.
- d) Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - 1) Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - 2) Invoices must be itemized based on the categories specified in the Exhibit C. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - 3) Sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
 - 4) Each invoice shall clearly delineate those costs claimed for reimbursement from the State's grant amount, as depicted in Paragraph 3, "Grant Amount" and those costs that represent Grantee's and Local Project Sponsors' costs, as applicable, in Paragraph 4, "Grantee Cost Share."
 - 5) Original signature and date (in ink) of Grantee's Project Manager.

Payment will be made no more than monthly, in arrears, upon receipt of an invoice bearing the Grant Agreement number. Submit the original and three (3) copies of the invoice form to the following address:

Department of Water Resources
Christopher Scobba or current Point of Contact (POC)
Division of IRWM, North Central Regional Office (NCRO)
3500 Industrial Boulevard, Room 130
West Sacramento, CA 95691

11. WITHHOLDING OF GRANT DISBURSEMENT BY STATE. If State determines that a project is not being implemented in accordance with the provisions of this Grant Agreement, or that Grantee has failed in any other respect to comply with the provisions of this Grant Agreement, and if Grantee does not remedy any such failure to State's satisfaction, State may withhold from Grantee all or any portion of the Grant Amount and take any other action that it deems necessary to protect its interests. If State determines that Grantee has not substantially complied with a portion of the grant's scope in the Grant Agreement, State may withhold the portion of the Grant Amount attributable to that portion of the scope and require Grantee to immediately repay the proportionate share of the disbursed grant amount, with interest at a rate equal to the State of the California general obligation bond interest rate in effect at the time. State may consider Grantee's refusal to repay the requested disbursed grant amount a contract breach subject to the default provisions in Paragraph 13, "Default Provisions." If State withholds a portion of the grant amount, State may require Grantee to submit a revised Work Plan, Schedule, and Budget for State's approval before State disburses any additional grant amount.

If State notifies Grantee of its decision to withhold the entire grant amount from Grantee pursuant to this Paragraph, this Grant Agreement shall terminate upon receipt of such notice by Grantee and shall no longer be binding on either party.

12. CONTINUING ELIGIBILITY. Grantee must meet the following ongoing requirements to remain eligible to receive State grant funds:
- a) "If the region's IRWM Plan was adopted on or before September 30, 2008, the Regional Water Management Group must adopt an IRWM Plan that complies with Part 2.2 of Division 6 of the CWC, commencing with section 10530, within two years of entering into a binding agreement with DWR (i.e., the date of execution of the grant agreement by DWR)."
 - b) Timely adoption of an IRWM Plan that meets the requirements contained in Part 2.2 of Division 6 of the CWC, commencing with Section 10530.
 - c) An urban water supplier that receives grant funds governed by this Grant Agreement shall maintain compliance with the Urban Water Management Planning Act (CWC§10610 et. seq.).
 - d) Reporting of status of IRWM Plan Update as described in Exhibit E under the heading "Quarterly Progress Report."
13. DEFAULT PROVISIONS. Grantee will be in default under this Grant Agreement if any of the following occur:
- a) Breach of this Grant Agreement, or any supplement or amendment to it, or any other agreement between Grantee and State evidencing or securing Grantee's obligations.
 - b) Making any false warranty, representation, or statement with respect to this Grant Agreement.
 - c) Failure to operate or maintain projects in accordance with this Grant Agreement.
 - d) Failure to make any remittance required by this Grant Agreement.
 - e) Failure of Grantee or a Local Project Sponsor receiving grant funding through this Grant Agreement to adopt, no later than 2 years after the State executes the Grant Agreement, an IRWM Plan that meets the requirements contained in Part 2.2 of Division 6 of the CWC, commencing with Section 10530.
 - f) Failure to undertake all reasonable and feasible efforts to take into account the water-related needs of disadvantaged communities in the area within the boundaries of the IRWM Plan.
 - g) Failure to comply with Labor Compliance Program (LCP) requirements.
 - h) Failure to meet any of the requirements set forth in Paragraph 12, "Continuing Eligibility."

Should an event of default occur, State may do any or all of the following:

- a) Declare the Grant be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
 - b) Terminate any obligation to make future payments to Grantee.
 - c) Terminate the Grant Agreement.
 - d) Take any other action that it deems necessary to protect its interests.
14. PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS: Grantee and Local Project Sponsors shall be responsible for ensuring any and all permits, licenses, and approvals required for performing their obligations under this Grant Agreement are obtained, and shall comply with CEQA (PRC Section 21000 *et seq.*) and other applicable federal, State and local laws, rules, and regulations, guidelines, and requirements for each project described in Exhibit A.

15. RELATIONSHIP OF PARTIES. Grantee and Local Project Sponsors are solely responsible for design, construction, and operation and maintenance of Projects within the ECCC IRWM Program. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of grant funds by State and shall not be deemed to relieve or restrict responsibilities of Grantee and Local Project Sponsors under this Grant Agreement.
16. GRANTEE REPRESENTATIONS. Grantee accepts and agrees to comply with all terms, provisions, conditions, and written commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Grantee in the application, documents, amendments, and communications filed in support of its request for Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 financing. Grantee warrants that all Local Project Sponsors will be contractually required to comply with this Grant Agreement for their respective project or projects. In the event that Grantee fails to secure an agreement with any of the Local Project Sponsors by December 2012, the Grantee shall immediately notify and consult with State of the nonparticipating Local Project Sponsor and its effects on the Projects. Based on the consultation, State may not hold Grantee responsible for the associated nonparticipating Local Project Sponsor's activities under this Grant Agreement, and may reduce the Grant Amount according to the portion of grant intended for the nonparticipating Local Project Sponsor(s). In addition, in the event the Grantee fails to secure an agreement with any of the Local Project Sponsors(s), the Grantee shall submit to State a revised grant agreement Scope of Work within four months of the failure to secure such an agreement.
17. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Grant Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager, and shall be submitted in both electronic and hard copy forms. If requested, Grantee shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit E. The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Project Completion Report for each project listed on Exhibit A is a requirement for the release of any funds retained for such project.
- Quarterly Progress Reports: Grantee shall submit Quarterly Progress Reports on a regular and consistent basis to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall be sent via e-mail, to the State's Project Manager as specified in Exhibit B. Quarterly Progress Reports shall provide a brief description of the work performed, Grantees activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Grant Agreement during the reporting period. The first Quarterly Progress Report should be submitted to DWR no later than three months after the State signs the agreement, with future reports then due on successive three month increments based on the invoicing schedule and this resulting date.
 - Project Completion Reports: Grantee shall prepare and submit to State a separate Project Completion Report for each project included in Exhibit A. Grantee shall submit a Project Completion Report within ninety (90) calendar days of project completion. Each Project Completion Report shall include a description of actual work done, any changes or amendments to each project, and a final schedule showing actual progress versus planned progress, and copies of any final documents or reports generated or utilized

during a project. The Project Completion Report shall also include, if applicable, certification of final project by a registered civil engineer, consistent Standard Condition D-15, "Final Inspections and Certification of Registered Civil Engineer." A DWR "Certification of Project Completion" form will be provided by the State.

- Grant Completion Report: Upon completion of all projects included in Exhibit A, Grantee shall submit to State a Grant Completion Report. The Grant Completion Report shall be submitted within ninety (90) calendar days of submitting the Project Completion Report for the final project to be completed under the Grant Agreement. The Grant Completion Report shall include reimbursement status, a brief description of each project completed, and how those projects will further the goals of the IRWM Plan and identify any changes to the IRWM Plan, as a result of project implementation. Retention for the last project to be completed as part of this Grant Agreement will not be disbursed until the Grant Completion Report is submitted to and approved by the State.
- Post-Performance Reports: Grantee shall submit a Post-Performance Report for each project. Post-Performance Reports shall be submitted to State within ninety (90) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated, for each project, annually for a total of 10 years after the completed project begins operation.

18. IRWM PROGRAM PERFORMANCE AND ASSURANCES. Grantee agrees to faithfully and expeditiously perform or cause to be performed all IRWM Program work as described in the final plans and specifications for each project under this Grant Agreement and implement the project in accordance with applicable provisions of the law. In the event State finds it necessary to enforce this provision of this Grant Agreement in the manner provided by law, Grantee agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

19. LABOR COMPLIANCE. Grantee agrees to comply with all applicable California Labor Code requirements, including prevailing wage provisions. Grantee must, independently or through a third party, adopt and enforce a Department of Industrial Relations-certified LCP meeting the requirements of Labor Code section 1771.5 for projects funded by:

- a) Proposition 84 (Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006; PRC sections 75075 *et seq.*) or
- b) Any other funding source requiring an LCP.

At the State's request, Grantee must promptly submit written evidence of Grantee's compliance with the LCP requirements.

20. OPERATION AND MAINTENANCE OF PROJECT. For the useful life of any construction and implementation projects and in consideration of the Grant made by State, Grantee agrees to ensure or cause to be performed the commencement and continued operation of the projects, and shall ensure or cause the projects to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The Grantee shall ensure that all operations and maintenance costs of the facilities and structures are contractually assumed by the appropriate Local Project Sponsors for their respective projects; State shall not be liable for any cost of such maintenance, management, or operation. Grantee or Local Project Sponsors may be excused from operations and maintenance only upon the written approval of the State's Project Manager. For purposes of this Grant Agreement, "useful life" means a period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material

and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal of Grantee to ensure operation and maintenance of the projects in accordance with this provision may, at the option of State, be considered a breach of this Grant Agreement and may be treated as default under Paragraph 13, "Default Provisions."

21. STATEWIDE MONITORING REQUIREMENTS. Grantee shall ensure that all groundwater projects and projects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76 (commencing with Section 10780) of Division 6 of CWC) and, where applicable, that projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by the State Water Resources Control Board.

22. PROJECT MONITORING PLAN REQUIREMENTS. The Grant Agreement work plan should contain activities to develop and submit to State a monitoring plan for each project contained in this Grant Agreement. Monitoring plan can be for the entire Proposal or on a per project basis. Along with the Attachment 6 Project Performance Measures Tables requirements outlined on page 21 of the Proposition 84 Round 1 Implementation Proposal Solicitation Package, the Project Monitoring Plan should also include:
 - a) Baseline conditions.
 - b) Brief discussion of monitoring systems to be utilized.
 - c) Methodology of monitoring.
 - d) Frequency of monitoring.
 - e) Location of monitoring points.A monitoring plan shall be submitted to the State prior to disbursement of grant funds for construction or monitoring activities for each project in this Grant Agreement. See Exhibit G ("Requirements for Data Submittal") for web links and information regarding other State monitoring and data reporting requirements.

23. NOTIFICATION OF STATE. For each project, Grantee shall promptly notify State, in writing, of the following items:
 - a) Events or proposed changes that could affect the scope, budget, or work performed under this Grant Agreement. Grantee agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the wording/scope of work, schedule or term, and budget. See Exhibit H for guidance on Agreement Amendment requirements.
 - b) Any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide the opportunity for attendance and participation by State's representatives. Grantee shall make such notification at least fourteen (14) calendar days prior to the event.
 - c) Completion of work on a project shall include final inspection of a project by a Registered Civil Engineer, as determined and required by State, and in accordance with Standard Condition D-15 (Final Inspections and Certification of Registered Civil Engineer). Furthermore, the Grantee shall provide the State the opportunity to participate in the inspection. Grantee shall make such notification at least fourteen (14) calendar days prior to the final inspection.

24. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Grant Agreement shall be in writing. Notices

may be transmitted by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, return receipt requested, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by electronic means. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

25. PERFORMANCE EVALUATION. Upon completion of this Grant Agreement, Grantee's performance will be evaluated by the State, a copy of the evaluation will be placed in the State file, and a copy sent to the Grantee.
26. PROJECT REPRESENTATIVES. The Grantee has acknowledged authorization to enter into a cost sharing partnership agreement as documented in Exhibit I. The Project Representatives during the term of this Grant Agreement are as follows.

Department of Water Resources
Paula Landis
Chief, Division of IRWM
P.O. Box 942836
Sacramento CA 94236-0001
Phone: (916) 651-9220
e-mail: plandis@water.ca.gov

Grantee: Contra Costa Water District
Name: Jerry Brown
Title for Project Director: General Manager
Address: P.O. Box H2O
Concord, CA 94524
Phone: (925) 688-8034
e-mail: jbrown@ccwater.com

Direct all inquiries to the Project Manager:

Department of Water Resources
PM Name: Christopher Scobba (or current POC)
Division of Integrated Regional Water Management
NCRO
3500 Industrial Boulevard, Room 130
West Sacramento, CA 95691

Phone: (916)376-9665
e-mail: cscobba@water.ca.gov

Grantee: Contra Costa Water District
PM Name: Marie Valmores
Grants Specialist
P.O. Box H2O
Concord, CA 94524

Phone: (925) 688-8132
e-mail: mvalmores@ccwater.com

Either party may change its Project Representative or Project Manager upon written notice to the other party.

27. STANDARD PROVISIONS. The following Exhibits are attached and made a part of this Grant Agreement by this reference:

Exhibit A - Work Plan
Exhibit B - Schedule
Exhibit C - Budget
Exhibit D - Standard Conditions
Exhibit E - Report Format and Requirements
Exhibit F - Local Project Sponsors
Exhibit G - Requirements for Data Submittal

- Exhibit H - Guidelines for Grantees
- Exhibit I - Grantee Resolution

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

CONTRA COSTA WATER DISTRICT

Paula J. Landis, P.E., Chief
Division of Integrated Regional Water Management

Jerry Brown
General Manager

Date_____

Date_____

| Approved as to Legal Form and Sufficiency

Approved as to Legal Form and Sufficiency

Spencer Kenner, Assistant Chief Counsel
Office of Chief Counsel

Douglas E. Coty, District Legal Counsel

Date_____

Date_____

**EXHIBIT A
 WORK PLAN**

Task 1: Pittsburg Recycled Water Pipeline Rehabilitation Project – Delta Diablo Sanitation District (DDSD).

This project involves the rehabilitation of approximately 3,200 feet of 20-inch and 2,100 feet of 30-inch diameter asbestos cement (AC) recycled water pipe using slip-lining construction and grouting of the annular space including all related ancillary work. The existing recycled water main, converted from a raw water pipeline, is over 35 years old, has experienced failures, and may not be able to withstand the increased operating pressures that will be needed for the service area. The rehabilitation will provide reliability and ensure the on-going delivery of approximately 526 acre-feet per year (AFY) of Title 22 disinfected recycled water to sites in the City of Pittsburg.

With the expansion of recycled water service now to the City of Antioch, DDSD will need to increase the system operating pressure from about 100 psi up to 150 psi.

One section of the pipeline to be rehabilitated is located beneath Highway 4.

Task	Description	Deliverables
1.A.1 Project Administration	<i>This task involves activities relating to the administration of the Pittsburg Recycled Water Pipeline Rehabilitation Project, including:</i> <ul style="list-style-type: none"> • <i>coordination with the City of Pittsburg and irrigation customers</i> • <i>review and approval of design consultant invoices;</i> • <i>development of a labor compliance program in accordance with State requirements;</i> • <i>preparation of quarterly, annual and final progress reports documenting the status and performance of the project and as required by the grant agreement.</i> 	<i>Labor Compliance Program</i> <ul style="list-style-type: none"> • <i>Approved invoices</i> • <i>Quarterly, Annual and Final Reports to DWR</i>
1.B.1 Permit/Easement Acquisition	<i>This task involves acquiring temporary construction temporary entry permits and easements, if necessary, from Caltrans and PG&E, respectively to perform the rehabilitation work in their respective rights of way.</i>	<i>Easement agreements</i>
1.C.1 50% Submittal	This task involves the preparation of the 50% plans and specifications for the Pittsburg Recycled Water Pipeline Rehabilitation Project.	0% design submittal
1.C.2 90% Submittal	This task involves the preparation of the 90% plans and specifications for the Pittsburg Recycled Water Pipeline Rehabilitation Project.	90% design submittal
1.C.3 Final Submittal	This task involves finalizing the project design and preparing the final bid set of plans and specifications.	Final contract documents
1.C.4 Environmental Documentation	This task involves preparing and filing a CEQA Categorical Exemption for the project.	CEQA Notice of Exemption
1.C.5 Permit Acquisition	This task involves acquiring the permits, if necessary, within various agencies' rights-of-way to perform the rehabilitation work.	Executed permits
1.D.1 Bid Solicitation	This task involves advertising the Pittsburg Recycled Water Pipeline Rehabilitation Project for bid, bid opening, responding to contractor requests for information and preparing addenda as needed, review of the bids submitted and awarding the contract to the successful bidder.	Advertisement for Bid <ul style="list-style-type: none"> • Bid Summary and documents/addenda • Award of contract
1.D.2. Mobilization and Site Preparation	This task involves preparing the site for restoration and moving heavy equipment to the site. Installing BMPs to protect water quality and completing all species surveys as required.	Installed BMPs
1.D.3 Construction	This task involves rehabilitation of approximately 5,240 feet of 20-inch and 30-inch asbestos cement recycled water main using slip-lining. Specific construction activities include: <ul style="list-style-type: none"> • Mobilization of labor and equipment • Site stabilization for storm water quality • On-site construction activities needed to rehabilitate the pipeline including preliminary/ancillary work to complete the project • Testing of materials to ensure compliance with contract documents • Demobilization of labor and equipment upon completion of work. 	Record drawings <ul style="list-style-type: none"> • On-site inspection reports • Third-party testing reports • As-Built Drawings

Task	Description	Deliverables
1.E.1 Construction Administration	This task involves administration activities associated with the construction of the Pittsburg Recycled Water Pipeline Rehabilitation Project, including: <ul style="list-style-type: none"> • Construction Management • Inspection activities • Responses to RFIs and Change Order requests • Payment of contractor invoices • Public notification of construction activities • Tracking cost share and reimbursable project expenses 	<ul style="list-style-type: none"> • Approved invoices • Quarterly progress reports
1.F.1 Legal	This task involves addressing legal matters with District legal counsel associated with obtaining easements and/or permits needed to implement the project or potential amendments to this grant agreement or sub-grant agreements.	Permits/Easements

Task 2: Watershed Protection and Restoration Project – ECCC Habitat Conservancy (Conservancy).

The purpose of this project is to acquire and restore habitat for endangered and listed species in eastern Contra Costa County. This is part of a regional program to permanently protect and manage a 30,000 acre preserve system for ecosystem integrity, species and recreation.

The parcel acquired and restored will be located in a high priority acquisition area identified in the East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan (HCP/NCCP), and it will provide important benefits to listed species. Efforts are being focused on the northwest area of the East County Region near the cities of Pittsburg and Clayton. One of the main goals in this area is to protect a corridor that reaches from the Concord Naval Weapons Station (just west of the East County IRWMP area) to the Black Diamond Mines Regional Preserve (and farther south to Alameda and San Joaquin County). This region is rich in natural resources and contains the headwaters to many small creeks that drain to the north through more urbanized areas and to the east into existing preserved lands. Parcels in this region are large (200-500 acres) and provide critical habitat for aquatic species, raptors, and rare plants.

Restoration will involve restoring/creating aquatic habitats (wetlands/ponds) suitable for CA Tiger Salamander or CA Red legged frog. Past projects have restored riparian corridors, created/restored wetlands for fairy shrimp and amphibians, and created ponds to support tiger salamanders. Splitting the funding between acquisition and restoration, it is conservatively estimated that approximately 200 to 500 acres would be preserved and 2 acres of wetted habitat would be restored.

Task	Description	Deliverables
2.A.1 Administration	This task involves general project administration including coordination with project partners and preparation of project invoices. In addition, this task includes development of a Labor Compliance Plan and preparation and submittal of the quarterly, annual and final reports required by the Grant Agreement <i>documenting the status and performance of the project and as required by the grant agreement.</i>	Invoices and quarterly progress reports, Labor Compliance Program Quarterly, Annual and Final Reports
2.B.1 Parcel Acquisition	This task includes identification of the specific parcel to be acquired and restored, completion and submission of appraisals, and parcel acquisition.	Map and Parcel Number(s) Copy of appraisal approval Copy of title report
2.C.1. Planning	This task will include completing a pre-acquisition environmental survey and preparing an assessment of restoration opportunities.	Completed Survey Completed Assessment
2.C.2. Design	This task includes completion of conceptual, 30%, 60%, 90% and final restoration design.	Conceptual Design Construction bid documents
2.C.3. Environmental Documentation	This task includes preparation and filing of a Negative Declaration.	Copy/receipt of filing of Notice of Determination
2.C.4. Permitting	This task involves securing for all required local, State and Federal permits.	Permit approvals
2.D.1. Construction Contracting	This task includes advertising for bids, holding a pre-bid meeting, awarding the construction contract, and issuing a notice to proceed.	Bid Advertisement Pre-bid Meeting Contract Award Notice to Proceed

2.D.2. Mobilization and Site Preparation	This task involves preparing the site for restoration and moving heavy equipment to the site. Installing BMPs to protect water quality and completing all species surveys as required.	Installed BMPs
2.D.3. Construction	This task involves clearing and grubbing the site; performing earthwork; procuring materials for the berm liner and spillway mat, seed / hydroseed and plant material; plant installation; and 6 months of weeding and maintenance.	Completed restoration
2.D.4. Performance testing and Demobilization	This task involves performance testing and demobilization.	Monitoring reports
2.E.1. Construction Administration	This task includes resident engineering, consultant review of construction activities, and construction materials testing.	Resident Engineer hired Inspection reports Testing reports

**EXHIBIT B
SCHEDULE**

Task 1: Pittsburg Recycled Water Pipeline Rehabilitation Project – Delta Diablo Sanitation District (DDSD).

Task	Description	Start Date	Finish Date
Task 1	Pittsburg Recycled Water Pipeline Rehabilitation Project	5/31/11	6/3/13
	Proposition 84 Grant Award	8/11/11	8/11/11
Task 1A.1	Project Administration	1/2/12	6/3/13
	General Project Administration	1/2/12	10/1/12
	Labor Compliance	7/2/12	9/28/12
	Quarterly Progress Reports	9/3/12	6/3/13
	Quarterly Progress Reports 1	9/3/12	9/3/12
	Quarterly Progress Reports 2	12/3/12	12/3/12
	Quarterly Progress Reports 3	3/1/13	3/1/13
	Project Completion Report	6/3/13	6/3/13
	Grant Completion Report	6/3/14	6/3/14
Task 1B.1	Easements	5/7/12	6/8/12
	Easement Acquisition	5/7/12	6/8/12
	Planning and Design	5/31/11	6/1/12
Task 1C	Planning, Design, Environmental Documentation and Permitting	5/31/11	5/31/11
	Feasibility Study (completed prior to June 1, 2011)	5/31/11	5/31/11
	Development of Financing (completed prior to June 1, 2011)	5/31/11	5/31/11
	Design Tasks	9/16/11	6/1/12
Task 1C.1	50% Submittal	2/1/12	2/28/12
Task 1C.2	90% Submittal	4/16/12	5/11/12
Task 1C.3	Final Submittal	6/1/12	6/1/12
	Prepare Final Design Documents	5/14/12	5/25/12
	Submit Final Design Documents	5/28/12	6/1/12
Task 1C.4	Environmental Documentation	6/13/11	7/22/11
	CEQA (e.g. CATEX)	6/13/11	7/15/11
	Complete Environmental Documentation	7/18/11	7/22/11
Task 1C.5	Permitting	6/13/11	7/22/11
	Permit Acquisition	6/13/11	7/22/11
Task 1D	Construction Implementation	6/13/11	2/8/13
	Begin Implementation	6/13/11	6/13/11
Task 1D.1	Construction Contracting Tasks	6/4/12	7/11/12
	Bid Solicitation	6/4/12	6/29/12
	Contracting	7/2/12	7/6/12
	Award Contract	7/11/12	7/11/12
Task 1D.2	Construction Tasks	8/20/12	1/9/13
	Start Construction	8/20/12	8/20/12
	Mobilization	8/21/12	8/27/12
	On-Site Construction	8/28/12	12/31/12
	Testing	1/1/13	1/7/13
	Demobilization	1/8/13	1/8/13
	Complete Construction	1/9/13	1/9/13
	End Implementation	10/19/12	10/19/12
Task 1E.1	Environmental Mitigation Tasks	7/30/12	10/19/12

Task	Description	Start Date	Finish Date
	Implementation (if necessary)	7/30/12	10/19/12
Task 1F.1	Construction Administration Tasks	7/30/12	2/8/13
	Construction Management	7/30/12	1/11/13
	Inspection	8/20/12	12/21/12
	Material Testing	12/10/12	12/21/12
	As-built	1/7/13	2/8/13
Task 1G.1	Other Tasks	1/9/12	1/13/12
	Legal	1/9/12	1/13/12

Task 2: Watershed Protection and Restoration Project – ECCC Habitat Conservancy (Conservancy).

Task	Description	Start Date	Finish Date
Task 2	Watershed Protection and Restoration	9/19/11	9/26/16
	Proposition 84 Grant Award	9/19/11	9/19/11
Task 2.A.	Administration	8/11/11	3/3/14
	Labor Compliance Program	6/07/13	12/31/13
	Quarterly Progress Reports	9/3/12	3/3/14
	Quarterly Progress Reports 1	9/3/12	9/3/12
	Quarterly Progress Reports 2	12/3/12	12/3/12
	Quarterly Progress Reports 3	3/1/13	3/1/13
	Quarterly Progress Reports 4	6/3/13	6/3/13
	Quarterly Progress Reports 5	9/2/13	9/2/13
	Quarterly Progress Reports 6	12/2/13	12/2/13
	Quarterly Progress Reports 7	3/3/14	3/3/14
	Project Completion Report	3/3/14	3/3/14
	Grant Completion Report	6/3/14	6/3/14
Task 2.B.	Development of Financing	7/2/12	1/30/13
	Parcel Acquisition	6/1/12	1/1/14
Task 2.C.	Identify specific parcel	6/1/12	12/3/12
	Planning, Design, Environmental Documentation, and Permitting	2/1/12	5/6/13
Task 2.C.1.	Planning	6/1/12	10/2/12
	Survey Parcel	6/1/12	10/2/12
	Restoration Assessment	6/1/12	10/2/12
Task 2.C.2	Design	10/8/12	5/6/13
	10% Design (concept design)	8/1/12	10/1/12
	30% Design	12/5/12	1/4/13
	60% Design	1/7/13	2/4/13
	90% Design	2/5/13	4/5/13
Task 2.C.3.	Final Design	4/8/13	5/30/13
	Environmental Documentation	5/1/12	7/30/13
Task 2.C.4.	CEQA/NEPA	5/1/12	7/30/13
	Permitting	2/1/12	7/30/13
	USACE 404	2/1/12	7/30/13
	DFG Streambed Alteration Agreement	2/1/12	7/30/13
	SWRCB 401 Water Quality Certification	2/1/12	7/30/13
	County Grading permit)	2/1/12	7/30/13
Task 2.D.	Conservancy Permits	2/1/12	7/30/13
	Construction	5/21/12	10/28/13

	Begin Implementation	5/21/12	5/21/12
Task 2.D.1.	Construction Contracting	4/8/13	6/7/13
	Advertise for Bids	4/8/13	5/28/13
	Pre-Bid Meeting	4/29/13	4/29/13
	Evaluate Bids	5/29/13	6/6/13
	Award Contract	6/7/13	6/7/13
Task 2.D.2.	Mobilization and Site Preparation	6/25/13	7/11/13
Task 2.D.3.	Construction	6/25/13	10/25/13
	Survey area	6/21/13	7/11/13
	Initial Grading	6/30/13	7/4/13
	Seeding/Planting	9/16/13	10/25/13
	End Implementation	10/28/13	10/28/13
Task 2.F.	Construction Administration	6/3/13	10/25/13
	Inspection	6/3/13	10/25/13

**EXHIBIT C
 BUDGET**

Concurrent Draw Down: In this method, grant funding and the cost share will be spent simultaneously. The amount of the cost share for each invoice must be based on the ratio of grant funding and the Grantee's cost share.

Project 1 – Pittsburg Recycled Water Pipeline Rehabilitation Project

Project Title: Pittsburg Recycled Water Pipeline Rehabilitation Project						
Budget Category		(a)	(b)	(c)	(d)	(e)
		Non-State Share* (Funding Match)	Requested Grant Funding	Other State Funds Being Used	Total	% Funding Match
(a)	Direct Project Administration Costs	\$30,250	\$28,250		\$58,500	52%
(b)	Land Purchase/Easement	\$11,100	\$25,900		\$37,000	30%
(c)	Planning/Design/Engineering/Environmental Documentation	\$90,650	\$99,350		\$190,000	48%
(d)	Construction/Implementation	\$205,500	\$894,000		\$1,099,500	19%
(e)	Environmental Compliance/Mitigation/Enhancement	\$10,000	\$0		\$10,000	100%
(f)	Construction Administration	\$22,500	\$77,500		\$100,000	23%
(g)	Other Costs (Including Legal Costs, Permitting and Licenses)	\$5,000	\$0		\$5,000	100%
(h)	Construction/Implementation Contingency	\$0	\$0		\$0	0%
(i)	Grand Total (Sum rows (a) through (h) for each column)	\$375,000	\$1,125,000	\$0	\$1,500,000	25%
<i>*Sources of Funding: DDSD General Fund</i>						

Project 2 – Watershed Protection and Restoration

The table below presents the budget for the Watershed Protection and Restoration project.

Project Title: Watershed Protection and Restoration						
Budget Category		(a)	(b)	(c)	(d)	(e)
		Non-State Share* (Funding Match)1	Requested Grant Funding	Other State Funds Being Used	Total	% Funding Match
(a)	Direct Project Administration Costs	\$40,000	40,000		\$80,000	50%
(b)	Land Purchase/Easement	\$0	\$0		\$0	n/a
(c)	Planning/Design/Engineering/Environmental Documentation	\$25,000	\$250,000		\$275,000	9%
(d)	Construction/Implementation	\$75,000	\$335,000		\$410,000	18
(e)	Environmental Compliance/Mitigation/Enhancement	\$0	\$0		\$0	n/a
(f)	Construction Administration	\$0	\$25,000		\$25,000	0%
(g)	Other Costs (Including Legal Costs, Permitting and Licenses)	\$25,000	\$0		\$25,000	100%
(h)	Construction/Implementation Contingency	\$78,000	\$0		\$78,000	100%
(i)	Grand Total (Sum rows (a) through (h) for each column)	\$243,000	\$650,000		\$893,000	27%

***Sources of Funding:**

Federal Match -USFWS Section 6 Grant (already awarded). East Bay Regional Park District Measure Wastewater Funds (funds are secure).

EXHIBIT D
STANDARD CONDITIONS

D.1 ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) **SEPARATE ACCOUNTING OF GRANT DISBURSEMENT AND INTEREST RECORDS:** Grantee shall account for the money disbursed pursuant to this Grant Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- b) **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Grant Agreement.
- c) **REMITTANCE OF UNEXPENDED FUNDS:** Grantee, within a period of sixty (60) calendar days from the final disbursement from State to Grantee of grant funds, shall remit to State any unexpended funds that were disbursed to Grantee under this Grant Agreement and were not needed to pay Eligible Project Costs.

D.2 ACKNOWLEDGEMENT OF CREDIT: Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Grant Agreement. During construction of the Project, Grantee shall install a sign at a prominent location which shall include a statement that the Project is financed under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, administered by State of California, Department of Water Resources. Grantee shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

D.3 AMENDMENT: No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Grant Agreement is binding on any of the parties. For guidance on the Amendment Requirements see Exhibit H.

D.4 AMERICANS WITH DISABILITIES ACT: By signing this Grant Agreement, Grantee assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

D.5 AUDITS: State reserves the right to conduct an audit at any time between the execution of this Grant Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Grantee to conduct a final audit, at Grantee's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may take any action it deems necessary to protect its interests.

Pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit of State for a period of three years after final payment under this Grant Agreement with respect of all matters connected with this Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of Grantee or subcontractors shall be preserved for this purpose for at least three (3) years after Project completion. See Exhibit H for a listing of documents/records that State Auditors would need to review in the event of a grant being audited.

D.6 BUDGET CONTINGENCY: LIMIT ON STATE FUNDS. Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 is subject to the availability of funds including any mandates from the Department of Finance, the Pooled Money Investment Board or any other state authority. The State will not make payments of any kind, including advances or reimbursements, until funding is made available by the State Treasurer.

D.7 CHILD SUPPORT COMPLIANCE ACT: For any Grant Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:

- a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

D.8 COMPETITIVE BIDDING AND PROCUREMENTS: Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Grant Agreement.

D.9 COMPUTER SOFTWARE: The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Grant Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

D.10 CONFLICT OF INTEREST

- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) **Former State Employee:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

D.11 DELIVERY OF INFORMATION, REPORTS, AND DATA: The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Grant Agreement, such reports, data, information, and certifications as may be reasonably required by the State.

D.12 DISPOSITION OF EQUIPMENT: Grantee shall provide to State, not less than 30 days prior to submission of the final project invoice, a final inventory list of equipment purchased with grant funds provided by State. Grantee shall consult with State on the scope of the inventory not less than 60 days prior to the submission of the final project invoice. The inventory shall include all items with a current estimated fair market value of more than \$5,000 per item. Within 60 days of receipt of such inventory, State shall provide Grantee with a list of the items on the inventory to which State will take title. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items to which it takes title. Cost of transportation, if any, shall be borne by State.

D.13 DISPUTES: In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. Any claim that Grantee may have regarding the performance of this Grant Agreement including, but not limited to claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty (30) calendar days of Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Grant Agreement to implement the terms of any such resolution.

D.14 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this Grant Agreement, Grantee, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(b) to inform employees, contractors, or subcontractors about all of the following:
 - 1. The dangers of drug abuse in the workplace,
 - 2. Grantee's policy of maintaining a drug-free workplace,
 - 3. Any available counseling, rehabilitation, and employee assistance programs, and
 - 4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide as required by Government Code Sections 8355(c), that every employee, contractor, and/or subcontractor who works under this Grant Agreement:
 - 1. Will receive a copy of Grantee's drug-free policy statement, and
 - 2. Will agree to abide by terms of Grantee's condition of employment, contract or subcontract.

D.15 FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of a construction project and as determined by State, Grantee shall provide for a final inspection and certification by a California Registered Civil Engineer that the project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Grant Agreement and to the State's satisfaction.

D.16 GOVERNING LAW: This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

D.17 GRANTEE COMMITMENTS: Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 financing.

D.18 INCOME RESTRICTIONS: The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon, accruing to or received by the Grantee under this Grant Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Grant Agreement.

D.19 INDEPENDENT CAPACITY: Grantee, and the agents and employees of Grantee, if any, in the performance of the Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

D.20 INSPECTIONS: State shall have the right to inspect the work being performed at any and all reasonable times, providing a minimum of a 24-hour notice, during the term of the Grant Agreement. This right shall extend to any local project sponsor, subagreements, and Grantee shall include provisions ensuring such access in all its contracts or sub-contractors entered into pursuant to its Grant Agreement with State. Grantee acknowledges that Project documents may be subject to the Public Records Act (California Government Code Section 6250 *et seq.*). State shall have the right to inspect these documents at any and all reasonable times after completion of the Project to ensure compliance with the terms and conditions of this Grant Agreement. During regular office hours, State shall have the right to inspect and to make copies of any books, records, or reports of the Grantee relating to this Grant Agreement. Grantee shall maintain and shall make available at all times for such inspection accurate records of its costs, disbursements, and receipts with respect to its activities under this Grant Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.

D.21 NONDISCRIMINATION: During the performance of this Grant Agreement, Grantee and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full. Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Grant Agreement.

D.22 NO THIRD PARTY RIGHTS: The parties to this Grant Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

D.23 OPINIONS AND DETERMINATIONS: The parties agree that review or approval of any IRWM Program applications, documents, permits, plans and specifications or other program information by the State is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the IRWM Program.

D.24 PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Grantee shall be responsible for obtaining any and all permits, licenses, and approvals required for performing its obligations under this Grant Agreement. Grantee shall comply with the California Environmental Quality Act (PRC Section 21000 *et seq.*) and other applicable federal, State, and local laws, rules, and regulations, guidelines, and requirements prior to disbursement of funds under this Grant Agreement.

Without limiting the foregoing, Funding Recipient shall keep informed of and take all measures necessary to ensure compliance with California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor

Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done under this Funding Agreement. Pursuant to the provisions of Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, Cal. Pub. Res. Code § 75076 *et seq.*, the Funding Recipient must have a labor compliance program that meets the requirements of California Labor Code Section 1771.5.

D.25 PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: Grantee and Local Project Sponsors shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the IRWM Program acquired with funds under this Grant Agreement without prior permission of State. Grantee and Local Project Sponsors shall not take any action concerning the performance of this Grant Agreement, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Grantee to meet its obligations under this Grant Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired with funds disbursed under this Grant Agreement be remitted to State.

D.26 REMEDIES, COSTS, AND ATTORNEY FEES: The Grantee agrees that any remedy provided in this Grant Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State as a result of breach of this Grant Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Grant Agreement by the State shall not preclude the State from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Grant Agreement, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.

D.27 RETENTION: Notwithstanding any other provision of this Grant Agreement, State shall, for each project, withhold five percent (5.0%) until January 1, 2016 and ten percent (10.0%), thereafter, of the funds requested by Grantee for reimbursement of Eligible Costs. Each project in this Grant Agreement will be eligible to release its respective retention when that project is completed and Grantee has met requirements of Paragraph 17, "Submissions of Reports" as follows. At such time as the "Project Completion Report" required under Paragraph 17 is submitted to and approved by State, State shall disburse the retained funds as to that project to Grantee, except in the case of the last project to be completed under this Grant Agreement, in which case retention for such project will not be disbursed until the "Grant Completion Report" is submitted to and approved by State.

D.28 RIGHTS IN DATA: To the extent permitted by law, the Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Grant Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Grant Agreement, subject to appropriate acknowledgement of credit to the State for financial support. The Grantee shall not utilize the materials for any profit-making venture, sell, or grant rights to a third party who intends to do so.

D.29 SEVERABILITY OF UNENFORCEABLE PROVISION: If any provision of this Grant Agreement is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Grant Agreement shall be construed to remain fully valid, enforceable, and binding on the parties.

D.30 STATE REVIEWS AND INDEMNIFICATION: The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State is for administrative purposes only and does not relieve the Grantee or Local Project Sponsors of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee and Local Project Sponsors agree to indemnify, defend and hold harmless the State and the State against any loss or liability arising out of any claim or action brought against the State from and against

any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with:

- a) The Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof;
- b) Performing any of the terms contained in this Grant Agreement or any related document;
- c) Any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and CWC Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the natural water system; or
- d) Any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Grant Agreement. Grantee agrees to pay and discharge any judgment or award entered or made against the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of the Grant Agreement.

D.31 SUCCESSORS AND ASSIGNS: This Grant Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Grant Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

D.32 TIMELINESS: Time is of the essence in this Grant Agreement.

D.33 TRAVEL: Grantee agrees that travel and per diem costs shall NOT be eligible for reimbursement with State funds, and shall NOT be eligible for computing Grantee cost match. Travel includes the costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Grant Agreement.

D.34 WAIVER OF RIGHTS: None of the provisions of this Grant Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Grant Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Grant Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

EXHIBIT E REPORT FORMAT AND REQUIREMENTS

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

QUARTERLY PROGRESS REPORT

Grantee shall submit Quarterly Progress Reports on a consistent basis to meet the State's requirement for disbursement of funds. The quarterly progress report should describe the work performed during the reporting period. For each project, describe the work performed including:

CONTINUING ELIGIBILITY

- In areas that receive water supplied from the Sacramento-San Joaquin Delta, the IRWM Plan must reduce dependence on the Sacramento-San Joaquin Delta for water supply (SB 855 (Stats. 2010) Section 31(c)(1)(B)).
- Discuss the reasonable and feasible efforts to engage DAC into your IRWM efforts in regards to planning and projects that support their critical water supply or water quality needs.

PROJECT INFORMATION (INCLUDE ANY OF THE BELOW THAT WERE APPLICABLE DURING THE REPORTING PERIOD)

- Legal matters.
- Engineering matters.
- Environmental matters.
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies.
- Major accomplishments during the quarter (i.e. tasks completed, milestones met, meetings held or attended, press releases, etc).
- Discussion of data submittal effort(s) for the previous quarter, including a description of the data submitted and date(s) of submittal.
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter.
- Description of any differences between the work performed and the work outlined in the project work plans.
- Description of any efforts to update IRWM Plan to obligations listed in Paragraph 12, "Continuing Eligibility, if applicable."

COST INFORMATION

- Provide a List showing all costs incurred during the quarter by the grantee, the Local Project Sponsor overseeing the work, and each contractor working on the project. The list should include for all non-construction, or implementation costs, (i.e., design, and admin charges) the hours per task worked on during the quarter for above personnel.
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Work Plan.
- A revised budget, including an explanation of why the revisions were necessary, by task, if changed from latest budget shown in Appendix C, Budget. Note a revised budget may require an official amendment to the Agreement before it is accepted as final.

SCHEDULE INFORMATION

- A schedule showing actual progress verse planned progress as shown in Exhibit B.
- A discussion on how the actual schedule is progressing in comparison to the schedule in Exhibit B.
- A revised schedule, by task, if changed from latest schedule in Exhibit B. Note, a revised schedule may require an official amendment to the Agreement before it is accepted as final.

ANTICIPATED ACTIVITIES NEXT QUARTER

- Provide a description of anticipated activities for the next quarterly reporting period.

PROJECT COMPLETION REPORT

A Project Completion Report is required for each project identified in the Work Plan, Exhibit A. This report will include the following Sections:

EXECUTIVE SUMMARY

The Executive Summary consists of a maximum of ten (10) pages summarizing project information (see report status section below for topics). The Executive Summary should include the following:

- Brief description of work proposed to be done in the original Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 IRWM Implementation Grant application.
- Description of actual work completed and any deviations from the work plan identified in the Grant Agreement. List any official amendments to the Agreement, with a short description of the amendment
- Describe the mechanism or process that allows for continued performance monitoring of the projects in meeting the objectives of the IRWM Plan.

REPORTS AND/OR PRODUCTS

- Provide a copy of any final technical report or study, produced for this project as described in the Work Plan, if applicable.
- Provide a map and shapefile(s) showing the location of the completed project. A description of the geographic projection and datum used for the shapefile must be submitted with the shapefile (a NAD '83 datum and either a UTM 10 or UTM 11 projection, dependent on the project's location in the state, should be utilized).
- If any wells were constructed as part of the project, provide the following information: well logs; borehole geophysical logs; state well number; site information to include horizontal (NAD '83) and vertical (NAVD '88) datum to be determined within 0.5 feet.
- Provide an electronic copy of any as-built plans (media: CD-ROM; PDF format).
- Provide copies of any data collected along with location maps.
- If applicable, describe the findings of any study and whether the study determined the engineering, hydrologic, hydrogeologic, environmental, economic and financial feasibility of the project.
- If applicable, a discussion of the critical water supply or water quality benefits to DAC as part of this Grant Agreement.

COST & DISPOSITION OF FUNDS INFORMATION

- A list of invoices showing:
 - The date each invoice was submitted to State.
 - The amount of the invoice.
 - The date the check was received.
 - The amount of the check (If a check has not been received for the final invoice, then state this in this section).
- A spreadsheet summary of the original budget costs by task versus the final project costs
- A summary of final funds disbursement including:
 - Labor cost of personnel of agency/ major consultant /sub-consultants (Indicate personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc).
 - Construction cost information, shown by material, equipment, labor costs, and change orders.
 - Any other incurred cost detail.
 - A statement verifying separate accounting of grant disbursements.
- Summary of project cost including:
 - Accounting of the cost of project expenditure.
 - Include all internal and external costs not previously disclosed.

- A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

ADDITIONAL INFORMATION

- Benefits derived from the project, with quantification of such benefits provided, if applicable.
- A final project schedule showing actual progress verse planned progress.
- Certification from a California Registered Civil Engineer that the project was conducted in accordance with the approved work plan and any approved modifications thereto.
- Submittal schedule for the Post Performance Report and an outline of the proposed reporting format.

GRANT COMPLETION REPORT

The Grant Completion Report shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects in the IRWM Program funded by this Grant Agreement, and includes the following:

EXECUTIVE SUMMARY

The Executive Summary consists of a maximum of twenty (20) pages summarizing information for the grant as well as the individual projects.

REPORTS AND/OR PRODUCTS

- Summary of the regional priorities, objectives, and water management strategies of the IRWM Plan.
- Brief comparison of work proposed in the original Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 IRWM Implementation Grant application and actual work done.
- Brief description of the projects completed and how they will further the goals identified in the Agency's final approved IRWM Plan.
- Describe how the implemented projects will meet the regional priorities identified in the final approved IRWM Plan and how the projects contribute to regional integration.
- Identify remaining work and mechanism for their implementation.
- Identify any changes to the IRWM Plan as result of project implementation.
- Short description of the two year IRWM Plan update and the date when the updated Plan was submitted to DWR.
- If applicable, a short discussion on how the IRWM Plan will assist in reducing dependence on Delta water supplies.
- A discussion of the critical water supply or water quality benefits to DAC as part of this Grant Agreement

COST & DISPOSITION OF FUNDS INFORMATION

- A summary of final funds disbursement for each project.

ADDITIONAL INFORMATION

- A final schedule showing individual project's actual progress duration verse planned progress.
- Certification from a California Registered Civil Engineer that the Program was conducted in accordance with the approved work plan and any approved modifications thereto. Discussion of the synergies of the completed projects, including the integration of project benefits and a comparison of actual benefits versus those discussed in the original proposal.
- Submittal schedule for the Post Performance Reports for each of the projects in this Grant Agreement.

POST-PERFORMANCE REPORT

Post Performance Report is required annually for every project for a period of 10 years beginning after the first year of operation, and includes the following:

REPORTS AND/OR PRODUCTS

- Time period of the annual report, i.e., Oct 2014 through September 2015.
- Short project description.
- Brief discussion of the project benefits to water quality, water supply, and the environment.
- An assessment of any explanations for any differences between the expected versus actual project benefits in meeting IRWM priorities as stated in the original IRWM Implementation Grant application. Where applicable, the reporting should include quantitative metrics, i.e., new acre-feet of water produced that year, acres of wildlife habitat added, etc.
- Summary of any additional costs and/or benefits deriving from the project since its completion, if applicable.
- Continued reporting on meeting the Output Indicators and Targets discussed in the Project Monitoring Plan discussed in Paragraph 22 of this Grant Agreement.
- Any additional information relevant to or generated by the continued operation of the project.

ELECTRONIC REPORT FORMATTING

Grantee agrees that work funded under this Grant Agreement will be provided in an electronic format to State. Electronic submittal of final reports, plans, studies, data, and other work performed under this grant shall be as follows:

- Text preferably in MS WORD or text PDF format.
- Files generally less than 10 MB in size.
- Files named so that the public can determine their content. For example, file naming of reports must have the title and, if subdivided into smaller sized files, the chapter number/letter and names in the report Table of Content (TOC); files of maps, figures, and tables by number/letter as referenced in the TOC; well logs files with DWR-required naming convention; and Appendix number/letter and named in the TOC.
- For projects involving a modeling component, grantee shall provide the major input data files, parameters, calibration statistics, output files, and other information requested by State's Project Manager.

EXHIBIT F
LOCAL PROJECT SPONSORS

LOCAL PROJECT SPONSORS

Grantee has assigned, for each project, a Local Project Sponsor according to the roles of the participating agencies identified in the IRWM Plan. Local Project Sponsors may act on behalf of Grantee for the purposes of individual project management, oversight, compliance, and operations and maintenance. Local Project Sponsors are identified for each Sponsored Project below:

Local Sponsor Agency Designations		
Sponsored Project	Sponsor Agency	Agency Address
Project 1 – Pittsburg Recycled Water Pipeline Rehabilitation Project	Delta Diablo Sanitation District	2500 Pittsburg-Antioch Highway, Antioch CA 94509-1373
Project 2 - Watershed Protection and Restoration	East Contra Costa County Habitat Conservancy	30 Muir Road Martinez, CA 94553

**EXHIBIT G
REQUIREMENTS FOR DATA SUBMITTAL**

SURFACE AND GROUNDWATER QUALITY DATA:

Groundwater quality and ambient surface water quality monitoring data that include chemical, physical, or biological data shall be submitted to the State as described below, with a narrative description of data submittal activities included in project reports, as described in Exhibit E.

Surface water quality monitoring data shall be prepared for submission to the California Environmental Data Exchange Network (CEDEN). The CEDEN data templates are available on the CEDEN website. Inclusion of additional data elements described on the data templates is desirable. Data ready for submission should be uploaded to your CEDEN Regional Data Center via the CEDEN website. CEDEN website:
<http://www.ceden.org>.

If a project's Work Plan contains a groundwater ambient monitoring element, groundwater quality monitoring data shall be submitted to the State for inclusion in the State Water Resources Control Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program. Information on the GAMA Program can be obtained at: http://www.waterboards.ca.gov/water_issues/programs/gama/. If further information is required, the Grantee can contact the State Water Resources Control Board (SWRCB) GAMA Program. A listing of SWRCB staff involved in the GAMA program can be found at:
http://www.swrcb.ca.gov/water_issues/programs/gama/contact.shtml

GROUNDWATER LEVEL DATA

For each project that collects groundwater level data, Grantee will need to submit this data to DWR's Water Data Library (WDL), with a narrative description of data submittal activities included in project reports, as described in Exhibit E. Information regarding the WDL and in what format to submit data in can be found at:
<http://wdl.water.ca.gov/>.

In the near future, DWR's WDL will be replaced by the California Statewide Groundwater Elevation Monitoring program (CASGEM). Once this Program comes online Grantee will then submit groundwater level data to CASGEM. Information regarding the CASGEM program can be found at:
<http://www.water.ca.gov/groundwater/casgem/http://www.water.ca.gov/groundwater/casgem/>

EXHIBIT H

STATE AUDIT DOCUMENT REQUIREMENTS AND GUIDELINES FOR GRANTEES UNDER DWR FINANCIAL ASSISTANCE PROGRAMS

The following provides a list of documents typically required by State Auditors and general guidelines for Grantees. List of documents pertains to both Grant funding and Grantee's Funding Match and details the documents/records that State Auditors would need to review in the event of this Grant Agreement is audited. Grantees should ensure that such records are maintained for each funded project.

List of Documents for Audit

Internal Controls:

1. Organization chart (e.g., Agency's overall organization chart and organization chart for this Grant Agreement's funded projects).
2. Written internal procedures and flowcharts for the following:
 - a. Receipts, deposits and disbursements
 - b. State reimbursement requests
 - c. Grant expenditure tracking
 - d. Guidelines, policy, and procedures on grant funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on grant funded Program/Project.

Agreements and Contracts:

1. Original signed Grant Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants received from the State.
3. A listing of all other funding sources for each project.
4. All subcontractor and consultant contracts and related or partners documents, if applicable.
5. Contracts between the Agency and member agencies as related to this grant agreement.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under this Grant Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related budget line items under this Grant Agreement.
3. Reimbursement requests submitted to the State for this Grant Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under this Grant Agreement.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for grant reimbursement.

Administration Costs: Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on this grant funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to this Grant Agreement.

Project Files:

1. All supporting documentation maintained in the project files.
2. All correspondence related to this Grant Agreement.

General Grant Agreement Guidelines

Amendment Requirements:

Amendments (to the work plan, budget, and/or schedule portions of the agreement) are triggered when the proposed changes are deemed by DWR to be substantial. Substantial changes generally include changes to the wording/scope of work, schedule or term, and budget. For example, a formal budget change to an Agreement is required when the proposed budget change for a Task is greater than 10% of the budget for that particular Task or the Task to be exchanged.

Funding Match Contribution

Funding Match (often referred to as Grantee Cost Share) is the amount defined in Paragraph 4 of this Agreement. Funding Match consists of non-State funds including in-kind services. In-kind services are defined as work performed (i.e., dollar value of non-cash contributions) by the Grantee (and potentially other parties involved) directly related to the execution of the scope of work (*examples*: volunteer services, equipment use, and facilities). The cost of which in-kind service is valued can counted as funding match in-lieu of actual funds (or revenue) provided by the Grantee. Other funding match and in-kind service eligibility conditions apply (see paragraph 9). Provided below is guidance for claiming funding match with and without in-kind services.

1. Adequate documentation supporting value of in-kind service (or volunteer service) as funding match claimed shall be maintained. Although tracked separately, in-kind services shall be documented and, to the extent feasible, supported by the same methods used by the Grantee for its own employees. Provide formal (on official letterhead) and substantial documentation of in-kind service by including the following:
 - Describe contributed item(s) or service(s)
 - Purpose for which contribution was made (tie to scope of work)
 - Name of contributing organization and date of contribution
 - Real or approximate value of contribution. Who valued the contribution and how was the value determined (e.g., actual, appraisal, fair market value, etc.)? Justification of rate (see item #4, below).
 - Person's name and function of the contributing person
 - Hours of contribution
 - If multiple sources exist, summarize these on a table with summed charges
 - Was contribution provided by, obtained with, or supported by government funds? If so, indicate source.
2. Funding match contribution (including in kind services) shall be for costs and services directly attributed to activities included in this Grant Agreement Work Plan. These services, furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as in-kind if the activities are an integral and necessary part of this Grant Agreement. Evaluate eligibility with DWR Project Manager in advance of submittal.
3. Do not track cash contributions made to a project as an expenditure as one would for an in-kind service. When providing funding match, track cash contributions to the Project (i.e. revenues) and expenditures (typically in-kind contribution) separately in an accounting system.
4. Rates for volunteer or in-kind services shall be consistent with those paid for similar work in the Grantee organization. For example, volunteer service of clearing vegetation performed by an attorney shall be valued at a fair market value for this service, not the rate for professional legal services. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

EXHIBIT I
GRANTEE RESOLUTION

CERTIFIED A TRUE COPY OF THE ORIGINAL

Mary A. Neher
for Mary A. Neher, District Secretary
Contra Costa Water District

RESOLUTION NO. 11-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CONTRA COSTA WATER DISTRICT AUTHORIZING AN APPLICATION TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES TO OBTAIN A PROPOSITION 84 INTEGRATED REGIONAL WATER MANAGEMENT IMPLEMENTATION GRANT AND EXECUTION OF AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, CONDITIONED UPON GRANT AWARD

WHEREAS, in November 2006, Proposition 84: the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coast Protection Bond Act of 2006 (Public Resource Code (PRC) Section 75001 *et seq.*) was passed by the vote of the people of California;

WHEREAS, the intent of the Integrated Regional Water Management (IRWM) Grant Program is to encourage integrated regional management of water resources and provide funding for projects that support integrated water management planning and implementation;

WHEREAS, the IRWM Implementation Grant Program is administered by the California Department of Water Resources;

WHEREAS, there is a maximum grant amount of \$12,666,667 million available in the San Joaquin River Funding Area for implementation funding with a 25% minimum funding match of the total project costs to be paid for with non-State funds; and

WHEREAS, grant application procedures established by the California Department of Water Resources require applicants to provide a copy of a resolution adopted by the applicant's governing body designating an authorized representative to file an application and enter into an agreement to receive an Integrated Regional Water Management planning grant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Contra Costa Water District that the General Manager, or his designee, is hereby authorized to prepare the

Resolution No. 11-02
January 5, 2011
Page 2

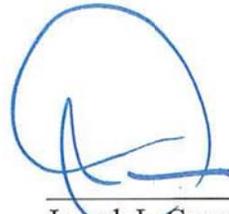
necessary data, conduct investigations, and execute and submit all documents and applications, which may be necessary to obtain an Integrated Regional Water Management planning grant.

BE IT FURTHER RESOLVED, by the Board of Directors of Contra Costa Water District that the General Manager, or his designee, is hereby authorized to execute any and all agreements, amendments, and payment requests which may be necessary to receive an Integrated Regional Water Management Planning grant, and for the initiation and completion of the project.

* * * * *

The foregoing Resolution was duly and regularly adopted at a meeting held on the 5th day of January 2011 by the Board of Directors of Contra Costa Water District by the following vote of the Board:

AYES: Borba, Burgh, Boatman, Campbell, Wandry
NOES: None
ABSTAIN: None
ABSENT: None



Joseph L. Campbell, President

ATTEST:


Goolu Lashkari
Acting District Secretary

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Conservancy Work Plan – 2012 Summary & 2013 Work Plan

RECOMMENDATION

APPROVE the 2013 Conservancy Work Plan.

DISCUSSION

The Conservancy Work Plan: 2012 Summary and 2013 Work Plan provides both a summary of tasks initiated and completed in 2012 and tasks planned for 2013 (attached).

Section 8.11.1 of the HCP/NCCP provides a schedule for implementation, forecasting tasks for the first year, five-year periods during the 30 year term of the Plan, and beyond year 30 of HCP/NCCP implementation. The HCP/NCCP also provides a list of the duties of the implementing entity (the Conservancy) in Section 8.3. Based on this information and general knowledge of the HCP/NCCP, staff has developed the 2013 Conservancy Work Plan.

As mentioned, the Work Plan also includes a summary of tasks that have been completed and progress achieved on the on-going tasks in 2012. In cases where a task appeared in the HCP/NCCP implementation schedule, the recommended timeline from the HCP/NCCP is juxtaposed with staff’s recommended timeline in the Work Plan for comparison purposes. The “Actions Taken in 2012” column describes the type of work that has been completed and the end result for actions taken in 2012. The “Actions Proposed for 2013” column provides the goals and type of work planned in 2013. For the more complex tasks, the Work Plan attempts to provide a sense of the general approach recommended.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Some noteworthy features of the 2013 Work Plan include the following:

Wetland Permitting: With the U.S. Army Corps of Engineer's issuance of the Regional General Permit (RGP) related to the HCP/NCCP in 2012, and the associated Biological Opinion issued by U.S. Fish and Wildlife Service, the critical priorities are completing the In Lieu Fee Agreement with Corps (and possibly other agencies) to ensure HCP/NCCP fees satisfy multiple regulatory requirements over the long term and securing programmatic certification of the RGP by the State and Regional Boards.

Land acquisition: With market conditions continuing to be favorable and various grants nearing expiration, land acquisition will continue to be a priority.

Restoration: Planning and design for restoration/creation will proceed on three scales in 2013: a) two mid-sized projects will be planned and designed for constructed in 2014; b) initial planning will commence on one or more larger projects for consideration in the future; and c) opportunities for designing and constructing one or more small/simple projects in the late summer of 2013 will be explored.

Preserve Management and Management Planning: With acquisition, restoration and permitting drawing much of the Conservancy's attention in prior years, an increasing emphasis will be placed on this topic in 2013, particularly as the first preserve management plan is readied for review and approval.

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

Attachment:

- Conservancy Work Plan: 2012 Summary and 2013 Work Plan

Conservancy Work Plan: 2012 Summary and 2013 Work Plan

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
<i>Program Administration (general)</i>			
1	Increase public awareness of the Plan and provide opportunities for involvement in the implementation of the Plan by the public, interested agencies, and others.	<p>PAC meetings were held quarterly.</p> <p>The Conservancy continued to publicize activities via its website and other means. The film documentarian producing a film on Habitat Conservation Plans continued to film.</p> <p>Created the 2011 YEAR IN REVIEW document to accompany the 2011 Annual Report which provides a graphical, easy to digest summary of accomplishments related to project permitting, wetland coordination, land acquisition, habitat restoration and creation, funding and partners. The document was distributed via an augmented mailing list including local elected officials. The Conservancy hosted two, well-attended public workshops in October 2012, one in response to a request for a workshop on Plan amendment ideas and the second on the new Regional General Permit for the HCP/NCCP.</p>	<p>PAC meetings will continue to be held quarterly. Conservancy will continue using the website to communicate with the public. Staff will pursue greater media coverage of Plan activities to improve awareness by the public at-large, including continued work with the documentarian featuring the Conservancy. A Year in Review document will be prepared for 2012. A new task for this year is to work with EBRPD to host the California Habitat Conservation Plan Coalition's (CHCPC) annual meeting, as requested by CHCPC. For 2013, the annual meeting is proposed to be combined with a celebration of accomplishments since passage of the NCCP Act, an event to which state and federal policy makers will be invited.</p>
2	Develop a Conservancy Volunteer Program and Implement Volunteer Activities	Ongoing work to involve volunteers including investigating opportunities and objectives with the PAC. Worked with Save Mount Diablo volunteers to implement and monitor the Irish Canyon Restoration Project.	Ongoing development of the volunteer programs with a goal to expand volunteer hours, range of volunteers' tasks and overall public involvement in the HCP/NCCP. Continue to collaborate with Save Mount Diablo and other volunteer groups and organizations to implement planting and plant maintenance as well as plant surveys.
3	Develop and maintain annual budgets and work plans. Prepare and submit an annual report to CDFG and USFWS.	Conservancy Staff prepared the 2012 annual budget and the 2012 work plan for Board discussion in January 2012. Conservancy prepared and published the 2011 Annual Report in the spring of 2012.	Conservancy Staff prepare the 2013 annual budget and this 2013 work plan for Board discussion in January 2013. The 2014 versions of these documents will be prepared for Board consideration in December 2013. Conservancy will also prepare and publish the 2012 Annual Report.
4	Calculate the amounts of automatic annual fee adjustments and distribute these calculations to Permittees by March 15 of each year, in accordance with Chapter 9 of the HCP/NCCP.	The calculations for the 2012 automatic annual fee adjustments were performed and applied to Conservancy's fee schedule and the cities/County fee schedule (the schedules are currently different with respect to wetland fees because the Conservancy approved the 2011 Periodic Fee Audit in July 2011 but action by cities and the county on fees is pending). In July 2012, the Conservancy Board determined to commission a second periodic fee audit. That audit was released for public review in December 2012 and will be considered by the Board in January 2013.	Consider the 2012 periodic fee audit. Approve and recommend revised fees as appropriate. Provide support to cities and County in their fee review process.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
5	Pursue State and Federal Grants to assist in funding preserve acquisition and other implementation tasks.	Conservancy Staff continued to research and apply for available grant money which made up a significant portion of the funding for implementation of the HCP/NCCP during 2012. More than \$2 million in new grants were approved in 2012.	Conservancy Staff will continue to research and apply for available grant money which will make up a significant portion of the funding for implementation of the HCP/NCCP during 2013. Staff will apply for Section 6 funds and for various non-federal grant funds that can match the Section 6 funds and/or fund Conservancy's activities.
6	Administer grants already awarded.	Grant revenues actually received in 2012 is estimated at \$5.87 million, requiring a substantial numbers of agreements, invoices, forms and other grant management duties.. Since 2007, the total grant funding approved for the Conservancy is greater than \$47 million, with almost \$32 million of that spent to date and about \$15 million remaining. Procedures for accessing Section 6 funds continue to be greatly accelerated by WCB.	Staff will continue with these tasks in 2013 and pursue additional streamlining of the Section 6 granting process.
7	Coordinate with other Regional HCPs and pursue a legislative program that will aid the Conservancy's implementation of the Plan.	As part of ongoing participation in the coalition of northern California HCPs (NCCPP), staff assisted in hosting its annual conference in Vacaville in November and participated in a panel discussion on coordinating wetlands and aquatic resources permitting with HCPs. Continued active participation with the California Habitat Conservation Plan Coalition (CHCPC) which is coordinate efforts across the state to improve funding opportunities for HCPs, promote coordination of wetlands permitting with HCPs and share lessons learned among HCPs. implemented 2012 Legislative Platform, attended annual CHCPC legislative trip to Washington in April and intensively collaborated with CHCPC on effort to restore funding for Section 6 program, working with Congressman McNerney who lead efforts in the House. Proposed 2013 Platform.	Continue to participate in the CHCPC to pursue common policy objectives and to learn from the experiences of other HCP's. Attend NCCPP Conferences and host CHCPC annual conference in 2013. Implement 2013 Legislative Platform, including an emphasis on Section 6 funding levels in Congress, accessing Proposition 84 funds through WCB and coordinating species and wetlands permitting. Work with other HCP's to explore challenges associated with creating effective endowments to fund long term management, including potential obstacles to reasonable rates of investment return.
8	Provide accounting services for the Conservancy.	Staff continued to manage Conservancy finances by processing more than 230 payments and receipts in 2012. The Conservancy conducted an audit of the 2011 Financial Statements. The auditors written statements were presented to the Board and filed with appropriate agencies.	As well as preparing the 2014 Budget and managing finances consistent with the approved budget for 2013, day to management of debits and deposits will continue. The Conservancy will conduct an audit of the 2012 Financial Statements. The auditors written statements will be presented to the Board.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
9	Pursue regional permits and permitting programs for jurisdictional wetlands and waters with the appropriate state and federal agencies to help ensure coordination between implementation of the HCP/NCCP and the implementation of state and federal wetlands regulations.	Major progress was made in 2012. The Sacramento District of the U.S. Army Corps of Engineers issued a Regional General Permit (RGP) linked to the HCP/NCCP in May. The Corps also approved a short term mechanism which relies on the Conservancy's existing restoration projects to enable payment of HCP fees by applicants to satisfy Corps regulatory requirements. This procedure may be used until May of 2013 by which time the Corps wishes to replace it with adoption of an In-Lieu Fee Instrument which will formalize this arrangement. The USFWS issued a Biological Opinion on the RGP which further simplifies the process. The Corps and Conservancy convened a well-attended public workshop in October to introduce and explain the RGP. The Conservancy met a number of times with the Water Boards (State, San Francisco Bay and Central Valley) and the Corps and USEPA seeking to conclude years of interagency work to coordinate the RGP and HCP/NCCP with the state's responsibilities for Section 401 of the Clean Water Act and the Porter Cologne Act. Significant progress was made during the year and the Conservancy was invited to work with the Water Boards in drafting a programmatic certification of some kind for the RGP that would address the state wetland regulatory process. The Water Boards have also expressed interest in participating in development of the In Lieu Fee Instrument.	Pursue as a top Conservancy priority the goal of completing regional permitting instruments in 2013 including 401 Water Quality Certification of the RGP (or other equivalent regional permitting device) from the Water Boards and development and execution of an In-Lieu Fee Instrument (agreement) to link the Conservancy's fee collection and conservation activities to implementation of the various new permits.
<i>Program Administration (HCP/NCCP permit issuance)</i>			
10	Develop and update the template Planning Survey Report (PSR) Application	Additional review and revision is on-going based on experiences with projects that have used the form as well as modifications based on new policies and requirements.	Continue to use and update the template as necessary. Continue to seek feedback from users.
11	Provide training to local jurisdictional staff on HCP/NCCP applications. Assist local jurisdictions to ensure that project proponents comply with the provisions of the Plan, including performance of required avoidance, minimization and mitigation measures.	Staff continued to coordinate with local jurisdiction staff to discuss updates and HCP/NCCP application processing and continued to provide assistance and technical support in 2012. Staff held regular meetings with the Contra Costa County Public Works Department, Environmental Unit Staff, in order to assist with facilitation of HCP/NCCP applicability to the County's many road and flood control projects.	Coordination, training and outreach efforts will continue and expand in 2013.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
12	Implement Permitting Program: Process applications for coverage under the HCP/NCCP, tracking performance of required avoidance, minimization and mitigation measures.	The Conservancy reviewed and approved applications by Participating Special Entities for take coverage under the HCP/NCCP and oversaw implementation of agreements. The Conservancy assisted other local jurisdictions with their take coverage activities by providing technical input and by reviewing and offering advice on numerous Planning Survey Applications. The Conservancy reviewed and approved Construction Monitoring Reports submitted by covered activities and worked with numerous project proponents on the details of their avoidance and minimization procedures in cases where species were present.	Efforts are on-going and will continue in 2013.
13	Prepare report documenting the expected benefits of the HCP/NCCP to non-covered special-status species to provide streamlining for future CEQA documents.	An administrative draft has been prepared.	A public draft of this document will be complete and circulated in early 2013.
14	Establish GIS database to track land acquisitions and Permitting Program database to track projects, impacts, and take coverage.	Both databases were comprehensively updated in 2012 and new programming was instituted to query both databases simultaneously and generate the reports and tables needed for the 2012 and future Annual Reports.	Staff will continue to maintain and improve the GIS and covered project tracking databases. The possibility of developing a more interactive financial database will also be pursued to simplify the preparation of materials for audits and other reports requiring financial information.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
<i>Preserve Acquisition and Management</i>			
15	Continue to acquire land to assemble Preserve System and Meet Stay Ahead requirements as described in Section 8.6.1	<p>Conservancy staff will continue to meet with acquisition partners. The East Bay Regional Park District has been the primary partner and detailed coordination and cost-sharing will continue. The Conservancy will also continue to coordinate with other potential partners such as Save Mount Diablo, State Parks, Contra Costa Water District, Agricultural-Natural Resource Land Trust of Contra Costa County, Brentwood Agricultural Land Trust, the Natural Heritage Institute, cities such as the Cities of Oakley and Brentwood with potential preserves in their boundaries and private mitigation banks to learn of their current acquisition efforts and explore opportunities for partnering.</p> <p>Conservancy will continue following general approach to land acquisition used in previous years: (a) seek partners such as EBRPD willing to be responsible for assisting with the fund-raising and willing to be the land owner and land manager or easement holder (or to find another entity to serve that role) so that the Conservancy can avoid actually owning and managing land or easements in perpetuity, (b) maintain an "Open Door Policy" and be willing to consider proposals from a range of partners, (c) once a prospective partner has found a willing landowner and established a price, the Conservancy should evaluate the cost effectiveness of the acquisition in achieving HCP goals, develop a proposed acquisition cost-share and strategy for ensuring management and monitoring, evaluate the pros and cons of the overall package and consider approving or disapproving Conservancy participation in the acquisition.</p>	
16	Develop a mutually agreeable programmatic strategy with East Bay Regional Park District (EBRPD) to collaborate on land acquisition and management in the HCP area.	EBRPD is implementing its Master Plan and is buying land in the inventory area for park and open space purposes. Voters approved EBRPD's Measure WW in 2008, providing significant new capital to support this work. Continuing to partner with EBRPD will help to ensure that the land acquisition and management goals of EBRPD's land program and the similar goals of the HCP/NCCP are implemented in a coordinated manner (this goal is set forth in Section 13.6 of the Implementing Agreement). Conservancy staff and EBRPD staff have been discussing partnership opportunities and believe, for the time-being, that partnership opportunities should be addressed case by case because the details are numerous and specific to the parcel in question. Coordination has been excellent so far and numerous agreements have been completed to address specific acquisition and restoration projects.	
17	Conducting pre-acquisition assessments and post-acquisition detailed biological assessments of potential acquisitions to determine their biological value for the HCP.	Conservancy Staff and consultants developed protocols and practices for a phased and more streamlined approach to this task that defers the most expensive field work until after property is purchased. In 2012, assessments of preserve system lands included detailed, thorough surveys for wetlands and covered plants.	In 2013, the pre-acquisition assessments and resource inventories will continue. These surveys are essential to ensure HCP/NCCP requirements are being met.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
18	Create template Conservation Easement Deeds and Deed Restrictions and other protective covenants to speed-up addition of land to the Preserve System and to protect the interests of the Conservancy in land it acquires.	In 2012, staff worked with the wildlife agencies and EBRPD to develop a deed restriction template that EBRPD and the wildlife agencies have approved. A basic Conservation Easement template was developed in previous years which could be adapted and used on properties not owned by EBRPD.	EBRPD recording of the required deed restrictions on preserved lands will commence in 2013.
19	Develop and begin to implement a strategy for funding the long term management of the Preserve system before 50% of the authorized take under the maximum urban development area is used or before the end of year 15 of implementation, whichever comes first. Provide progress reports on this matter in the Annual Report.	This a critically important long term task that must be confronted as early as possible during implementation. To date, some significant steps have been made toward addressing this issue. The Conservancy and District acquired properties with cumulative annual lease revenue of approximately \$400,000 and agreed that a portion of this lease revenue would set aside in a non-wasting endowment for long term management. Contributions to recovery collected from Participating Special Entities can also be applied in part to long term management.	Work on this effort will continue in 2013 including development of management plans which help us begin to improve the estimates in the HCP/NCCP of long term management costs. The Conservancy will also work with other agencies and possibly seek a grant to examine opportunities for maximizing rate of return on endowments.
20	Develop management plans for the Preserve System and individual preserves.	Staff held a series of meetings with EBRPD to develop the first preserve management plan for the Preserve System, the Byron Hills Preserve Management Plan. The working draft Byron Hills Plan incorporates recreation, exotic plant and monitoring elements that subsequently also be addressed at the system-wide level.	In 2013, next steps on the Byron hills Preserve Management Plan are seeking input from wildlife agencies, the PAC, and presenting a draft to the Board. A second preserve management plan covering other portions of the Preserve System will be initiated in 2013.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
21	Implement management plans for the Preserve System and individual preserves.	With preserve management planning in progress and numerous recently-acquired properties to assess, preserve management activities generally continued past practices. EBRPD institutes new grazing leases as lands are acquired. EBRPD and the Conservancy coordinated on an as-needed basis with efforts such as milk thistle eradication, rare plant propagation, fuel management, potential riparian exclosures, cattle watering systems, needed culvert replacements and failing spring boxes. EBRPD conducted day to day management of the Preserve system, including ranger patrols fire and law enforcement supervision, supervision of grazing tenant, maintaining and replacing fences and gates and addressing hazards to people and wildlife in the new preserves	Interim management procedures will continue and expand as management plans are completed. With significant blocks of preserve lands now assembled, management obligations will increasingly need to be addressed, though land contiguity will improve efficiency.
22	Prepare an Exotic Plant Control Plan to address exotic and invasive plants on Preserve System lands	Several exotic plant control activities have been planned and implemented on a project-by-project basis until preserve management plans and the system-wide Exotic Plant Control Program are developed	The initial Exotic Plant Control Program will be developed as an element within the Byron Hills Preserve Management Plan and subsequently expanded,. This plan will likely be based on and coordinated with existing policies and programs such as with the East Bay Regional Park District's Integrated Pest Management Plan.
23	Prepare a Recreation Plan to address recreational uses on Preserve System lands	Recreation needs, opportunities and constraints were identified as land has been acquired. The Byron Hills Preserve Management Plan is including comprehensive evaluation of and planning for recreation.	Incorporate a detailed recreation element in the Byron Hills Preserve Management Plan. Experience thus far with that Plan suggests that it may not be advisable to have a separate and detailed system-wide recreation plan as the details of recreation may be better evaluated and planned for in the context of the more localized preserve management plans. A determination on how to perform the required and necessary planning components will be made after the first preserve management plan is finalized.

	TASK	ACTIONS TAKEN IN 2012	ACTIONS PROPOSED FOR 2013
<i>Habitat Restoration/Creation</i>			
24	Design habitat restoration and creation projects and perform additional environmental compliance for habitat restoration if needed.	Like land acquisition, habitat restoration and creation will be a key program area for the Conservancy. If restoration and creation of jurisdictional wetlands and waters does not keep pace with impacts, the ability to mitigate such impacts by paying a fee will be suspended (the HCP provides that the Conservancy has until the second year to "get ahead"). Likewise progress on this task is an essential foundation to completion of efforts to coordinate wetlands permitting with the HCP.	Staff will work with consultants and other partners to assess new acquisitions for restoration opportunities and to explore and develop restoration concepts. Two restoration projects will be designed in 2013 for possible 2014 construction: a) riparian habitat restoration, pond repair and improved cattle watering on Ang; and b) Hess Creek stream restoration south of Kirker Pass. In addition, initial planning for a larger project may commence.
25	Implement habitat restoration and habitat creation projects.	In 2012, the Conservancy constructed three small vernal pools/seasonal wetlands. The projects involved restoration and creation of seasonal and alkali wetlands in the form of vernal pools. (Two on Vaquero Farms South and one on Souza 2, totaling about .58 acres wet acres). In addition, design commenced on two additional restoration projects (see above).	In 2013, the Conservancy may implement one or two smaller habitat restoration/creation projects while preparing for larger projects in 2014 and following years.
<i>Monitoring and Adaptive Management Program</i>			
26	Design Monitoring and Adaptive Management Program	Preserve monitoring and adaptive management measures were designed as part of development of the Byron Hills Preserve Management Plan. In addition, the Conservancy designed adaptive management measures for restoration projects.	Work on this effort will continue through 2013. The components of a comprehensive monitoring strategy are being developed as part of the Byron Hills Preserve Management Plan, which will be released for comment in 2013. Addressing erosion from a small channel on Souza 2 will be a design priority for 2013.
27	Monitoring and adaptive of restoration projects and new preserves.	The five previously constructed restoration projects were monitored throughout 2012 and several adaptive measures were taken including repair of a rock-lined grade control structure at the Upper Hess Project. A \$250,000 portion of the \$2.25 million grant received from the Gordon and Betty Moore Foundation is to study the impacts of turbines on avian species and methods for reducing these impacts. The Board approved a collaborative project with EBRPD to attach GPS units to golden eagles as a first project to be carried out under the grant. Eagle tagging efforts were initiated in 2012 but no suitable eagles for tagging were captured.	Work on this effort will continue and be expanded in 2013 to include 2012 restoration/creation sites. The golden eagle study will continue.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Legislative Issues

RECOMMENDATION

- a) ADOPT the 2013 Legislative Platform;
- b) ADOPT Resolution 2013-01 to support working together with agencies from across California to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$47 million to \$80 million in the Fiscal Year 2014 Interior and Related Agencies Appropriations bill;
- c) AUTHORIZE the Chair or staff, as appropriate, to communicate items on the Platform to relevant members and staff of the U.S Congress and the California Legislature, relevant federal and state agencies, potential advocacy partners and others;
- d) AUTHORIZE payment of \$5,000 as membership dues for the California Habitat Conservation Planning Coalition in 2013.

DISCUSSION

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

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Item (b): Conservancy staff is also recommending approval of Resolution 2013-01 which is a more formal expression of Item 1 on the 2013 Legislative Platform suitable for submission Members of Congress and the federal administration. Resolution 2013-01 is virtually identical to the resolution approved last year.

Item (c): If the Governing Board approves the 2013 Platform and Resolution 2013-01, staff is also recommending that the Board authorize these positions to be communicated to appropriate parties through written communication and attendance of meetings. Staff is recommending that this authorization extend to signing coalition letters consistent with the 2013 Platform, including such letters that do not request a specific dollar amount or that request a lesser dollar amount (CHCPC legislative affairs experts believe it may be more strategic this year to stress in certain communications the need to increase funding without requesting a specific dollar amount).

A Conservancy representative has been invited to attend a short trip to Washington D.C. in March of 2013 as part of continued California Habitat Conservation Planning Coalition (CHCPC) efforts to advocate for Platform issues, Items 1-3 and 5, 7 and 8 and Conservancy staff would propose to attend as occurred in previous years. The costs of such a trip would be covered within the proposed 2013 Conservancy Budget.

The Conservancy has also been requested to host CHCPC's Annual Meeting in 2013, as more fully described under item d below. This event would also be combined with a celebration of NCCP accomplishment 10 years since the passage of the act to reform the state's Natural Community Conservation Planning Act. Elected officials and senior policy makers at the federal state and local levels are proposed to be invited to the celebration. East Bay Regional Park District has indicated a willingness to work with the Conservancy to host such an event. Such event would provide an excellent opportunity for the Conservancy to pursue its Legislative Platform. Staff is recommending that Conservancy work with CHCPC and EBRPD to hold this event.

Item (d): Staff is recommending payment of CHCPC's \$5,000 membership dues again in 2013. Our continued participation with the California Habitat Conservation Planning Coalition is an effective and cost-effective means for pursuing the Conservancy's Legislative Platform as the work of the Coalition is very consistent with the Conservancy's Legislative Platform.

During 2012, the California Habitat Conservation Planning Coalition's fourth year, the Coalition pursued support for an increase in HCP land acquisition grant funding, engaged the U.S. Fish and Wildlife Service and the U.S. Department of the Interior on budgets for these grants, and began work on resolving delays in spending land acquisition grants. This work included orchestrating a Washington D.C. advocacy trip, Coalition workshops in May and October, hosting numerous conference calls, and preparation of a wide variety of documents to pursue the Coalition's and Conservancy's legislative agendas. The Coalition's FY2013 briefing book on the request to increase funding for Federal Section 6 grants is attached (please note, the briefing book will be updated in the next few months to reflect the FY2014 request). These activities were carried out through the participation of many individuals in work groups and through considerable pro-bono staff time provided by The Nature Conservancy and the Institute for Ecological Health as well as by dues paid by members. A document explaining the 2013 CHCPC membership contributions is attached.

Each year, a CHCPC member agency takes a turn hosting the annual meeting and provides presentations and field visits that help other members understand how the host's plan works, what its challenges have been, and any innovative solutions. These meetings have provided very helpful lessons learned about a fairly unique field work—implementation of local government HCP/NCCPs. Conservancy staff has attended prior year workshops in the Riverside and San Diego Counties. The CHCPC has asked the Conservancy to host the meeting in 2013, preferably in April. The event may be combined with a celebration of NCCP accomplishments, as described in item c. Staff recommends that the Conservancy work with CHCPC to host the event.

Attachments:

- Proposed 2013 Conservancy Legislative Platform
- Resolution 2013-01
- CHCPC's Briefing Book for the FY2013 Section 6 campaign (this is the document for last year, it is being updated for FY2014)
- Document explaining CHCPC Voluntary 2013 Membership Contributions



EAST CONTRA COSTA
COUNTY HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

2013

Federal & State Legislative Platform

The 2013 Legislative Platform of the East Contra Costa County Habitat Conservancy describes the policy position of the Conservancy on state and federal legislative matters pertaining to the successful and effective implementation of the East Contra Costa County Habitat Conservation Plan (HCP) / Natural Community Conservation Plan (NCCP).

SUMMARY

In 2013, the East Contra Costa Habitat Conservancy will support and advocate for the following legislative or policy actions in the state and federal governments:

- Item 1:** *Advocate* restoring funding for the Cooperative Endangered Species Conservation Fund to \$80 million in FY2014, an increase relative to the \$47 million appropriated in FY2012 but a decrease from the \$85 million appropriated in FY2010 that is commensurate with, and not more severe than, the overall reduction in federal spending.
- Item 2:** *Request* recognition of Habitat Conversation Plans as a reliable way of streamlining critical infrastructure and economic stimulus projects in a manner that is consistent with federal environmental regulations and in the process creating many “green” jobs.
- Item 3:** *Advocate* implementation of the revised grant guidelines for the U.S. Fish and Wildlife Service (USFWS) Section 6 Grant Program so that a significant portion of the Conservancy’s fee funds can be used as match.
- Item 4:** *Request* the California Wildlife Conservation Board to continue its financial support for Conservancy projects with the goal of growing the approximately \$4.4 million contributed so far to an overall contribution of \$20 million over the next several years. Such funding would help the State and the Conservancy meet the required non-federal match for the State and Conservancy’s five approved Section 6 grants. \$90 million in State funding has already been earmarked in the voter-approved Proposition 84 for Natural Community Conservation Plans.
- Item 5:** *Advocate* for consideration of HCP/NCCP’s as a suitable means for fulfilling the requirements of SB375.

- Item 6:** *Advocate* for HCP/NCCP's to be viewed as a suitable place to spend funds collected pursuant to future state and federal climate change legislation as HCP/NCCP's effectively mitigate impacts of climate change by providing for ecological adaptation.
- Item 7:** *Advocate* for HCP/NCCP's to be viewed as critical partnerships and flagship programs that should receive increased support and elevated stature at the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife.
- Item 8:** *Advocate* for coordination of state and federal wetland regulations and regulatory programs with HCP/NCCP's in order to improve the overall efficiency, predictability and effectiveness of natural resource regulation.

2013 LEGISLATIVE PLATFORM DETAILS

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

LEGISLATIVE POSTION:

In recognition of the tremendous need for a continued federal investment in cooperative partnerships providing funds for threatened and endangered species work by nonfederal partners and assisting growth of local economies and jobs, and in partnership with approximately a dozen counties in northern and southern California, we request that the United States Congress place special emphasis on the Cooperative Endangered Species Conservation Fund (CESCF) program in Fiscal Year 2014 by providing \$80 million in the Fiscal Year 2014 Senate Interior, Environment and Related Agencies Appropriations Bill. This funding level would restore much of the cut from the last two years, but still be less than the fiscal year 2010 appropriations of \$85 million, a percentage reduction equivalent to the overall decrease in federal appropriations over that period. The CESCF appropriations exceeded \$100,000 million per year approximately a decade ago. Given the growth in the number of Habitat Conservation Plans, the CESCF ultimately needs to be funded at even higher levels. If the President proposes more than \$80 million for the CESCF for FY2014, the Conservancy will support the President's request.

BACKGROUND:

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

The CESCF program includes grant funding to states through three sub accounts - HCP Planning Assistance Grants, HCP Land Acquisition Grants, and Recovery Land Acquisition Grants. The land

acquisition programs focus on those lands that have greatest potential to benefit species at risk. The HCP planning and land acquisition grants have been very important for the preparation and implementation of large-scale HCPs in California.

The Conservancy has been the beneficiary of seven CESCO land acquisition grants providing a total of \$33,494,990 toward critical land acquisition under the East Contra Costa County HCP/NCCP. CESCO funds spent to date have contributed toward the acquisition and permanent protection of approximately 9,000 acres of habitat and future park land.

For fiscal year 2011, Congress cut CESCO very substantially, making a 30 percent cut in the fiscal year 2011 appropriations and an additional 20 percent cut in the fiscal year 2012 appropriations. This is a far greater cut than overall federal or total U.S. Fish and Wildlife Service funding. Fiscal year 2013 funding levels have not yet been set.

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

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

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

LEGISLATIVE POSITION:

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

BACKGROUND:

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

Creation of these types of jobs has been noted as a top priority of the current presidential administration.

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

LEGISLATIVE POSITION:

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

BACKGROUND:

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

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

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

continue to work with USFWS to make sure that anticipated changes in the eligibility of match funds actually occurs.

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

LEGISLATIVE POSITION:

Request the Wildlife Conservation Board to provide a substantial contribution of approximately \$20 million toward the required non-federal match for the Conservancy's five approved and active Section 6 grants. State funding has already been earmarked in the voter-approved Proposition 84 for Natural Community Conservation Plans.

BACKGROUND:

Section 6 HCP Land Acquisition funds are typically granted to States. The States administer the expenditure of the funds for specific land acquisition projects associated with the HCP named in the grant award. The Wildlife Conservation Board (WCB) is the state agency in California responsible for administering the Section 6 Land Acquisition grants. The Section 6 grants for the ECCC HCP/NCCP require a 55% non-federal match (e.g., 45% of the cost may be covered by federal funds, but 55% must be covered with non-federal funds). The Conservancy's seven approved Section 6 grants have a combined value of \$33,494,990. The required non-federal match is \$40,938,321. The HCP includes commitments for state and federal funding contributions and a substantial state contribution at this time would help the Conservancy meet the match requirements of approved Section 6 grants and conserve value habitat.

WCB administers various funding State programs to benefit wildlife, including a funding program specifically for NCCPs. Proposition 84, approved by voters in 2006, included a \$90 million line-item for NCCPs. Only four local government-led NCCPs in the state are actively seeking WCB funds for land acquisition, and the East Contra Costa County HCP/NCCP is the only one of these in northern California. In 2010, WCB staff proposed allocating the Conservancy \$5 million from its funds on hand as an initial contribution. So far, in five separate grant awards for five acquisitions, WCB has awarded the Conservancy \$4,441,401. The Conservancy plans to work with WCB to continue to seek grants on a project by project basis toward a fund-raising goal of \$20 million from WCB's Proposition 84 funds, thereby covering about half the non-federal match requirements of the already-approved Section 6 grants. Other potential state sources of funds that would be pursued include funds administered by the Coastal Conservancy and the Department of Water Resources.

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

proposed California Budget would reduce the allocation of remaining funds from about \$19 million to \$5 million. The Conservancy will continue to seek to protect the full allocation approved in 2009 as part of the Delta Legislation.

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

LEGISLATIVE POSITION:

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

BACKGROUND:

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

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

LEGISLATIVE POSITION:

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

BACKGROUND:

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

The Global Warming Solutions Act of 2006 (AB 32) required the Air Resources Board to prepare a Scoping Plan to achieve reductions in greenhouse gas (GHG) emissions in California. The Scoping Plan, approved by the ARB Board December 2008, provides the outline for actions to

reduce California's greenhouse gas (GHG) emissions and discusses the options for possible uses of allowances and revenues to be generated under the program. One such option is to provide funds toward programs that help the State adapt to climate change.

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

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

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

LEGISLATIVE POSITION:

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

BACKGROUND:

Both USFWS and CDFW have been helpful partners in implementing the East Contra Costa County HCP/NCCP, especially at the regional and field office level. However, this support could be improved if HCP/NCCPs were as high a priority in these organizations as they were in the early 1990s when the regional conservation planning effort got underway. The Conservancy should continue to seek enhanced support of HCPs and NCCPs at the state and federal levels as a key tool for conserving wildlife resources in our state and nation, and one of the only such tools that also supports economic development.

Item 8: Coordination of state and federal wetland regulations and regulatory programs with HCP/NCCP's

LEGISLATIVE POSITION:

Advocate for coordination of state and federal wetland regulations and regulatory programs with HCP/NCCP's in order to improve the overall efficiency, predictability and effectiveness of natural resource regulation.

BACKGROUND:

Regional HCP/NCCP's conserve a full range of habitats and natural communities, including wetlands and waters. Regional HCP/NCCP's are a more effective means for conservation of wetland, waters and other habitats because conservation priorities are evaluated and implemented on a regional scale that enables the most valuable resources to be targeted and that protects watershed and ecological functions. Coordinating state and federal wetland regulations and regulatory programs with HCP/NCCP's will better protect wetlands and waters and improve the efficiency and predictability of natural resource regulation. The Conservancy will work at the state and federal levels to promote such coordination. The issuance of the Regional General Permit related to the East Contra Costa County HCP/NCCP, as well as the associated Biological Opinion, represent excellent first steps toward the necessary coordination. The Conservancy now seeks coordination of the state's wetland regulations and regulatory programs with the HCP/NCCP, including the 401, Porter Cologne and Streambed Alteration programs.

Resolution No: 2013-01

RESOLUTION OF THE

East Contra Costa County Habitat Conservancy Governing Board

TO SUPPORT

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

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of the East Contra Costa County Habitat Conservancy does hereby support working together with agencies from counties across California to request that the United States Congress provide \$80 million for the Cooperative Endangered Species Conservation Fund in the fiscal year 2014 Interior, Environment and Related Agencies Appropriations bill anticipated to be passed by Congress in 2013.

Approved by the following vote on: January 23, 2013.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director

CALIFORNIA HABITAT CONSERVATION PLANNING COALITION

**U.S. Fish and Wildlife Service
Cooperative Endangered Species Conservation Fund:
Fiscal Year 2013 Funding Request**

CONSERVING NATURAL RESOURCES



FACILITATING ECONOMIC DEVELOPMENT

March 2012

REQUEST

The California Habitat Conservation Planning Coalition requests that Congress fund the Cooperative Endangered Species Conservation Fund (the "Fund") at \$80 million in Fiscal Year 2013. This would partially restore the Fund to its earlier level and help satisfy the urgent need for funding for endangered species conservation efforts, particularly conservation associated with Habitat Conservation Plans.

HABITAT CONSERVATION PLANS

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



SUPPORTED BY

Local Agencies:

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

Conservation Organizations:

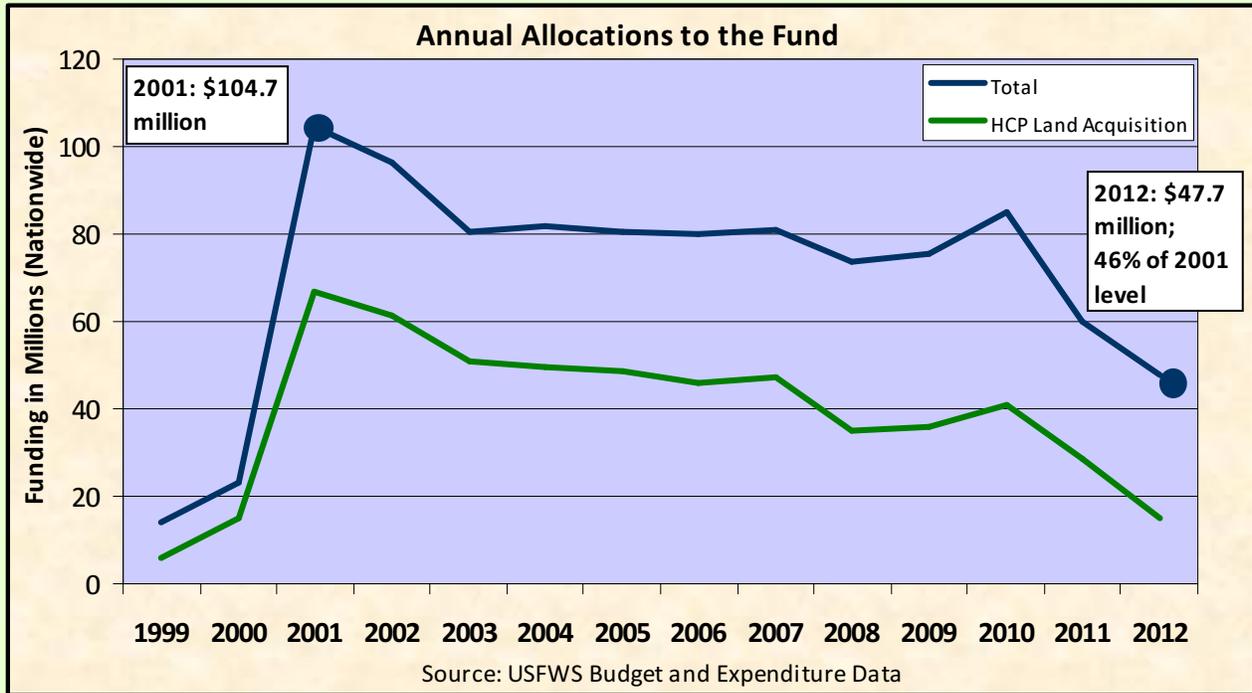
California Land Conservancy
California Native Plant Society
Endangered Habitats League
Friends of the Desert Mountains
Institute for Ecological Health
The Nature Conservancy
Sierra Foothills Audubon Society

Business/Infrastructure:

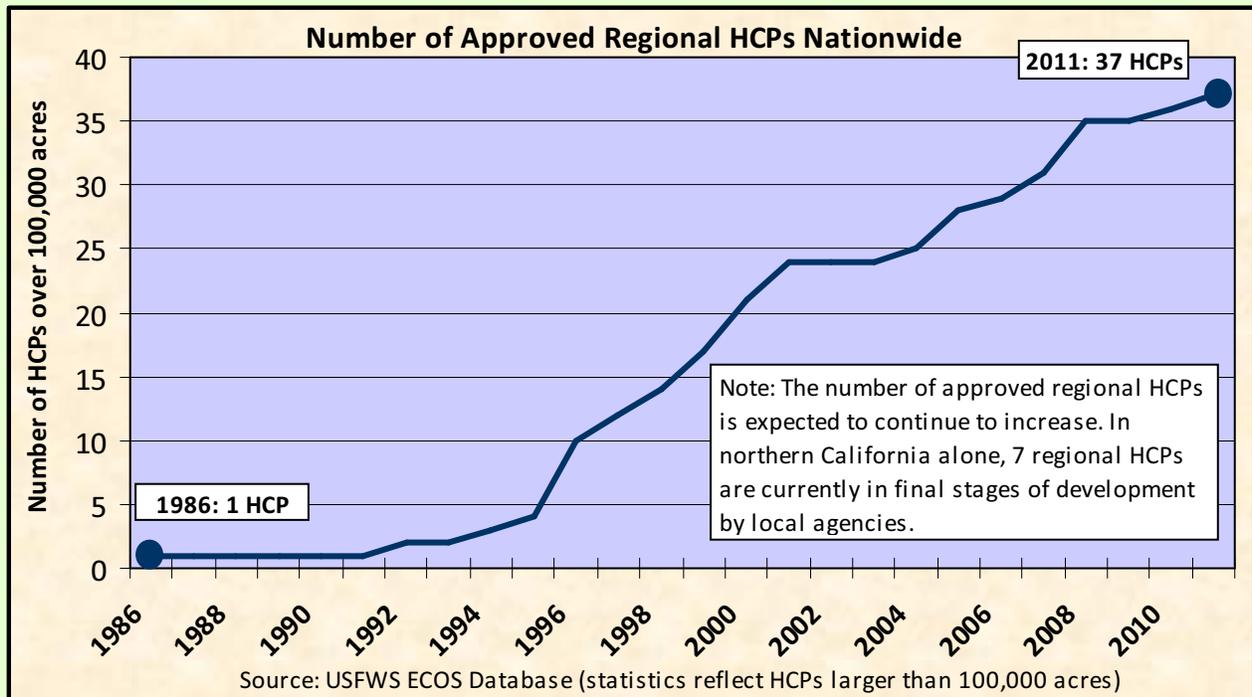
Building Industry Association of the Bay Area
Building Industry Association of San Diego County
East County Renewables Coalition
Pacific Gas and Electric Company
Sacramento Metropolitan Chamber of Commerce

WHY THE FUND ALLOCATION NEEDS TO INCREASE

A) FUNDING LEVELS HAVE DECLINED DRAMATICALLY



B) THE NUMBER OF APPROVED HCPS CONTINUES TO GROW



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

ECONOMIC AND CONSERVATION BENEFITS OF HCPs

Regional HCPs provide State and Federal regional permits for public infrastructure and private development projects based on conservation strategies that minimize conflicts between the environment and economic development. These regional umbrella permits last 30 to 75 years, transfer authority to local government, and improve certainty of the permit process for project proponents. Regional HCPs in California are expected to permit projects with a cumulative value of \$1.6 trillion.

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

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



HCPs Are Good for Businesses and Jobs

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

In the long term, streamlined permitting expedites:

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

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



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

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

ECONOMIC AND CONSERVATION BENEFITS OF HCPs



Photo: Scott Hein

Regional HCPs are a primary mechanism for the conservation of land and species, especially in fast-growing areas. Collectively, regional HCPs in California will conserve more than 1.5 million acres of land. Conserved land will be restored, enhanced and managed for the benefit of the widest array of species found in the United States. Conserved land also provides valuable open space to residents and visitors, protecting the natural beauty of these regions and providing numerous recreational opportunities.

HCPs Are a Better Way to Conserve Natural Resources

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

HCPs Facilitate Infrastructure Projects

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



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

- Jim Whalen, J. Whalen Associates Inc.

HCPs Provide Support for Working Farmers and Ranchers

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

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

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

CONSERVATION OUTCOMES AND SAMPLE ACCOMPLISHMENTS OF CALIFORNIA HCPs

- The 8,881-acre Joshua Hills acquisition, funded by \$4 million in mitigation fees from the Palm Drive/Gene Autry Trail (see pg. 6) and other Interchange projects and \$22 million from six other non-profit, federal and state sources, has created a protected corridor between the Coachella Valley Preserve and Joshua Tree National Park.

“By leveraging more than \$50 million of County General funds with nearly \$80 million of Federal Section 6 and California State park bond dollars, we have been able to acquire over 10,000 acres of open space for habitat preservation and the enjoyment of the residents of San Diego County.”

*- Ron Roberts, Chairman,
San Diego County Board of Supervisors*

Key Regional HCPs	Covered Species	Acres To Be Conserved
Butte Regional Conservation Plan	41	150,000
Coachella Valley MSHCP/NCCP	27	240,000
East Contra Costa County HCP/NCCP	28	30,000
Natomas / Metro Air Park HCPs	22	9,000
Placer County Conservation Plan	33	60,000
San Diego County Multiple Habitat Conservation Open Space Plan NCCP	263	158,000
San Diego MSCP - County Sub Area Plan	85	98,000
San Diego North County MSCP / NCCP	63	107,000
San Joaquin County Multi-species Conservation and Open Space Plan	97	101,000
Santa Clara Valley HCP/NCCP	19	36,100
Solano HCP	36	30,000
South Sacramento HCP	30	58,000
Western Riverside County MSHCP/NCCP	146	500,000
Yolo Natural Heritage Program	64	under development
TOTAL		1,577,100

- The Barron and Thomas acquisitions (right), totaling 1,650 acres, represent a recent conservation accomplishment in eastern Contra Costa County. Together, the properties bridged the last gap between Mount Diablo State Park and Black Diamond Mines Regional Preserve. These acquisitions contain a mosaic of valuable habitat types, including habitat for Alameda whipsnake, California tiger salamander and Western burrowing owl. The acquisitions were funded by \$2.7 million of Section 6 funds paired with \$3.5 million from state and local sources.



Photo: Scott Hein



- The 1,379-acre Gildred Ranch, in Ramona, California (left) is the keystone property of the Ramona Grasslands Preserve and includes the drainage of Santa Maria Creek, which falls to the San Pasqual Valley in a 200-foot seasonal waterfall. A Section 6 grant of \$5.23 million was combined with \$5.77 million in state and county funds to acquire the property from the Gildred family. After this purchase, other nearby large ranches were acquired and added to the preserve which protect the habitat of golden eagles and other birds of prey.

ECONOMIC OUTCOMES AND SAMPLE ACCOMPLISHMENTS OF CALIFORNIA HCPs



- The Palm Drive/Gene Autry Trail Interchange in Interstate 10 (above) nears completion under budget and ahead of schedule. The environmental coverage provided by the Coachella Valley Multiple Species Habitat Conservation Plan made this project "shovel ready" and led to a federal stimulus grant of \$10 million.

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

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

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

- Riverside County's Public Safety Enterprise Communication System was aging and the 20 radio tower sites covered only about 60% of the territory. Riverside County developed a plan to build 50 more sites in order to achieve 100% coverage for emergency service providers. Five sites have been permitted and built so far within areas covered by the county's Multiple Species Habitat Conservation Plan.

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





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

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



California Habitat Conservation Planning Coalition

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

Contact:

John Hopkins, Director
California Habitat Conservation Planning Coalition
409 Jardin Place
Davis, California 95616
Phone: 530-756-6455
Email: ieh@cal.net

Printed on recycled paper

California Habitat Conservation Planning Coalition

Voluntary 2013 Membership Contributions Background

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

Securing adequate federal, state and local funding to assist preparation and implementation of NCCPs and HCPs.

Coordinating NCCPs and HCPs with other federal, state and regional natural resource protection and permitting programs, including programs for adaptation to climate change.

Facilitating the development and improving the effectiveness of NCCPs and HCPs.

Strengthening understanding of and support for NCCPs and HCPs among decision makers, stakeholders and the public.

2013 Program and use of Voluntary Membership Contributions

Contributions will pay for staff time provided by IEH, as well as other expenses. Staff will provide support for our Calendar 2013 campaign to protect funding for Section 6 of the federal Endangered Species Act (the Cooperative Endangered Species Conservation fund) with a particular focus on the HCP land acquisition and HCP planning grants subaccounts. Staff will also assist other Work Groups and projects and the Steering Committee, organize Coalition business meetings and an annual meeting.

These activities will include:

- * Working to obtain NCCPs as an allowed recipient of Cap and Trade auction revenue funds (part of the California Climate Change Program)
- * Ensuring that the forthcoming state Wetlands Protection Program regulations provide for programmatic permitting by Regional Water Quality Control Boards that is coordinated with regional conservation plans
- * Promoting the importance and value of NCCPs to agency leadership and seeking specific “asks” to make regional conservation plans a higher priority. Activities will include events to celebrate the tenth anniversary of SB107, the Natural Community Conservation Planning Act and periodic meetings with regional US Fish and Wildlife Service [USFWS] and with California Department of Fish and Wildlife [CADFW] leadership.

* Developing HCP Effectiveness solutions and outreach materials, with a 2013 focus on how to prepare plans more quickly. This will include a request for a meeting of Washington leadership (Dept of the Interior and USFWS) with USFWS California leadership, CADFW leaders and other coalition members to discuss how to prepare regional conservation plans more quickly and how to make regional conservation planning a higher priority. We will also begin outreach activities to promote our solutions.

* Participating in a multi-agency group determining how to integrate aquatic resources monitoring with HCP/NCCP monitoring.

* Preparing an Economic Benefits report and determining how to have higher endowment returns (these projects require outside grant funding).

* Holding a spring meeting and field trip in connection with the East Contra Costa County Habitat Plan and an October business meeting in San Diego.

* Producing three editions of our E-newsletter.

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

The Coalition's 2012 Activity

Our Federal Funding Campaign Work Group focused on the Fiscal 2013 Cooperative Endangered Species Conservation Fund (Section 6) appropriations. We requested \$80 million in funding. The administration asked for \$60 million, the same level as Fiscal 2011. Our activities included a late March trip to Washington DC and assembling request letters to Senators Feinstein and Boxer from a variety of local government and other entities. We also organized a Dear Colleague letter from Members of Congress to the Chair and Ranking Member of the House Interior Appropriations Subcommittee. The leads for this letter were Rep McNerney (D) and Rep Lungren (R). Seventeen additional Members signed the letter.

Congress had not finalized the Fiscal 2013 appropriations as of late November 2012. The House Interior Appropriations bill provides \$14.129 million - while an extremely low figure it is much higher than the \$2.845 million proposed by the House last year. An informal Senate bill proposes \$47.7 million, the same as last year. We expect that, as before, the eventual House-Senate Conference committee will accept the Senate figure.

At the federal level we also provided material to the White House Office of Management and Budget on how regional HCPs can assist infrastructure permitting, while providing enhanced environmental benefits.

Coalition participants held meetings with US Fish and Wildlife Service Regional Director Ren Lohofener and with California Department of Fish and Game Director Chuck Bonham to promote the importance and values of NCCPs and HCPs and of Section 6 funding.

The Coalition is carrying out several Work Group activities and other projects. We are analyzing how to speed up the preparation of regional HCPs and NCCPs and developing material that we will use for an extensive outreach and education program. This is the first stage of a project that later on will examine how to improve plan implementation and then how to increase the value of regional conservation plans. We are seeking funding for the generation of a report on the economic benefits of regional HCPs and NCCPs. We are determining how to show that Cap and Trade auction revenue (product of California climate change program mandated by AB32) used by NCCPs would reduce greenhouse gas emissions as part of our advocating this use for a portion of the auction revenue. We have begun discussions on how to coordinate regional scale monitoring for wetlands and for ESA species and habitats.

We produced issues of the Coalition e-newsletter in January and August and are preparing a third issue to release at the end of the year.

The Coalition held two business meetings, a May meeting in Sacramento and an October meeting in San Diego. At these meetings Coalition leaders discussed our various issues and activities and made decisions on future work.

Voluntary 2013 Membership Contributions

In order to sustain and build the coalition's work in 2013 we need a source of funding. This provide for some staff time (at \$45 an hour) and expenses, as well as other costs. We obtain base funding for the Coalition through a system on voluntary membership contributions. This income will also improve the Coalition's ability to obtain grant funding.

There is a tiered schedule of recommended voluntary membership contributions for 2013 to reflect the varying funding capacities of Coalition members:

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

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

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

2012 Membership Contributions

The coalition received total of \$32,000.00 in voluntary membership dues from the California Land Conservancy, Coachella Valley Conservation Commission, County of San Diego, East Contra Costa Habitat Conservancy, Endangered Habitats League, ICF International, Institute for Ecological Health, The Nature Conservancy, Pacific Gas and Electric, Resources Law Group, San Joaquin Council of Governments, Solano County Water Agency and the Yolo Natural Heritage Program.

Management and Reporting

The Coalition's Steering Committee oversees spending of the Coalition's funds. There are quarterly reports and there will be a 2011 annual report. Contributors will receive the annual report and, if they wish, the quarterly reports.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2013 Budget and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) **APPROVE the 2013 Conservancy Budget.**
- b) **AUTHORIZE staff to execute annual contracts for on-going consulting services with:**
 - **ICF Jones and Stokes: not to exceed \$289,000 for the term from January 1, 2013 through December 31, 2013;**
 - **H.T. Harvey and Associates: not to exceed \$260,000 for the term from January 1, 2013 through December 31, 2013;**
 - **Restoration Resources: not to exceed \$50,000 for the term from January 1, 2013 through December 31, 2013;**
 - **Thunder Mountain Enterprises: not to exceed \$50,000 for the term from January 1 2013 through December 31, 2013;**
 - **Monk and Associates: not to exceed \$50,000 for the term January 1, 2013 through December 31, 2013.**
- c) **AUTHORIZE staff to execute a contract for legal services with Resources Law Group not to exceed \$90,000 for a term from January 1, 2013 through December 31, 2013.**

DISCUSSION

Item (a): Please find attached a proposed 2013 Conservancy Budget (Table I-1) and supporting tables prepared by staff for discussion by the Board.

Table I-1: The 2013 Conservancy Budget, Table I-1, provides recommended expenditures by program area from the various funding sources controlled by the Conservancy or related to the

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

I HERBY 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

HCP, including the Development Fee Account, the Wetland Mitigation Fee Account, and the various grant funds awarded (or proposed) to support implementation tasks associated with the HCP.

The California Wildlife Foundation holds an account set up by the wildlife agencies to help match the Conservancy's efforts to implement the HCP/NCCP. This account contains pre-plan mitigation payments collected by the wildlife agencies as well as mitigation payments from activities not covered by the HCP. The current balance is approximately \$3.6 million. The wildlife agencies control disbursements from this account. The 2013 Budget does not preclude the Conservancy from requesting grants of these funds. However, given that fee revenue is lower than expected due to economic conditions and varies significantly year to year, staff recommends requesting little or no funding from this account, leaving funding available to be requested later should funding critical funding gaps emerge.

Tables I-2 through I-10: Tables I-2 through I-10 present detailed cost estimates by program area (e.g., Administration and Project Permitting, Land Acquisition, etc.). Detailed cost estimates are excerpted from the HCP as a point of comparison with the detailed estimates provided for the proposed 2013 Budget (see additional background information below on comparison with HCP estimates).

The 2013 estimates that form the basis for the 2013 Budget are shaded light blue. Prior Conservancy Budget amounts are also provided for comparison purposes. Table I-2 summarizes County staff costs, which are distributed among the various program areas. Tables I-3 through I-10 provide the basis for the budget in Table I-1 for each program area. The purpose of including these tables is to provide more information on what these program areas encompass and how the estimates were derived.

Background on HCP cost estimates presented for comparison: As was the case in developing previous Budgets, staff felt the cost estimate information presented in Appendix G of the HCP/NCCP would provide a useful basis of comparison for the 2013 Budget. Cost estimate information for years 6 to 10 of implementation was compiled from Exhibit G for the Initial Urban Development Area Scenario (previous budgets compared expenditures to the year 1 to 5 estimates from the HCP for the Maximum Urban Development Area Scenario; the change was made because 2013 will be year six of implementation; also staff felt the smaller budget of the Initial Scenario made a better comparison at this time). The Year 6 to 10 cost estimates were divided by five to calculate the average annual costs during this five year period.

This estimated average annual cost from the HCP is useful information but there are some things to keep in mind when making comparisons:

- Since the costs of some tasks may change significantly during the five year period (e.g. land management), the annual average of the five-year cost estimate may over or underestimate needs in early years.
- The estimates from the HCP are in 2005 and 2006 dollars. The Consumer Price Index has increased about 14% since 2005 and about 14% since 2006.

- The Conservancy has adopted an approach to implementing the HCP/NCCP that reflects funding opportunities and constraints. For example, land acquisition grants have been relatively plentiful while fee revenue has been relatively scarce, and the Budget has reflected these realities. The HCP estimates do reflect funding variability.

Table II: Table II presents updated information on approved grants. The total amount of grant funding that has been approved for award to the Conservancy is \$47,135,022. Of this amount, \$31,949,400 has been spent (this total includes a few hundred thousand dollars that has been spent by the Conservancy but not yet reimbursed by grant funders). Awarded grant funds not yet spent total \$15,160,722, but of this amount, approximately \$1.5 million is encumbered or proposed for specific projects. Grant funding totals do not reflect funding provided by East Bay Regional Park District (EBRPD), either through its own funds or grants received by EBRPD. EBRPD has contributed more \$13 million of its funds or its grant funds toward joint land acquisition projects alone. Approved grant totals include only those Proposition 84 funds that have actually been approved by the California Wildlife Conservation Board (WCB) to date (\$4,441,401). The Conservancy has adopted a medium-term goal through its Legislative Platform of securing \$20 million from Proposition 84 (e.g. \$15 to 16 million more than has been received to date).

Table III: Table III is an update of the Budget Status Table presented in July. It compares the approved 2012 Budget with actual expenditures that had cleared the accounting process by mid December and also takes into account expenditures projected to occur before the end of the year but not yet reflected in the Conservancy's accounting. Table III indicates that Conservancy expenses for 2012 will be within the approved Budget, though it is possible Planning and Design expenditures may exceed the budget level for that category by a small amount (estimated at \$5,000), which is well within the budget for contingency.

Considerations in developing the 2013 Budget: The proposed 2013 Budget has been adapted from the 2012 Budget approved last year. Noteworthy aspects of the allocations proposed for 2012 include the following:

- Recommended expenditures for Land Acquisition remain high. This category is very heavily funded by grants, the vast majority of which have deadlines for expending funds that should not be missed. Further, market conditions are favorable for land acquisition. As a result of all these factors, the recommendation for this category is aggressive. However, it should be noted that, like last year, the recommended expenditures may exceed what we are capable of spending this year and will depend on willing sellers, the timing of acquisitions, the ability to secure match and the pace of grant procurement. Staff have provided an ambitious but reasonable estimate of what it may be possible to spend this year given these factors, but it would be helpful to the Conservancy's long term goals if grant funding expenditures allowed us to exceed the budget amount for this category.
- Overall, Budget allocations have increased 21% from the 2012 Budget. Excluding land acquisition, Budget allocations have decreased 1% since last year (which was down 24% from the year before). The primary reason for the flat non-land acquisition budget levels is that funding constraints for these categories remain.

- Planning and Design for Management and Restoration is up 14% while restoration and creation is down 22% mainly because we propose to focus restoration program efforts in 2013 on designing mid-size or larger projects that will be built in later years.
- Environmental compliance is up 10% mainly because a concerted effort to finalize regional wetlands permitting is proposed and there will be substantial work to permit the restoration projects being designed this year.

Recommendation on 2013 Budget: Staff recommends that the Governing Board discuss the Proposed Budget, determine any modifications or clarifications, and approve the Budget with any modifications. Consistent with the expenditure policies approved in October 2007, the total amounts for each program area in the Budget would be figures that could not be exceeded without amendment of the Budget. The detailed estimates provided in Tables I-2 through I-10 provide the basis for the program area totals but the subcategories presented are estimates not binding totals. However, one exception is that the total estimated maximum cost of all County staff support plus the estimated maximum cost of the Contract Planner working full time for the Conservancy, which is \$724,896 (\$538,776 plus \$186,120), should also be designated by the Board as an expenditure limit that may not be exceeded without further approval of a revised amount. This recommendation is offered to be consistent with the Joint Exercise of Powers Agreement forming the Conservancy which provides that the Governing Board shall set an annual limit on the amount of County staff costs that may be recovered from the Conservancy.

Item (b): Staff recommends the actions set forth below with respect to firms providing on-going consulting services to the Conservancy. All contracts are consistent with the recommended 2013 Budget.

ICF Jones and Stokes:

The recommendation is to execute a contract for \$289,000 for a one year term from January 1, 2013 through December 31, 2013. Please find an overview below:

- Contract amount: \$289,000
- Primary tasks: full-time contract planner to manage HCP/NCCP permitting program; preparation of annual report, preserve management plans, monitoring program plan and exotic pest control plan; and support to effort to coordinate wetlands permitting with the HCP/NCCP
- Funding sources: Conservancy funds, administrative charges collected from applicants, grant funds from California Department of Fish and Game for development of preserve management plan and monitoring plan.

ICF Jones and Stokes has provided a range of services to the Conservancy since 2007 and a continuation of that support is vital in 2013. Staff worked with ICF to develop cost projections for key tasks that will continue in 2013 and used this information as background in crafting the Proposed 2013 Conservancy Budget. As a result of general economic condition and the somewhat slow pace of fee revenues, the contract limit, reduced from 2009 and 2010 levels will remain approximately constant for 2013. Key tasks for ICF Jones and Stokes in 2013 include:

- Preparation of preserve management plans and system-wide management plans required by the HCP; a first draft of the Byron Hills Preserve Management Plan was completed in 2012 and a final plan will be approved in 2013. Work on the system-wide Exotic Plant Control Program Plan will also be initiated in 2012. And initial work on another regional management plan. [Approximately \$35,000 for this task]
- Initiate preparation of the Monitoring Program plan, as required by the HCP/NCCP [Approximately \$20,000 for this task]
- Provision of a consulting planner to assist the Conservancy five days a week for 12 months with review of permit applications, development and upkeep of comprehensive tracking databases, and general program support (in lieu of the Conservancy hiring a full-time planner); [Approximately \$180,000 for this task]
- Assistance with completing the regional wetlands permitting programs initiated during development of the HCP; [Approximately \$20,000 for this task]
- Assistance with preparation of the 2011 Annual Report and additional design on databases required to track the Conservancy's compliance with the Plan; [Approximately \$25,000 for this task]
- Provision of biological expertise to assist with answering technical questions, support the Conservancy with pre-acquisition assessments and assist with day to day operation of the Plan; [Approximately \$10,000 for this task]

The proposed contract is consistent with the Proposed 2013 Conservancy Budget.

H.T. Harvey & Associates:

The recommendation is to execute a contract for \$260,000 for the term January 1, 2013 through December 31, 2013. Please find an overview below:

- Contract Amount: \$260,000
- Primary tasks: Planning and design of the Hess Triangle Creek and Wetland Restoration Project, restoration opportunities analysis, CEQA species analysis, on-call biological work
- Funding sources: Department of Water Resources grant, Conservancy funds

H.T. Harvey and Associates provided a range of services to the Conservancy in 2013. Staff worked with H.T. Harvey and Associates to develop cost projections for key tasks that will continue in 2013 and used this information as background in crafting the Proposed 2013 Conservancy Budget. The Conservancy has a grant for wetland restoration that would cover most of the expense of this contract (\$650,000 from the Department of Water Resources - Integrated Regional Water Management Program). The grant must be spent by December 2014 and must be used for restoration or acquisition actions in the western portion of the HCP Plan Area. The Hess Triangle Creek and Wetland Restoration Project on the portion of the former Land Waste Management Property which is south of Kirker Pass Road would be eligible for the grant funds and is the primary work addressed by the proposed contract. The Board approved a contract with H.T. Harvey and Associates in 2012 to initiate planning for this project and this new contract is recommended primarily to continue that work.

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

- Design, development of construction documents and permitting of the Hess Triangle Creek and Wetland Restoration Project (to be constructed in 2014) . [Approximately \$225,000 for this task]
- Finalization of comprehensive report analyzing all special status species with a potential to occur in the area (a list many times larger than the 28 covered species) with respect to the conservation measures of the HCP. The report is intended as a document the Conservancy and other customers of the Plan can use to streamline their CEQA measures. With this report and the HCP EIR, project proponents would have effective base upon which biological impact sections could tiered. [Approximately \$5,000 for this task]
- Conservancy properties restoration assessment, development of opportunities and constraints analysis, development of concept designs [Approximately \$25,000 for this task]
- On-call biological services including advising on adaptive management of restoration projects [Approximately \$5,000 for this task]

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

Monk and Associates: The recommendation is to authorize staff to execute a contract with Monk and Associates for \$50,000 for the term January 1, 2013 through December 31, 2013. Please find an overview below:

- Contract amount: \$50,000
- Primary tasks: Monitoring of Souza I and Upper Hess, Souza II Corral, Vaquero Farms South wetland projects. Complete as-built reports for Souza I corral and Vaquero Farms South vernal pools. Provide restoration opportunities analysis and on-call biological services related to unanticipated botanical and wildlife tasks that may be encountered on properties or projects.
- Funding sources: Conservancy funds

Monk and Associates designed the Souza I pond restoration/creation project (2008) and has been providing the required monitoring for that project as well as the Upper Hess project. Monk and Associates designed and oversaw the construction/restoration in late 2012 of three small vernal pools on Souza II and Vaquero Farms South.

- Monitoring hydrology and vegetation of Souza I and Upper Hess, Souza II corral and Vaquero Farms South wetland restoration projects [Approximately \$28,000 for this task]
- Complete As-built reports for Souza II corral and Vaquero Farms South wetlands [Approximately \$4,000 for this task]
- Design potential small vernal pool fairy shrimp restoration project [Approximately \$10,000]
- Conservancy properties restoration assessment, [Approximately \$5,000]
- On-call biological tasks [Approximately \$3,000]

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

Restoration Resources, Inc.: The recommendation is to authorize staff to execute a contract with Restoration Resources, Inc. for on-call maintenance tasks for \$50,000 for the term January 1, 2013 through December 31, 2013. Please find an overview below:

- Contract amount: \$50,000
- Primary tasks: Maintenance and Adaptive Management work on Souza I, Souza 2, Upper Hess and future restoration projects
- Funding sources: Conservancy funds

The Conservancy has now completed construction on seven wetland restoration/creation projects: Lentzner Springs Wetland (2008), Vasco Caves - Souza I Pond (2008), Souza II Wetlands (2009), Irish Canyon (2010), Upper Hess (2011), Souza II corral (2012) and Vaquero Farms South (2012). These projects need varying degrees of maintenance over the coming years. Anticipated maintenance activities include weeding, replacing plants, repairing silt fences and other best management practices that prevent silt from entering waterways. In addition, contractor support is needed to perform management and enhancement actions required by the Plan, such as constructing grazing enclosures to protect resources, general exotic plant control, etc.

Restoration Resources offers a competitive fee schedule, are able to provide a broad array of services on a timely basis, are responsive to Conservancy staff requests and have the expertise to provide the maintenance needed.

Tasks included in this contract include:

- Plant maintenance: weeding and replacement seeding/planting as needed
- Invasive plant control
- Adaptive Management activities on Souza I, Souza II, Hess and future restoration projects
- Installation and maintenance of erosion control measures
- Fence/gate installation and maintenance
- On-call biological maintenance and property management tasks

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

Thunder Mountain Enterprises: The recommendation is to authorize staff to execute a contract with Restoration Resources, Inc. for on-call maintenance tasks for \$50,000 for the term January 1, 2013 through December 31, 2013. Please find an overview below:

- Contract amount: \$50,000
- Primary tasks: Maintenance and Adaptive Management work on Lentzner Spring restoration site and future restoration projects
- Funding sources: Conservancy funds

Thunder Mountain is the contractor that built and provided the first four years of maintenance on the Lentzner Spring Restoration Project. The staff of Thunder Mountain is familiar with the site, the wetland features, and plants that have been installed. Thunder Mountain has also demonstrated particular strength for designing and implementing erosion control best management practices which are often a key need at stream and wetland restoration sites.

Thunder Mountain has provided adaptive management services on the Souza II property, at the Upper Hess restoration project as well as the Vaquero Farms South vernal pools. They offer a competitive fee schedule, are extremely responsive to Conservancy staff requests and have the expertise to provide the maintenance needed.

Tasks included in this contract include:

- Plant maintenance: weeding and replacement seeding/planting as needed
- Invasive plant control
- Adaptive Management activities on Souza II, Hess and future restoration projects
- Installation and maintenance of erosion control measures
- Fence/gate installation and maintenance
- On-call biological maintenance and property management tasks

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

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

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

Resources Law Group assisted with developing all of the agreements related to the HCP/NCCP and have also assisted with a large number of initial implementation tasks since approval of the HCP. Substantial future and on-going work remains. Key tasks include:

- General legal support to the operations of the Conservancy, including advising the Governing Board and staff, legal support to Conservancy meetings, reviewing application of agreement templates, legal assistance to staff with the take authorization program (including reviewing and finalizing agreements with Participating Special Entities), development of agreements with EBRPD for management funding and legal support to the Conservancy's legislative program. [approximately \$50,000 for this task]
- Assisting with development of regional wetlands permitting programs coordinated with the HCP/NCCP, including negotiating and continued drafting of an agreement with the wetlands regulatory agencies to coordinate wetlands permitting with the HCP (In Lieu fee Instrument). [approximately \$35,000 for this task]
- Assisting with the land acquisition programs, including assisting staff with applying agreement templates, specialized due diligence on land acquisition prospects, assistance with interacting with state and federal granting agencies. [approximately \$10,000 for this task]

The recommended contract amount of \$90,000 is the same level as the 2012 contract. The contract amount recognizes that many of the foundational documents associated with the Conservancy have been completed but that a big effort is expected this year on regional wetlands permitting. This recommended contract amount is consistent with the recommended 2013 Conservancy Budget.

Attachments:

- Proposed 2013 Conservancy Budget and supporting tables

Proposed 2013 Conservancy Budget: Recommended Expenditures and Comparison to Budgets From Previous Years

Table I-1

Cost Category	Proposed 2013 Expenditures						Approved 2012 Conservancy Budget		Approved 2011 Conservancy Budget		Approved 2010 Conservancy Budget		Approved 2009 Conservancy Budget		Approved 2008 Conservancy Budget	
	Development Fee Account	Wetland Mitigation Fee Account	Grant Funding	TOTAL (2013)	% of Total	% Change from 2012	TOTAL (2012)	% of Total	TOTAL (2011)	% of Total	TOTAL (2010)	% of Total	TOTAL (2009)	% of Total	TOTAL (2008)	% of Total
Program Administration and Permitting Program	\$609,840	\$0	\$0	\$609,840	4%	0%	\$609,596	5%	\$606,981	4%	\$514,189	3%	\$493,665	3%	\$494,575	4%
Land Acquisition	\$230,000	\$0	\$13,799,084	\$14,029,084	88%	25%	\$11,268,217	85%	\$14,025,099	84%	\$14,046,303	89%	\$14,046,495	85%	\$9,900,667	84%
Management, Restoration & Recreation Planning & Design	\$100,136	\$30,000	\$180,000	\$310,136	2%	14%	\$271,029	2%	\$303,259	2%	\$232,139	1%	\$328,170	2%	\$338,322	3%
Habitat Restoration/Creation	\$0	\$206,609	\$50,000	\$256,609	2%	-22%	\$331,069	3%	\$843,259	5%	\$331,920	2%	\$980,239	6%	\$407,326	3%
Environmental Compliance	\$81,086	\$40,000	\$50,000	\$171,086	1%	10%	\$155,921	1%	\$165,770	1%	\$151,303	1%	\$166,495	1%	\$109,000	1%
HCP/NCCP Preserve Management and Maintenance	\$219,318	\$0	\$0	\$219,318	1%	5%	\$209,202	2%	\$264,257	2%	\$298,151	2%	\$293,247	2%	\$404,100	3%
Monitoring, Research, and Adaptive Management	\$119,756	\$40,000	\$100,000	\$259,756	2%	-6%	\$275,202	2%	\$263,817	2%	\$169,565	1%	\$94,345	1%	\$66,500	1%
Remedial Measures	\$6,000	\$0	\$0	\$6,000	0%	0%	\$6,000	0%	\$6,000	0%	\$6,000	0%	\$6,000	0%	\$6,000	0%
Contingency Fund (5% of non-land acquisition costs)	\$91,337	\$0	\$0	\$91,337	1%	-1%	\$92,601	1%	\$122,367	1%	\$84,863	1%	\$117,808	1%	\$90,141	1%
TOTAL 2013 EXPENDITURES	\$1,457,472	\$316,609	\$14,179,084	\$15,953,166	100%	21%	\$13,218,838	100%	\$16,600,808	100%	\$15,834,433	100%	\$16,526,464	100%	\$11,816,631	100%

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

Table I-2

Personnel Cost estimates from the HCP

	Total cost per FTE per Year (from HCP)	Estimated FTEs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	How These Functions Are/Will Be Performed in the Conservancy
Administrative Personnel				
Executive Director ("E.D.")	\$134,640	1	\$134,640	County principal planner (80% FTE)
IT- Database / GIS Manager	\$87,516	0.5	\$43,758	County GIS staff, County IT staff & contract planner
Budget Analyst	\$74,052	0.5	\$37,026	Principal planner (10% FTE); County accountants
Acquisition Specialist	\$100,980	1	\$100,980	County prin. plnr.(10% FTE); outsourced to EBRPD/others
Grant Specialist / Conservation Planner	\$94,248	1	\$94,248	County Senior Planner (20% FTE) & contract planner
Admin - Secretary	\$60,588	0.5	\$30,294	County secretaries
Total administrative personnel		4.5	\$440,946	
Restoration Planning, Design, & Implementation and Monitoring Personnel²				
Senior Specialist	\$107,712	1	\$107,712	Outsourced to consultants
Project Manager	\$99,054	2	\$198,108	County senior planner (40% FTE) and consultants
Technical Support	\$67,320	2	\$134,640	County associate planner (10% FTE) & consultants
Total restoration personnel		5	\$440,460	
Preserve Management and Maintenance Personnel				
Preserve Manager	\$100,980	1	\$100,980	Outsourced to Conservancy land partners
Laborer	\$53,856	3	\$161,568	Outsourced to Conservancy land partners
Admin - Secretary	\$60,588	0.5	\$30,294	Outsourced to Conservancy land partners
Total Management and Maintenance Personnel		4.5	\$292,842	
TOTAL PERSONNEL (FROM HCP)		14	\$1,174,248	

County Staff Cost Estimates for the 2013 Conservancy Budget

	Projected average billing rate					Estimated FTE					Estimated Annual Cost				
	2013	2012	2011	2010	2009	2013	2012	2011	2010	2009	2013	2012	2011	2010	2009
Principal Planner	\$157	\$159	\$152	\$193	\$194	0.80	0.80	0.80	0.70	0.70	\$236,342	\$239,684	\$228,104	\$254,120	\$255,462
Senior Planner	\$128	\$129	\$123	\$161	\$158	0.80	0.80	0.80	0.70	0.70	\$191,873	\$193,775	\$185,511	\$211,534	\$207,783
Associate Planner	N/A	N/A	\$131	\$135	\$135	0.10	0.10	0.10	0.25	0.25	\$0	\$0	\$24,628	\$63,345	\$63,345
IT staff	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	\$0	\$0	\$0	\$0	\$0
GIS staff	\$137	\$130	\$121	N/A ⁴	N/A ⁴	0.25	0.25	0.25	N/A ⁴	N/A ⁴	\$64,354	\$61,142	\$56,964	\$0	\$0
Accounting staff	\$98	\$98	\$87	N/A ⁴	N/A ⁴	0.25	0.25	0.25	N/A ⁴	N/A ⁴	\$46,207	\$45,924	\$40,784	\$0	\$0
Secretarial staff	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	\$0	\$0	\$0	\$0	\$0
Senior management staff / HR	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	N/A ⁴	\$0	\$0	\$0	\$0	\$0
TOTAL COUNTY PERSONNEL											\$538,776	\$540,525	\$535,991	\$528,999	\$526,590

Notes:

- (1) Costs detailed in this Table are not reflected in summary Budget because they are split estimates for program areas
- (2) Costs for these staff are equally split between three program areas: Planning & Design, Restoration, and Monitoring
- (3) Reflects 1.5% average rate increase relative to County's FY12/13 rates to account for possible step/longevity/other salary adjustments.
- (4) Costs for these staff services are not billed directly. They are included in the rates for the staff that are billed directly.

Program Administration and Permit Program¹

Table I-3

	Estimated Costs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Office Space	\$28,500	\$5,700	\$0	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
Office Equipment by Employee	\$20,200	\$4,040	\$0	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
General Office Equipment	\$39,000	\$7,800	\$0	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
GIS/Database Equipment	\$32,500	\$6,500	\$0	\$0	\$0	\$0	\$0	\$0	costs included in planner rates
Maintenance of General Office Equipment	\$2,275	\$455	\$0	\$0	\$0	\$0	\$0	\$455	costs included in planner rates
Maintenance of GIS Database equipment	\$3,250	\$650	\$0	\$0	\$0	\$0	\$0	\$650	costs included in planner rates
Employees									
Executive Director	\$673,200	\$134,640	\$0	\$0	\$0	\$0	\$0	\$0	Principal planner performs these functions
IT- Database / GIS Manager	\$437,580	\$87,516	\$0	\$0	\$0	\$0	\$0	\$0	Contract planner/GIS planner (below) share database responsibilities; IT staff costs included in planner rates
Budget Analyst	\$370,260	\$74,052	\$0	\$0	\$0	\$0	\$0	\$0	Duties performed by County finance team
Acquisition Specialist	\$504,900	\$100,980	\$0	\$0	\$0	\$0	\$0	\$0	Outsourced to EBRPD; principal planner provides some of this function
Grant Specialist / Conservation Planner	\$471,240	\$94,248	\$0	\$0	\$0	\$0	\$0	\$0	Senior planner perform these functions
Admin - Secretary	\$302,940	\$60,588	\$0	\$0	\$0	\$0	\$0	\$0	Secretary costs included in planner rates
Principal Planner	n/a	n/a	\$88,628	\$89,881	\$114,052	\$145,211	\$145,978	\$102,666	Principal planner 30% FTE (position also has budget increments in other categories)
Senior planner	n/a	n/a	\$71,952	\$72,666	\$69,567	\$90,658	\$59,367	\$24,448	Senior planner 30% FTE (position also has budget increments in other categories)
Senior GIS Planner	n/a	n/a	\$38,612	\$36,685	\$34,178	previously covered in other planner rates			Senior GIS planner 15% FTE (position also has budget increment in other category)
Accountant	n/a	n/a	\$46,207	\$45,924	\$40,784	previously covered in other planner rates			Accountant 25% FTE
Senior Planner (new)	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$184,356	Propose not hiring 2nd senior planner for cost-efficiency and flexibility purposes
Employees Subtotal	\$2,760,120	\$552,024	\$245,400	\$245,156	\$258,581	\$235,869	\$205,345	\$311,470	
Travel	\$32,813	\$6,563	\$4,000	\$4,000	\$3,000	\$3,000	\$3,000	\$6,000	
Vehicle / Mileage Allowance	\$4,809	\$962	\$4,000	\$4,000	\$5,000	\$3,000	\$3,000	\$1,000	
Insurance	\$203,500	\$40,700	\$20,000	\$20,000	\$20,000	\$20,000	\$25,000	\$35,000	
Legal Assistance (general)	\$150,000	\$30,000	\$50,000	\$50,000	\$50,000	\$45,000	\$50,000	\$50,000	incl. legislative and permitting support
Financial Analysis Assistance	\$15,500	\$3,100	\$20,000	\$20,000	\$40,000	\$20,000	\$10,000	\$3,000	Annual outside audit (no fee audit this year)
JPA Member Meeting Stipend	\$15,000	\$3,000	\$0	\$0	\$0	\$0	\$0	\$0	
In-Lieu funding for Law Enforcement/Fire	\$28,519	\$5,704	\$0	\$0	\$0	\$0	\$0	\$2,000	
Contractor assistance with program admin	\$0	\$0	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	Annual report, database analysis, tech review of permit apps; general tech support
Contract planner	\$0	\$0	\$165,440	\$165,440	\$150,400	\$112,320	\$112,320	\$0	Manages take auth. process; manages databases; general coordination role (estimate assumes 80% FTE at \$110/hour)
Membership in CHCPC	\$0	\$0	\$5,000	\$5,000	\$5,000	\$0	\$0	\$0	Primary method for implementing Legislative Program
Miscellaneous equipment and supplies	\$0	\$0	\$1,000	\$1,000	\$0	\$0	\$0	\$0	dedicated Conservancy laptop / food for GB meetings / etc.
East County Water Management Assoc.	\$0	\$0	\$10,000	\$10,000	\$10,000	\$0	\$0	\$0	Conservancy's projected share of IRWMP grant writing costs
Public Relations and Outreach	\$125,000	\$25,000	\$25,000	\$25,000	\$5,000	\$15,000	\$25,000	\$25,000	includes intern for legislative effort, public outreach, web page, publications
TOTAL	\$3,460,986	\$692,197	\$609,840	\$609,596	\$606,981	\$514,189	\$493,665	\$494,575	

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

Land Acquisition

Table I-4

	Estimated Costs From HCP Years 6 - 10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					
			2013	2012	2011	2010	2009	2008
<i>Capital Costs</i>								
Land Costs	\$29,485,080	\$5,897,016	\$13,750,000	\$11,000,000	\$13,750,000	\$13,750,000	\$13,750,000	\$9,350,000
Due Diligence	\$1,285,710	\$373,623	\$229,084	\$228,217	\$225,099	\$226,303	\$226,495	\$215,667
Planning Surveys	\$46,425	\$9,285	\$50,000	\$40,000	\$50,000	\$70,000	\$70,000	\$170,000
Site Improvements	\$925,344	\$192,783	\$160,000	\$140,000	\$165,000	\$165,000	\$165,000	\$165,000
TOTAL	\$31,742,559	\$6,472,707	\$14,029,084	\$11,268,217	\$14,025,099	\$14,046,303	\$14,046,495	\$9,900,667

Land Cost Estimates and Assumptions

	Estimated Costs From HCP Years 6 - 10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					
			2013	2012	2011	2010	2009	2008
Number of parcels	40	8	12	10	12	12	12	10
Number of properties	n/a	n/a	6	5	6	6	6	5
Overall acreage acquired	5,060	1,012	2,500	2,000	2,500	2,500	2,500	1,700
Average cost per acre	n/a	n/a	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500
TOTAL	\$29,495,080	\$5,899,016	\$13,750,000	\$11,000,000	\$13,750,000	\$13,750,000	\$13,750,000	\$9,350,000

Due Diligence

	Estimated Costs From HCP Years 6 - 10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget					
			2013	2012	2011	2010	2009	2008
Number of Parcels to be Purchased	40	8.4	12	10	12	12	12	10
Number of Parcels Investigated	50	10.6	14	12	14	14	14	12
Appraisals	\$204,000	\$43,248	n/a	n/a	n/a	n/a	n/a	n/a
Preliminary Title Report	\$25,500	\$5,406	n/a	n/a	n/a	n/a	n/a	n/a
Phase I Site Assessment	\$306,000	\$64,872	n/a	n/a	n/a	n/a	n/a	n/a
Boundary Survey	\$312,120	\$66,239	n/a	n/a	n/a	n/a	n/a	n/a
Legal Description	\$204,000	\$43,248	n/a	n/a	n/a	n/a	n/a	n/a
Monumentation	\$234,090	\$49,629	n/a	n/a	n/a	n/a	n/a	n/a
Land acquisition specialist	\$504,900	\$100,980	n/a	n/a	n/a	n/a	n/a	n/a
Principal planner (0.1 FTE)	n/a	n/a	\$29,543	\$29,960	\$28,513	\$36,303	\$36,495	\$30,667
Senior GIS Planner (0.1 FTE)	n/a	n/a	\$25,742	\$24,457	\$22,786	n/a	n/a	n/a
Contract planner (0.1 FTE)	n/a	n/a	\$18,800	\$18,800	\$18,800	n/a	n/a	n/a
Proposed Agreement with EBRPD	n/a	n/a	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$90,000
Legal support to land acquisition	n/a	n/a	\$5,000	\$5,000	\$5,000	\$40,000	\$40,000	\$0
Due diligence contingency	n/a	n/a	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$50,000
Due diligence costs with other partners	n/a	n/a	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$45,000
TOTAL	\$1,790,610	\$373,623	\$229,084	\$228,217	\$225,099	\$226,303	\$226,495	\$215,667

Table I-4 (continued)

Pre-Acquisition Assessment / Planning Surveys

	<i>Estimated Costs From HCP Years 6 - 10</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for Conservancy Budget</i>					
			2013	2012	2011	2010	2009	2008
Land cover type surveys	\$0.00	\$0	\$10,000	\$8,000	\$10,000	\$10,000	\$15,000	\$30,000
Covered Species	\$0.00	\$0	\$10,000	\$8,000	\$10,000	\$10,000	\$10,000	\$10,000
Covered Plant Surveys	\$0.00	\$0	\$10,000	\$8,000	\$10,000	\$20,000	\$20,000	\$100,000
Covered Wildlife Surveys	\$0.00	\$0	\$10,000	\$8,000	\$10,000	\$20,000	\$10,000	\$30,000
Assess & document conservation value	\$0.00	\$0	\$10,000	\$8,000	\$10,000	\$10,000	\$15,000	\$0
Planning Survey Subtotal	\$0.00	\$0	\$50,000	\$40,000	\$50,000	\$70,000	\$70,000	\$170,000

"HCP assumes that by Year 6, preserve management staff will be in place and will perform these surveys as part of the monitoring budget. Such staff is not in place. The estimated annual cost in the HCP for years 1 to 5 is \$221,883."

Site Improvements

	<i>Estimated Costs From HCP Years 6 - 10</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for Conservancy Budget</i>					
			2013	2012	2011	2010	2009	2008
Number of Parcels Purchased	40	8	12	10	12	12	12	10
Demolition of Old Facilities	\$204,000	\$42,500	\$30,000	\$25,000	\$30,000	\$30,000	\$30,000	\$30,000
Repair of Boundary Fence	\$374,544	\$78,033	\$60,000	\$55,000	\$60,000	\$60,000	\$60,000	\$60,000
Repair and Replacement of Gates	\$163,200	\$34,000	\$30,000	\$25,000	\$30,000	\$30,000	\$30,000	\$30,000
Signs (Boundary, Landmark, ect.)	\$102,000	\$21,250	\$20,000	\$15,000	\$20,000	\$20,000	\$20,000	\$20,000
Other Security (e.g., Boarding up barns)	\$81,600	\$17,000	\$20,000	\$20,000	\$25,000	\$25,000	\$25,000	\$25,000
TOTAL	\$925,344	\$192,783	\$160,000	\$140,000	\$165,000	\$165,000	\$165,000	\$165,000

Management, Restoration, and Recreation Planning and Design

Table I-5

	Estimated Costs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Office Equipment	\$12,583	\$2,517	\$0	\$0	\$0	\$0	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	\$0	\$0	\$0	included in staff costs
Staff	\$734,100	\$146,820	\$77,511	\$78,404	\$60,634	\$69,514	\$125,545	\$85,697	see detail below
Travel	\$21,875	\$4,375	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$12,667	\$2,533	\$0	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Contractors	\$283,140	\$56,628	\$230,000	\$190,000	\$240,000	\$160,000	\$200,000	\$250,000	see detail below
TOTAL	\$1,137,698	\$227,540	\$310,136	\$271,029	\$303,259	\$232,139	\$328,170	\$338,322	

Staff

Position	Estimate from HCP	Cost Estimate Used for Conservancy Budget						Notes	
		2013	2012	2011	2010	2009	2008		
Senior Scientist (HCP estimate is 0.33 FTE)	\$107,712 per FTE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	HCP assumed 33% FTE
Project Manager (HCP estimate is 0.66 FTE)	\$99,054 per FTE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	HCP assumed 33% FTE
Technical Support (HCP estimate is 0.66 FTE)	\$67,320 per FTE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	HCP assumed 33% FTE
Senior planner	\$0	\$47,968	\$48,444	\$46,378	\$60,438	\$89,050	\$48,897	\$48,897	20% FTE
Principal planner	\$0	\$29,543	\$29,960	\$14,257	\$9,076	\$36,495	\$36,800	\$36,800	10% FTE
TOTAL FOR CONSERVANCY 2013	\$146,820	\$77,511	\$78,404	\$60,634	\$69,514	\$125,545	\$85,697		

Contractors

	Estimated Costs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Management and Recreation planning	\$150,000	\$30,000	\$80,000	\$100,000	\$80,000	\$80,000	\$60,000	\$100,000	finish 1 preserve mngmnt plan and initiate 2nd, 2 systemwide plans
Restoration Planning	\$100,000	\$20,000	\$150,000	\$90,000	\$160,000	\$80,000	\$140,000	\$75,000	design 2 medium projects in 2013/ start larger project
Restoration Design	\$33,140	\$6,628	\$0	\$0	\$0	\$0	\$0	\$75,000	lumped with planning
TOTAL	\$283,140	\$56,628	\$230,000	\$190,000	\$240,000	\$160,000	\$200,000	\$250,000	

Habitat Restoration/Creation

Table I-6

	Estimated Costs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Creation/Restoration Construction	\$2,109,868	\$421,974	\$80,000	\$120,000	\$580,000	\$150,000	\$650,000	\$200,804	see detail below
Office Equipment	\$12,583	\$2,517	\$0	\$0	\$0	\$0	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Staff	\$734,100	\$146,820	\$23,984	\$48,444	\$60,634	\$39,295	\$77,614	\$53,897	senior planner (10% FTE)
Travel	\$21,875	\$4,375	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$12,667	\$2,533	\$0	\$0	\$0	\$0	\$0	\$0	factored into contractor rates
Contractors	\$542,668	\$108,534	\$150,000	\$160,000	\$200,000	\$140,000	\$250,000	\$150,000	see detail below
TOTAL	\$3,507,094	\$701,419	\$256,609	\$331,069	\$843,259	\$331,920	\$980,239	\$407,326	

Cost of Restoration/Creation Construction

Project Type	Approx. Acres Restored	Assumed cost per acre	Cost Estimate Used for Conservancy Budget						Notes/Location
			2013	2012	2011	2010	2009	2008	
Large project (stream, vernal pool, pond, wetland)	5	\$90,000	\$0	\$0	\$500,000	\$0	\$450,000	n/a	large project at Land Waste Management
Small project (stream / vernal pool)	1 or 2	\$100,000	\$80,000	\$120,000	\$80,000	\$150,000	\$200,000	n/a	riparian at Ang; vernal pool at Vaq.
TOTAL			\$80,000	\$120,000	\$580,000	\$150,000	\$650,000	\$200,804	

Contractors

	Estimated Costs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Plans, Specifications, and engineering	\$124,275	\$24,855	\$50,000	\$20,000	\$50,000	\$20,000	\$50,000	\$35,000	
Development of bid package	\$16,570	\$3,314	\$10,000	\$10,000	\$30,000	\$10,000	\$50,000	\$5,000	
Construction Oversight	\$70,423	\$14,085	\$10,000	\$10,000	\$20,000	\$10,000	\$60,000	\$20,000	Includes inspectors and const. mgr
Post-construction Maintenance	\$331,400	\$66,280	\$80,000	\$120,000	\$100,000	\$100,000	\$90,000	\$90,000	mntnce of prior projects
TOTAL		\$108,534	\$150,000	\$160,000	\$200,000	\$140,000	\$250,000	\$150,000	

Environmental Compliance

Table I-7

	Estimated Costs From HCP Years 6 -10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
NEPA/CEQA	\$380,000	\$76,000	\$8,000	\$10,000	\$3,000	\$3,000	\$3,000	\$10,000	possible greenhouse gas addendum
CWA 404/401	\$0	\$0	\$8,000	\$2,000	\$15,000	\$10,000	\$20,000	\$10,000	manage existing permits/ start new
NHPA	\$41,000	\$8,200	\$8,000	\$2,000	\$20,000	\$12,000	\$12,000	\$10,000	manage existing permits/ start new
CDFG 1600-1607	\$8,000	\$1,600	\$8,000	\$2,000	\$10,000	\$10,000	\$20,000	\$1,000	manage existing permits/ start new
Other	\$30,000	\$6,000	\$0	\$0	\$0	\$0	\$0	\$0	
Report on non-covered species	\$0	\$0	\$5,000	\$15,000	\$20,000	\$25,000	\$40,000	\$50,000	streamlines CEQA for HCP users
Staff support to project permits	n/a	n/a	\$14,771	\$0	\$0	\$0	\$18,247	\$5,000	Principal Planner (5% FTE)
Develop regional wetlands permits	n/a	n/a	\$40,000	\$35,000	\$40,000	\$55,000	\$35,000	\$0	Contractor technical support
Develop regional wetlands permits	n/a	n/a	\$44,314	\$59,921	\$42,770	\$36,303	\$18,247	\$0	Principal Planner (15% FTE)
Develop regional wetlands permits	n/a	n/a	\$35,000	\$30,000	\$15,000	\$0	\$0	\$0	Legal support (In Lieu Fee Agreement)
Mid year budget correction	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$23,000	
TOTAL	\$459,000	\$91,800	\$171,086	\$155,921	\$165,770	\$151,303	\$166,495	\$109,000	

HCP/NCCP Preserve Management and Maintenance

Table I-8

	Estimated Costs From HCP Years 6-10	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Office Equipment	\$23,600	\$4,720	\$0	\$0	\$0	\$0	\$0	\$1,000	partners / lease revenue
Vehicle Purchase	\$45,000	\$9,000	\$0	\$0	\$0	\$0	\$0	\$8,000	partners / lease revenue
Equipment - capital	\$120,000	\$24,000	\$0	\$0	\$0	\$0	\$0	\$3,000	partners / lease revenue
Field Facilities (HCP assumes \$750K for years 1 -5 and 11-15)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$70,000	partners / lease revenue
Contractors - Capital	\$360,000	\$72,000	\$50,000	\$50,000	\$50,000	\$40,000	\$45,000	\$45,000	construction, fencing, etc.
Recreation Facilities	\$302,800	\$60,560	\$0	\$0	\$0	\$0	\$0	\$0	partners
Preserve Staff	\$1,464,210	\$292,842	\$100,000	\$100,000	\$200,000	\$200,000	\$180,000	\$180,000	cost share with partners (costs covered by lease revenues not included)
Conservancy staff coordination/oversight	\$0	\$0	\$38,756	\$39,202	\$14,257	\$18,151	\$0	\$0	senior & principal planner (10%&5% FTE)
Maintenance of Office Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	partners / lease revenue
Travel	\$875	\$175	\$0	\$0	\$0	\$0	\$0	\$100	partners / lease revenue
Vehicle Fuel and Maintenance	\$79,250	\$15,850	\$0	\$0	\$0	\$0	\$0	\$10,000	partners / lease revenue
Equipment - Operational	\$260,000	\$52,000	\$0	\$0	\$0	\$0	\$0	\$25,000	partners / lease revenue
Facilities Maintenance and utilities	\$57,500	\$11,500	\$0	\$0	\$0	\$0	\$0	\$10,000	partners / lease revenue
Water Pumping	\$15,000	\$3,000	\$0	\$0	\$0	\$0	\$0	\$2,000	partners / lease revenue
Contractors- operational	\$596,800	\$119,360	\$20,000	\$20,000	\$0	\$40,000	\$50,000	\$50,000	weed abatement, etc/
Recreation - operational	\$264,050	\$52,810	\$10,562	\$0	\$0	\$0	\$2,112	\$0	partners
TOTAL	\$3,589,085	\$717,817	\$219,318	\$209,202	\$264,257	\$298,151	\$277,112	\$404,100	

Monitoring, Research and Adaptive Management

Table I-9

	Estimated Costs From HCP (Years 6-10)	One-Fifth of Five-Year HCP Estimate	Cost Estimate Used for Conservancy Budget						Notes
			2013	2012	2011	2010	2009	2008	
Office Equipment	\$12,583	\$2,517	\$0	\$0	\$0	\$0	\$0	\$0	Factored in staff/contractor rates
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	\$0	\$0	\$0	\$0	Factored in staff/contractor rates
Monitoring staff	\$734,100	\$146,820	\$38,756	\$39,202	\$47,817	\$93,565	\$63,345	\$5,000	Principal planner (5% FTE) and senior planner (10% FTE)
Vehicle Fuel and Maintenance	\$12,667	\$2,533	\$0	\$0	\$0	\$0	\$0	\$0	Factored in staff/contractor rates
Travel	\$21,875	\$4,375	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$500	
Field Data Collection (Contractors)	\$1,455,690	\$291,138	\$110,000	\$70,000	\$50,000	\$60,000	\$30,000	\$50,000	wetland/rare plant/ project monitoring, etc
Directed Research	\$375,000	\$75,000	\$80,000	\$150,000	\$150,000	\$0	\$0	\$1,000	Grant-funded avian study
Adaptive Management	\$150,000	\$30,000	\$30,000	\$15,000	\$15,000	\$15,000	\$0	\$10,000	Based on monitoring results
TOTAL	\$2,835,248	\$567,050	\$259,756	\$275,202	\$263,817	\$169,565	\$94,345	\$66,500	

Remedial Measures

Table I-10

	Estimated Costs From HCP Years 6-10	One-Fifth of Five- Year HCP Estimate	Cost Estimate Used for Conservancy Budget					
			2013	2012	2011	2010	2009	2008
Remedial measures	\$30,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
TOTAL		\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000

Contingency Fund

	Estimated Costs From HCP Years 6-10	One-Fifth of Five- Year HCP Estimate	Cost Estimate Used for Conservancy Budget					
			2013	2012	2011	2010	2009	2008
Total cost of program excluding land acquisition	\$14,463,723	\$2,892,745	\$1,826,744	\$1,852,019	\$2,447,343	\$1,697,267	\$2,356,160	\$1,802,823
Contingency Fund	\$723,186	\$144,637	\$91,337	\$92,601	\$122,367	\$84,863	\$117,808	\$90,141
TOTAL		\$144,637	\$91,337	\$92,601	\$122,367	\$84,863	\$117,808	\$90,141

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

Table II

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

Funding Source	Agency	Purpose	Amount	Required Match	Amount Expended (12/31/12)	Remain (12/31/12)	Needs to be used by...	Complete ?	Notes
Section 6 (2006)	USFWS	Acquisition	\$6,531,054	\$7,982,399	\$6,531,054	\$0	June 2010	√	
Section 6 (2007)	admin	Acquisition	\$7,000,000	\$8,555,600	\$7,000,000	\$0	June 2011	√	
Section 6 (2008)	by WCB	Acquisition	\$6,000,000	\$7,333,333	\$4,633,214	\$1,366,786	2-14-13		\$1,300,900 proposed, leaving \$65,886 unspent
Section 6 (2009)		Acquisition	\$2,500,000	\$3,055,556	\$0	\$2,500,000	8-1-13		extended once
Section 6 (2010)		Acquisition	\$6,000,000	\$7,333,333	\$1,080,000	\$4,920,000	7-31-13		
Section 6 (2011)		Acquisition	\$4,463,936	\$5,455,922	\$0	\$4,463,936	10-31-14		
Section 6 (2012)		Acquisition	\$1,000,000	\$1,222,222	\$0	\$1,000,000	9-30-15		
CVPIA - HRP	USBR	Acquisition	\$1,241,631	\$500,000	\$1,241,631	\$0	Sep 2010	√	
IRWMP - Prop 50	SWRCB	Acquisition or restoration	\$750,000	\$500,000	\$750,000	\$0	June 2012	√	
IRWMP - Prop 50 (reprogrammed)	SWRCB	Acquisition or restoration	\$1,400,000	\$500,000	\$1,400,000	\$0	Mar 2012		
IRWMP - Prop 84	DWR	Acquisition or restoration	\$650,000	25% match required	\$0	\$650,000	12/31/2014		must be used within SF Regional Board area
NCCP Local Assistance (2006)	CDFG	Start-up staffing	\$40,000	=====	\$40,000	\$0	June 2008	√	
NCCP Local Assistance (2007)	CDFG	Start-up wetlands restoration	\$60,000	\$120,000	\$60,000	\$0	Dec 2008	√	
NCCP Local Assistance (2008)	CDFG	Wetlands restoration at Souza 2	\$150,000	=====	\$125,100	\$0	April 2011	√	
NCCP Local Assistance (2009)	CDFG	Hess Construction	\$150,000	\$111,000	\$150,000	\$0	Mar 2012	√	
NCCP Local Assistance (2010)	CDFG	Wetland and rare plant inventory	\$27,000	\$0	\$27,000	\$0	April 2013		
NCCP Local Assistance (2010)	CDFG	Restoration project monitoring/maint.	\$85,000	\$0	\$85,000	\$0	April 2013		
NCCP Local Assistance (2010)	CDFG	Preserve monitoring plan development	\$50,000	\$0	\$50,000	\$0	April 2013		
NCCP Local Assistance (2011)	CDFG	Wetland and rare plant inventory (phase 2)	\$40,000	\$0	\$40,000	\$0	April 2014		
NCCP Local Assistance (2011)	CDFG	Restoration project monitoring/maintenance	\$50,000	\$0	\$50,000	\$0	April 2014		
NCCP Local Assistance (2011)	CDFG	Preserve management plan development	\$75,000	\$0	\$65,000	\$10,000	April 2014		
Gordon and Betty Moore Foundation		Acquisition Fox Ridge	\$880,000	50% match desired	\$880,000	\$0	12/31/09	√	
Gordon and Betty Moore Foundation		Acquisition and research Souza 3	\$2,250,000	50% match desired	\$2,000,000	\$250,000			avian research portion on-going
Gordon and Betty Moore Foundation		Acquisition Fan, Galvin, Moss Rock&VF Central	\$1,300,000	50% match desired	\$1,300,000	\$0		√	
Prop 84 NCCP account	WCB	Acquisition of Barron	\$973,930	\$0	\$973,930	\$0	Feb 2012	√	
Prop 84 NCCP account	WCB	Acquisition of Thomas	\$1,842,966	\$0	\$1,842,966	\$0	June 2012	√	
Prop 84 NCCP account	WCB	Acquisition of Affinito	\$1,005,750	\$0	\$1,005,750	\$0	Dec 2012	√	
Prop 84 NCCP account	WCB	Acquisition of Vaquero Farms Central	\$230,000	\$0	\$230,000	\$0	Dec 2012	√	
Prop 84 NCCP account	WCB	Acquisition of Thomas North	\$388,755	\$0	\$388,755	\$0	Aug 2013	√	
TOTAL			\$47,135,022	\$42,669,365	\$31,949,400	\$15,160,722			

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

2) Includes expenditures made by the Conservancy for which reimbursement from the grant source has not yet occurred.

Explanation of Acronyms:

CDFG: California Department of Fish and Game

CVPIA HRP: Central Valley Project Improvement Act Habitat Restoration Program

DWR: Department of Water Resources

EBRPD: East Bay Regional Park District

IRWMP: Integrated Regional Water Management Plan

NCCP: Natural Community Conservation Plan

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

SWRCB: State Water Resources Control Board

USBR: United States Bureau of Reclamation

USFWS: United States Fish and Wildlife Service

WCB: California Wildlife Conservation Board (affiliated with CDFG)

Table III: End of Year Budget Status, Conservancy's 2012 Budget

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

	<i>Expenditures</i>					
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D= B + C</i>	<i>E= A minus D</i>	<i>F= E/A*100</i>
	<i>Approved 2012 Conservancy Budget</i>	<i>Expenditures as of 12/18/12¹</i>	<i>Projected Expenditures for Remainder of 2012</i>	<i>Total Expenditures thru 12/31/12 (Actual plus Projected)</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration and Permitting Program	\$609,596	\$514,455	\$91,000	\$605,000	\$5,000	1%
Land Acquisition	\$11,268,217	\$5,900,857	\$10,000	\$5,911,000	\$5,357,000	48%
Management, Restoration & Recreation Planning & Design	\$271,029	\$235,693	\$40,000	\$276,000	-\$5,000	-2%
Habitat Restoration/Creation	\$331,069	\$97,719	\$0	\$98,000	\$233,000	70%
Environmental Compliance	\$155,921	\$51,932	\$25,000	\$77,000	\$79,000	51%
HCP/NCCP Preserve Management and Maintenance	\$209,202	\$16,585	\$1,000	\$18,000	\$191,000	91%
Monitoring, Research, and Adaptive Management	\$275,202	\$106,858	\$22,000	\$129,000	\$146,000	53%
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$92,601	\$0	\$0	\$0	\$93,000	100%
TOTAL EXPENDITURES	\$13,218,838	\$6,924,100	\$189,000	\$7,114,000	\$6,105,000	46%
FEE REVENUES FOR 2012 (actual + projected)²				\$1,650,000		
GRANT REVENUE 2012 (actual + projected)				\$5,870,000		
TOTAL REVENUES YTD (through 6/30/12)				\$7,520,000		
DIFFERENCE BETWEEN YTD REVENUES & EXPENDITURES (projected)				\$410,000		
ESTIMATED FUNDS IN CONSERVANCY ACCOUNTS, December 31, 2012³				\$1,900,000		

Notes:

(1) Includes only costs actually paid. Cost for work performed but not yet billed is not included. Projections in Column C include these amounts.

(2) Includes revenue from all HCP Mitigation Fees, charges for staff time and contributions to recovery from Participating Special Entities

(3) Does not include approximately \$15M in grant revenue that has been approved but not received before 12-31-2012 (nor does it include Proposition 84 funds allocated for Delta County NCCPs). The fund balance also does not include the California Wildlife Foundation account which is held in trust for the Conservancy but is controlled by the wildlife agencies. That account has a current balance of more than \$3.6M.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Adrienne Galvin Property Acquisition

RECOMMENDATION

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

DISCUSSION

Item a) Overview of Property and Potential Acquisition:

The Adrienne Galvin property (*Property*) totals 111.95 acres and is located at 6041 Morgan Territory Road, Clayton, CA, 94517. Various photos and maps showing the Property and location are provided in the attached Pre-Acquisition Assessment.

EBRPD and the Seller (Adrienne Galvin) have reached agreement on the purchase of the Property. EBRPD commissioned an appraisal of the Property which was completed November 1, 2012. The fair market value of the Property is \$1,134,400. The Property is currently owned by Adrienne Galvin.

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

CONTINUED ON ATTACHMENT: <u>YES</u> ACTION OF BOARD ON: <u>January 23, 2013</u> OTHER _____	APPROVED AS RECOMMENDED: <u>Yes</u>
<u>VOTE OF BOARD MEMBERS</u> <input type="checkbox"/> UNANIMOUS AYES: _____ NOES: _____ ABSENT: _____ ABSTAIN: _____	
I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY BY: _____, DEPUTY	

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 Plan for Purchase of Property

Source	Total
Federal Section 6 HCP Land Acquisition Grant via WCB	\$1,134,400
Total	\$1,134,400

The proposed funding strategy would rely 100% on federal Section 6 funds for land acquisition costs. This approach is proposed to expend as much of an about-to-expire grant as possible. The FY08 Section 6 grant is set to expire February 14, 2013 (it has been extended twice and the funders have indicated that another extension would likely not be approved and would jeopardize other potential requests in the future). Currently, the amount remaining for that \$6 Million grant is \$1,366,786 (including funding proposed but not yet conveyed for acquisition of Alaimo; \$166,500 is now proposed for the Alaimo transaction; see item (b) below). With the Proposed Funding Plan for Adrienne Galvin and the proposed amendment to the funding plan for Alaimo, \$1,300,900 of the remaining \$1,366,786, would be spent, leaving an unspent remainder of \$65,886. There is no possibility of lining up another transaction by February 14 to fully expend the grant.

The federal Section 6 funds require a 55% non-federal match, so in previous acquisitions the Section 6 funds have typically funded 45% of the acquisition costs. The U.S. Fish and Wildlife Service (USFWS) does allow in-kind match from due diligence and start-up habitat management to fulfill some or all of the 55% non-federal match requirement (provided these costs are covered by eligible non-federal funds). Working with USFWS and WCB, Conservancy staff was able to provide an accounting documenting that approximately \$1.6 million of eligible in-kind match had been performed on prior, eligible projects. Of this, approximately \$377,000 was provided by contributions made by EBRPD to perform due diligence on 14 properties. The remaining approximately \$1.24 million of eligible match was funded by state dollars and included Integrated Regional Water Management Plan and California Department of Fish and Wildlife grants for restoration projects. This in-kind match is sufficient to fully fund the purchase of Adrienne Galvin with section 6 and increase the Section 6 funding for Alaimo to \$166,500.

Staff recommends the proposed funding plan because:

- relies on grant funds that we are in immediate danger of losing;
- provides the only feasible way to expend any of the remaining FY 08 funds; state Proposition 84 funds from WCB have typically been sought in the past but could not be approved by the grant deadline;
- in-kind match to be used as match for this acquisition may not be eligible to carried over to other Section 6 grants (use it or lose it)
- the Conservancy’s direct contribution is \$0

Would Acquisition of the Property Help the Conservancy Achieve the Conservation Goals of the HCP/NCCP? Yes. The Conservancy has prepared a Pre-Acquisition Assessment of the

Property to examine and document the biological resources 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 Adrienne Galvin property (Property) is located in the Upper Marsh Creek Watershed in the southwest portion of the HCP/NCCP inventory area. The Property consists of one parcel totaling approximately 111.18 acres. The Property is approximately 5.5 road miles southeast of Clayton and about 0.3 mile east of Morgan Territory Road at the end of a private road easement. The Property is bound to the east by Morgan Territory Ranch (a one-square mile private property encumbered by a conservation easement), to the south by 61.68-acre former Galvin Ranch (acquired in early 2012 by East Bay Regional Park District for the Preserve System), and by private property to the north and west. The Property is also located in close proximity to the Schwartz property purchased in 2009 for the Preserve System. The Property is mostly oak woodland (84.16 acres, 75.7% of the site) with 3.01 acres of chaparral/scrub, and 18.97 acres of annual grassland. The site offers expansive views of Mt. Diablo and Windy Point from various vantage points.

Acquisition of the Property will fulfill a number of land cover requirements of the HCP/NCCP. The Property is mostly located in an area designated as a medium priority for acquisition for the Preserve System (acquisition analysis sub-zone 4g), with a small portion located in sub-zone 4h which is designated as high priority for acquisition. Zone 4 (14,338 acres) was designed to incorporate the area at the highest elevations of Mount Diablo foothills not in public ownership. This area is dominated largely by oak woodland, chaparral, and mixed evergreen forest. Land acquisition in the Upper Marsh Creek watershed is required to help to achieve goals for preservation of core and movement habitat for Alameda whipsnake, to benefit California tiger salamander, California red-legged frog and foothill yellow-legged frog, conserve prime habitat for Mt. Diablo globelily and Mt. Diablo sunflower, protect important linkages between existing conserved lands and expand protection of the headwaters of Marsh Creek.

This site would constitute a key piece of the Preserve System by conserving rich habitat important for many HCP/NCCP covered species and by expanding a conservation corridor as required by the HCP/NCCP between Mount Diablo State Park and the block of conserved lands around Morgan Territory Regional Preserve, Round Valley Regional Preserve and the Los Vaqueros Reservoir.

Table 2. Land Cover Types on Property

Land Cover Type (acres)	Adrienne Galvin	HCP Land Acquisition Requirements (acres)	Percent of Land Acquisition Requirements
Annual grassland	18.97	16,500	0.1%
Chaparral/scrub	3.01	550	0.5%
Oak woodland	84.16	400	21.0%
Seasonal wetland	0.01	168	0.0%

Ruderal	3.91	N/A	
Urban	1.12	N/A	
Ephemeral stream	5,052	26,400	19.1%

Because this acquisition would help achieve the HCP/NCCP land acquisition requirements for annual grassland, chaparral/scrub, oak woodland, and streams; help achieve the specific HCP/NCCP requirements for Subzones 4g; provide suitable habitat for several covered species; is adjacent to a site known to support several covered plant species; and adds to the corridor between Mt. Diablo State Park and the area around Los Vaqueros Reservoir, staff finds that acquisition of the Property will substantially help the Conservancy to achieve the conservation goals of the HCP/NCCP.

Deadline: The parties hope the transaction can close by April 2013. The principal timing constraints will be the timing of the federal 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 \$1,134,400.

Future Conservancy actions: The Board would need to approve a Management Plan(s) that covers the Property and a funding agreement for management.

Agreements: The Funding Agreement with EBRPD and the 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 a demonstrated willing seller. Land acquisition under the HCP/NCCP is on a willing seller basis and must seize opportunities when presented.
- The Property is located in a medium priority acquisition sub-zone and its preservation would help the Conservancy meet a number of the more challenging land acquisition requirements of the HCP/NCCP including requirements for preservation of oak woodland, chaparral/scrub, and streams.
- 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.

Item b: Amend Funding Plan for Alaimo Property

On October 22, 2012, the Governing Board authorized the Executive Director 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). The funding plan for the property was proposed as follows:

Original Funding Plan for Alaimo Property

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

Staff is recommending that the funding plan be changed to substitute \$83,250 in additional Section 6 funds for the \$83,250 that was to have been funded with state Proposition 84 funds. The two reasons for this are: 1) the project was not able to be considered at the November 2012 WCB meeting and the next meeting is after the February 14, 2013 deadline for the expending the FY08 Section 6 grant funds proposed for the transaction; 2) as discussed in greater detail above, USFWS and WCB approved about \$1.6 million in in-kind match that could be used in part to increase the federal share of funding for this transaction, thereby allowing nearly all FY08 grant funds to be expended before the deadline.

The proposed revised funding plan is as follows:

Proposed Revised Funding Plan for Alaimo Property

Source	Total
EBRPD	\$18,500
Federal Section 6 HCP Land Acquisition Grant	\$166,500
Total	\$185,000

With this change, the Conservancy would no longer need to execute state grant agreement for state funds with WCB.

Attachments:

- Pre-Acquisition Assessment for Adrienne Galvin
- Templates of EBRPD Funding Agreement and WCB Subgrant Agreement



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Template prepared by the
ECCC Habitat Conservancy

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

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

SITE IDENTIFICATION

Site Name: Adrienne Galvin

Site Address/location: 6041 Morgan Territory Road, Clayton, California

Property APN(s) #: APN 080-070-014

Size of Parcel(s): 111.18 acres

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

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

Figures: The following figures are attached as Appendix B.

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

LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

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

The Adrienne Galvin Property (Property) is a 111.18¹-acre parcel located approximately 5.5 road miles southeast of the City of Clayton, about 0.3 mile east of Morgan Territory Road at the end of a private road easement. It is bound to the east by Morgan Territory Ranch (a one-square mile private property encumbered by a conservation easement), to the south by 61.68-acre former Galvin Ranch (acquired in early 2012 by East Bay Regional Park District for the Preserve System), and by private property to the north and west. The Property is mostly oak woodland (84.16 acres, 75.7% of the site) with 3.01 acres of chaparral/scrub, and 18.97 acres of annual grassland. The Property is also located in close proximity to the Schwartz property purchased in 2009 for the Preserve System. Acquisition of the Property would expand protection of a critical landscape linkage identified in the HCP/NCCP.

The minimum elevation of the Property is approximately 880 feet (at its western boundary); the highest point is about 1,520 feet and is located in the southwest corner. Terrain and vegetation varies from rolling open grassland within the small valley located in the northwest corner of the property, to moderately and steeply sloping oak woodland hillsides surrounding the valley and extending to the south part of the property. Chaparral can be found on the southernmost slopes. The site offers expansive views of Mt. Diablo and Windy Point from various vantage points.

The Property is located in the Upper Marsh Creek watershed. A seasonal tributary to Marsh Creek known as Salt Creek crosses the small valley from east to west. A second unnamed seasonal tributary drains a narrow ravine between two hills located at the south end of the property. The Property contains 5,052 feet of stream including first and second order ephemeral tributaries.

Conservation of the Property will achieve a number of the HCP/NCCP's goals and objectives for species. The Property contains habitat types known to support the Alameda whipsnake, California red-legged frog, California tiger salamander, and golden eagle. There is a good probability of the presence of the Mt. Diablo globelily and Mt. Diablo sunflower on the property, two plant species covered by the HCP/NCCP that can be found on the adjacent former Galvin Ranch property. There is also the potential that the property supports two other plant species targeted by the HCP/NCCP: the Mt. Diablo buckwheat and Big tarplant.

Acquisition of the Property will also fulfill a number of land cover requirements of the HCP/NCCP. The Property is mostly located in an area designated as a medium priority for acquisition for the Preserve System (acquisition analysis sub-zone 4g), with a small portion located in sub-zone 4h which is designated as high priority for acquisition. Zone 4 (14,338 acres) was designed to incorporate the area at the highest elevations of Mount Diablo foothills not in public ownership. This area is dominated largely by oak woodland, chaparral, and mixed evergreen forest. Land acquisition in the Upper Marsh Creek watershed is required to help to achieve goals for preservation of core and movement habitat for Alameda whipsnake, to benefit California tiger salamander, California red-legged frog and foothill yellow-legged frog, protect important linkages between existing conserved lands and expand protection of the headwaters of Marsh Creek.

This site would constitute a key piece of the Preserve System by conserving rich habitat important for many HCP/NCCP covered species and by expanding a conservation corridor as required by the HCP/NCCP between Mount Diablo State Park and the block of conserved lands around Morgan Territory Regional Preserve, Round Valley Regional Preserve and the Los Vaqueros Reservoir.

¹ GIS analysis conducted for this site by the Conservancy show 111.18 acres. The numbers reflected in this assessment are taken from GIS, not the acreage noted on the deed (111.96).

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	Area (acres)
Terrestrial Land Cover Types	
Annual grassland	18.97
Chaparral/scrub	3.01
Oak woodland	84.16
Wetland	0.01
Ruderal	3.91
Urban	1.12
Total area of terrestrial land cover	111.18

III. Streams (Figure 4)

Stream	Length (linear feet)
Ephemeral stream	5,052
Total streams (linear feet)	5,052

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc)	Distance from Site (miles)	General description of development and influence on site.
Rural development	On site and adjacent parcels.	The Property supports one main residence, and additional residential units. The Property also supports a variety of infrastructure associated with prior horse keeping. The immediate neighborhood is large parcel rural residential, agricultural grazing, and conservation lands. Surrounding rural development affects views, potential trail connections and could impact plants and wildlife due to proximity to potential pets, noise, lights, exotic plants, fire ignition sources and fuel breaks.
Urban development	The city of Clayton is located approximately 5.5 road miles northwest of the property and is home to the closest commercial uses.	Urban development is not close enough to have a significant effect on the Property.

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

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

- 1 2 3 4 5 6

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

Sub-Zone Requirement	Total Requirement	Contribution by this Acquisition (acres)	Percentage of Requirement Met by Acquisition
Zone 4 total area	8,350	111.18	1.3%
Sub-zone 4h	791	5.25	0.7%
Sub-zone 4c, 4e, 4f, 4g	1,400	105.92	7.6%

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

Land-Cover Requirement	Total Requirement (acres)	Contribution by this Acquisition (acres)	Percentage of Requirement Met by Acquisition
Preserve-wide Annual Grassland	16,500	18.97	0.1%
Preserve-wide Chaparral/scrub	550	3.01	0.5%
Preserve-wide Oak Woodland	400	84.16	21.0%
Seasonal Wetland	168	0.01	0.0%

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

Jurisdictional Wetland and Waters Requirement	Total Requirement (acres)	Contribution by this Acquisition (acres)	Percentage of Requirement Met by Acquisition
Preserve-wide Ephemeral stream (feet)	26,400	5,052	19.1%

VI. Site Conformance with Preserve Design Principles

The following is a subset² of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.
- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high

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

biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).

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

Property's size (~111 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use. It also provides a critical building block for expanding the landscape linkage along the southwest border of the inventory area.

The Property is well linked to conserve lands. It is adjacent in the south to the former Galvin Ranch, now part of the Preserve System. The eastern end of the Property is adjacent to Morgan Territory Ranch, which is encumbered by a conservation easement, and is in close proximity to several other protected lands (including Preserve System lands). Though the property shape is somewhat irregular, linkages to other preserved lands and compatible ranching uses in the vicinity reduce edge effects. Additional lands in the vicinity of this Property could be protected in the future, thus increasing linkages and reducing edge effects associated with non-protected lands.

The Property does not abut or share any edges with urban uses.

The Property encompassed a variety of environmental gradients. The minimum elevation is approximately 880 feet along the west property boundary; the maximum is about 1,520 feet in the southwest corner. Terrain and vegetation varies from rolling open grassland within the small valley located in the northwest corner of the property, to moderately and steeply sloping oak woodland hillsides surrounding the valley and extending to the south part of the property. Chaparral can be found on the southernmost slopes.

The Property is located in the Upper Marsh Creek watershed. A seasonal tributary to Marsh Creek known as Salt Creek crosses the small valley from east to west. A second unnamed seasonal tributary drains a narrow ravine between two hills located at the south end of the property. The Property contains 5,052 feet of stream including first and second order ephemeral tributaries. These reaches are part of the Marsh Creek watershed headwaters and protection in this area will have beneficial effects throughout the watershed.

This site persists mostly (95.5%) in its natural condition. As such, this site may need relatively little management to support covered species. In addition, it may be possible to restore some of the ruderal areas in the future.

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 site is accessed by a 20-foot-wide access easement from Morgan Territory Road, a public street.

The Property is currently subject to a Williamson Act contract (entered into in February 1975). A well-maintained network of unpaved ranch roads previously utilized as equestrian trails traverses the hillsides surrounding the valley.

The Property does have three residential units and infrastructure related to horse keeping. The seller previously conducted a horse boarding operation on the Property but that operation has been discontinued. Structures are described more fully in the next paragraph.

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

The Property supports a 1,500 sq. ft. single family residence, and associated garage/shop/horse stall structures. There is also a secondary residence (890 sq. ft. mobile home conversion), a 2,100 sq. ft. hay barn with built-in apartment, a 565 sq. ft. garage/shop structure, a 950 sq. ft. pole shed, a corral and paddock fencing, and gravel and asphalt paved roads.

Electrical and telephone services have been extended from off-site to the residential and agricultural building improvements located in the northwest area of the property.

There are a total of four wells established on the property, one of which is capped, and one of which is operable but currently not used. The main well serves the single family residence, the expanded mobile home unit, and has provided a source of agricultural water. Another well serves the apartment unit located in the hay barn. Water is pumped to a 12,000 gallon storage reservoir located on an elevated portion of the property, and then distributed to a nearby valve station from which the source of water from any of the three wells can be controlled.

There are three septic systems established on the property, one to serve each of the three residential units. These conventional systems were constructed in the mid-1970s and mid-1980s.

The Property is generally well maintained, with a good system of wells and water availability for domestic and agricultural use, and a good system of internal roads that are maintained annually. All residential and agricultural structures do not indicate any deferred maintenance. The seller will be leasing back an 8-acre area that includes the primary residence and intends to continue to live on the site.

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

Figure 4 shows the area around the main residence as supporting approximately 4 acres of ruderal land cover. This is typical of areas immediately surrounding rural development.

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 management constraints on the site.

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

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

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

No field work for invasive plants was performed.

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

The site has adequate water available and habitat is generally intact. The site is adjacent to Preserve System lands and other protected lands.

Appendices:

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

Appendix A

Photos courtesy of Mike Reeves, East Bay Regional Park District, unless otherwise noted



Photo 1: View looking southwest across Property to Mt. Diablo



Photo 2: View looking north across driveway and hay barn



Photo 3: View of oak woodland



Photo 4: View of Mt. Diablo from Property



Photo 5: View of Property (in the middle ground) looking east
Photo courtesy of Scott Hein

Figure 1: Adrienne Galvin Parcel - Regional Context

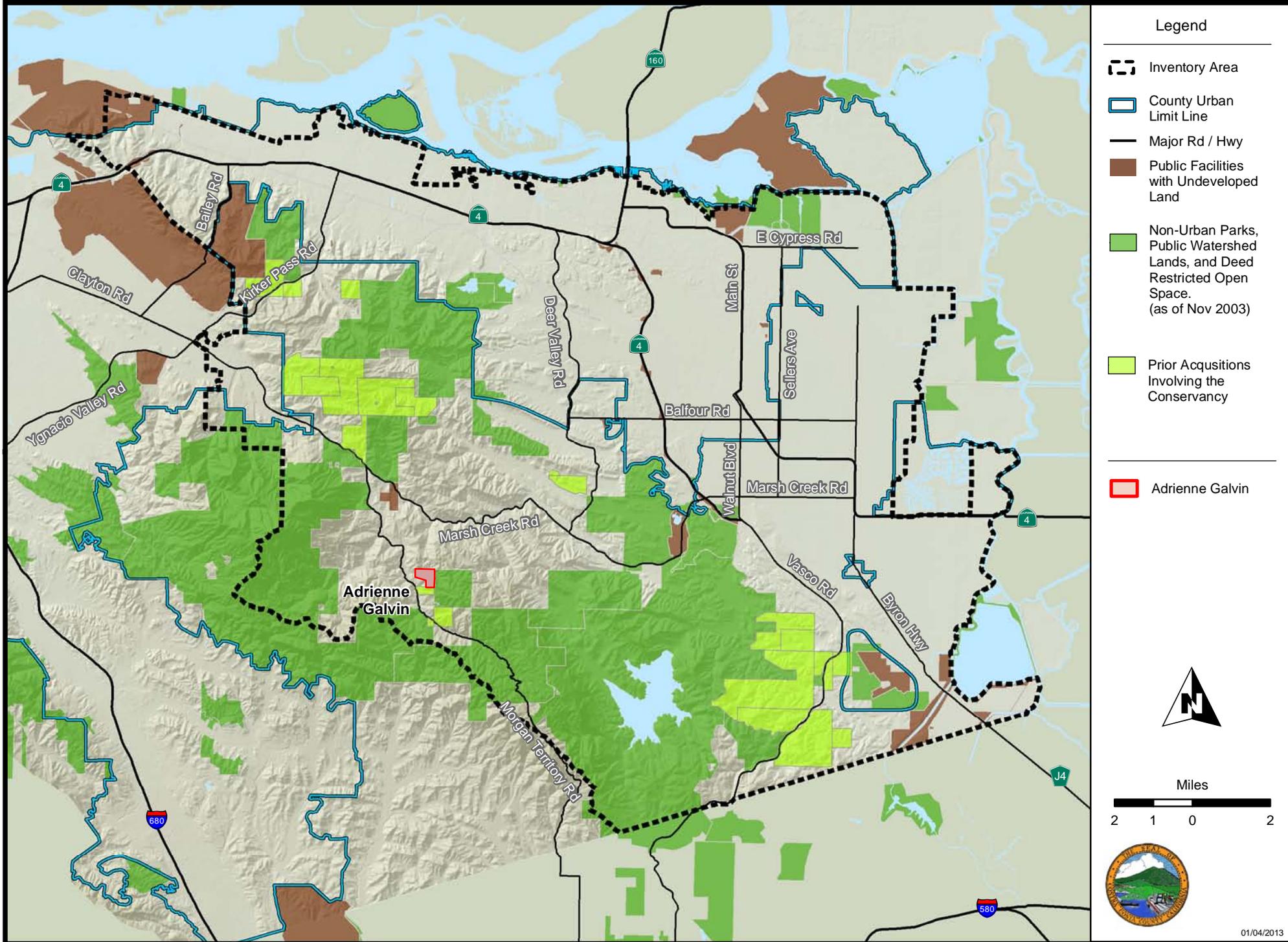


Figure 2: Adrienne Galvin Parcel - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

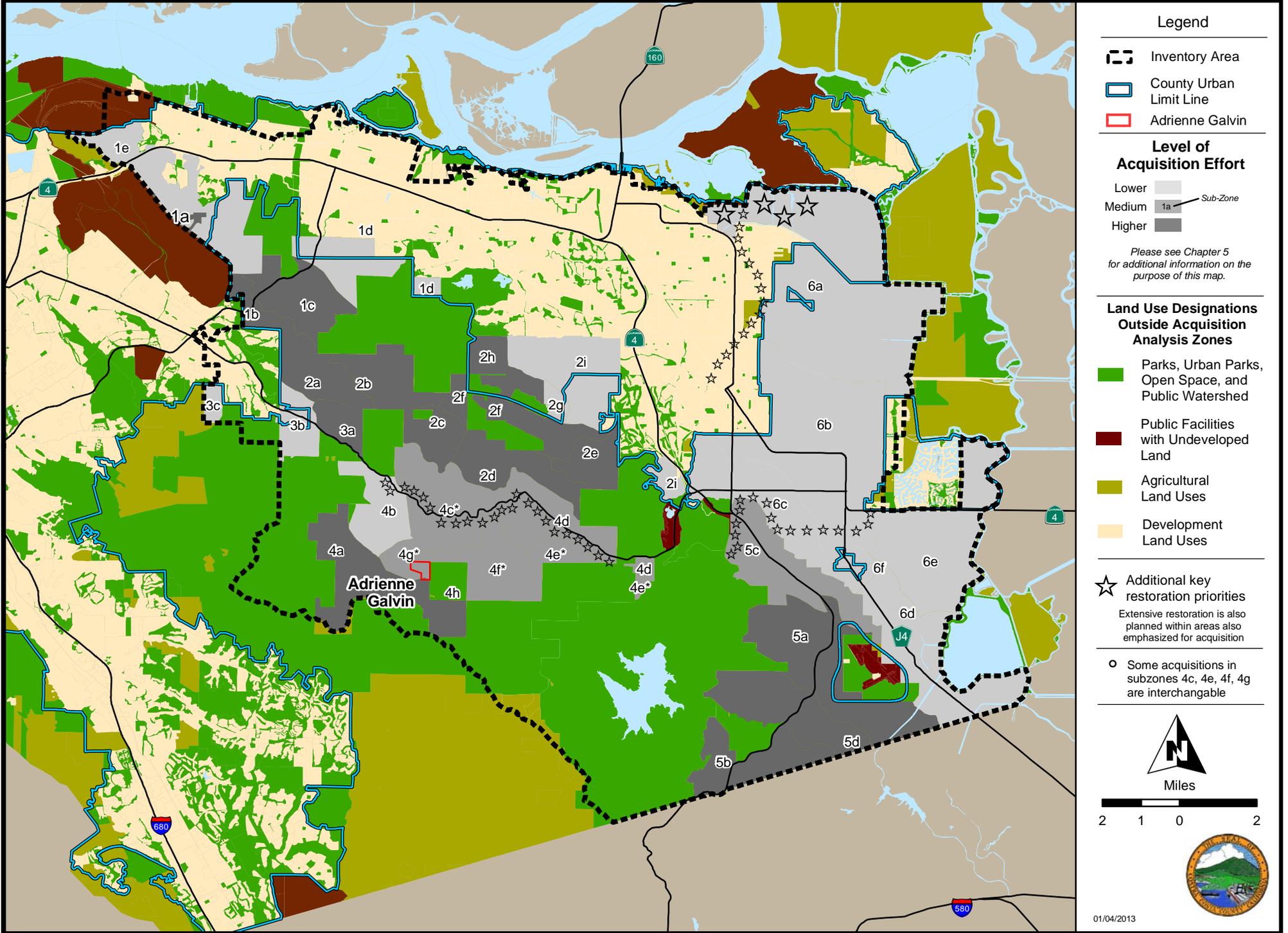


Figure 3: Adrienne Galvin parcel - April 2008 Orthophotography



Legend

 Adrienne Galvin

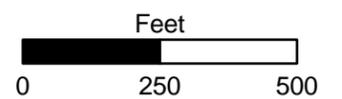
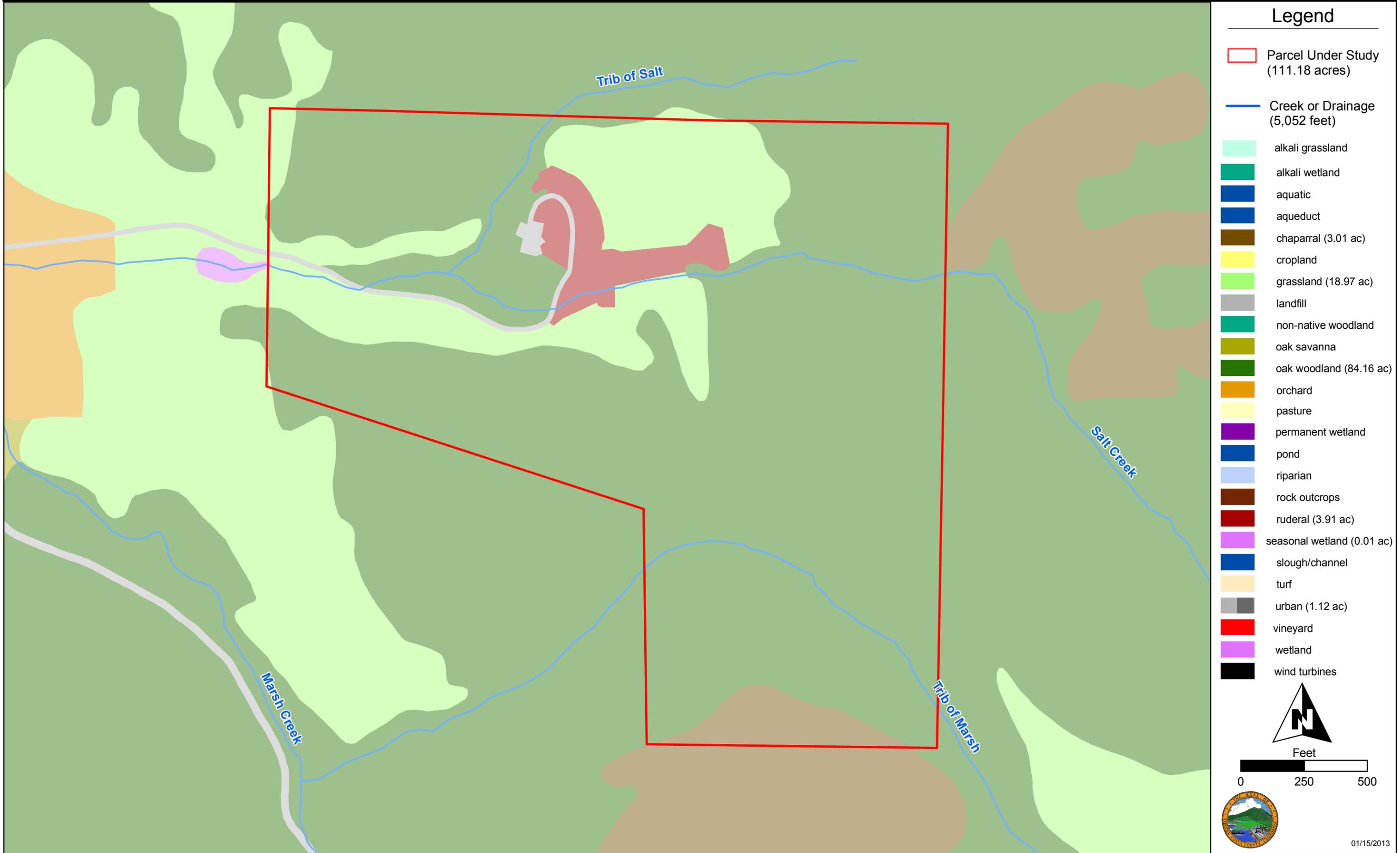


Figure 4. Adrienne Galvin parcel - Terrestrial and Aquatic Land Covers Types



**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 (30) 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: _____)
)

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, 4th Floor
Martinez, CA 94553

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

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

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

CONSERVANCY:

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

By: _____
Name: John Kopchik
Title: Executive Director
Date: _____

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special
district

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

ATTACHMENT 1 TO NOTICE OF UNRECORDED AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

CALIFORNIA WILDLIFE CONSERVATION BOARD
SUBGRANT AGREEMENT FOR ACQUISITION OF FEE INTEREST

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

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

Attn: John Kopchik, Executive Director

Phone: (925) 335-1227

Fax: (925) 335-1299

E-mail: john.kopchik@dcd.cccounty.us

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

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

Attn: Nancy Wenninger, Assistant General Manager

Phone: (510) 544-2601

Fax: (510) 612-5441

E-Mail: nwenninger@ebparks.org

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

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

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

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

Notices to be delivered to:

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

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

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

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

1. **BACKGROUND**

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

1.2. USFWS has approved the Applications for Federal Assistance submitted by CDFG, [insert grant #] (the “Federal Grant Application”), for Cooperative Endangered Species Conservation Fund (Section 6 of the Federal Endangered Species Act) Grant Program funding (“Federal Grant Funds”) to facilitate the acquisition of real property identified in the Federal Grant Applications. The Notice of Federal Assistance Approval for [insert grant #] (the “Federal Approval Notice”) which USFWS issued to CDFG specifies terms of acceptance of the Federal Grant Funds. CDFG and USFWS have entered into a Grant Agreements for Grant No. [insert grant #], Grant Title: [insert grant 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.

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

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

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property 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.
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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).
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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, 4th Floor, North Wing)
 Martinez, CA 94553-0095)
 Attn: Executive Director)
)

WHEN RECORDED, RETURN TO:

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

Project Name: [Insert Name of Property]
 County: Contra Costa
 APNs: [Insert Assessor Parcel Numbers]

Space above line for Recorder's use

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

This Notice of Unrecorded Subgrant Agreement ("Notice"), dated as of _____, 2011, is made by the East Contra Costa County Habitat Conservancy ("Subgrantee"), and the East Bay Regional Park District ("Successor Subgrantee") and recorded concurrently with the Deed described below, to provide notice of an agreement between Subgrantee, Successor Subgrantee and the Wildlife Conservation Board ("WCB"), a subdivision of the State of California, affecting the real property described below.

1. WCB, Subgrantee and Successor Subgrantee have entered into the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest, WCB Subgrant Agreement No. [Insert WCB Subgrant Agreement Number] (Section 6 Grant Agreements No. [Insert Section 6 Grant Agreements Numbers]) ("Subgrant" or "Agreement"), pursuant to which WCB subgrants to Subgrantee certain Federal Grant Funds for Successor Subgrantee's acquisition of fee title to approximately [Insert Number of Acres] acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from _____. The Property is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Subgrant.

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

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

3. Subgrantee and Successor Subgrantee covenant and agree in Section 6.1 b. of the Agreement as follows:

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

The Property shall be held and used for the purposes of preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (“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]

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with Phillips 66 Pipeline LLC to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project 196,920.27.22:

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

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a Participating Special Entity Agreement and to extend take authorization under the PSE Agreement to Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project 196,920.27.22 is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

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

The U.S. Department of Transportation (“DOT”) pipeline safety regulations require Phillips 66 to install deep well anode beds and rectifiers to protect the underground steel pipeline from corrosion and maintain the integrity of the steel pipe and coating and to conduct maintenance repairs to the pipeline within a set timeframe of 180 days from detection of an anomaly.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

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

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

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

Phillips 66 detected 1 site along the Line 200 which requires urgent repair in order to be in compliance with DOT pipeline safety regulations. The urgent repair project consists of one pipeline repair site which is identified by the Site ID 196,920.27.22 and located on property owned by East Bay Regional Park District (“EBRPD”) and jointly managed by the East Contra Costa County Habitat Conservancy within the Vasco Caves Regional Park area. This project is known as the Phillips 66 Pipeline Repair Project 196,920.27.22 (herein after referred to as “Project”).

The Project consists of a 60 foot by 60 foot staging and repair site (3,600 square feet of impact) with an associated 100 linear feet of an overland access route to the repair site from an existing gravel access road (2,260 square feet of impact). All impacts associated with the proposed work are temporary.

(See Figures 1A-1B; 2; 3A-3B; 4 and the Project Description in the Planning Survey Report Application for more information on the Project and its location).

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

A Participating Special Entity’s project must also be an eligible covered activity under the HCP/NCCP in order to be covered as a PSE. As set forth in Section 2.3.3 and 2.3.4 of the HCP/NCCP, Utility Line or Facility Operation and Maintenance is an eligible covered activity within the HCP/NCCP inventory area, including within HCP/NCCP Preserves. The Project is therefore an eligible covered activity. However, it should be noted that the pipeline is within an easement owned by Phillips 66 on land owned by EBRPD (in this case the repair will occur on Vaquero Farms South which is part of the HCP/NCCP Preserve System). Phillips 66 is responsible for securing all landowner permissions from EBRPD that may be necessary to conduct the repair work and future rare plant surveys as required by the HCP/NCCP. Phillips 66 has made it clear they are aware of this requirement and will obtain any necessary access permission from East Bay Regional Park District.

Conservancy staff has prepared a Participating Special Entity Agreement (“PSE Agreement”) for this Project (attached). Attached as Exhibit 1 to the PSE Agreement is the completed Planning Survey Report Application (“PSR”) for the Project, which was prepared by Monk and Associates Inc., the biological firm hired by Phillips 66 to complete the PSR. The PSR documents the

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

Key provisions of the Agreement:

- The Project impacts are reflected in the table below:

Land Cover Type	Impact Type (acres)	
	Permanent	Temporary
Annual Grassland	-	0.13

- The Agreement provides that ConocoPhillips will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$5,000.
- In addition, as set forth in the Agreement (page 6), Phillips 66 will pay the Conservancy \$5,503.85, which amount includes all HCP/NCCP mitigation fees necessary for the Project as well as a Contribution to Recovery for Endangered Species.
- The table below summarizes the required fees and administrative costs:

CONOCOPHILLIPS FEE SUMMARY	
Development fees:	\$2,751.92
Contribution to Recovery for Endangered Species:	\$2,751.92
TOTAL FEES AND CONTRIBUTIONS	\$5,503.85
Maximum Administrative Costs	\$5,000.00
MAXIMUM AMOUNT TO BE PAID	\$10,503.85

- The Fees and Administrative Costs must be paid before work commences. Phillips 66 anticipates starting work in January 2013 (as soon as they are issued the Certificate of Inclusion the applicant hopes to proceed with construction).
- As set forth in the HCP/NCCP, the Conservancy may charge a Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs born by the

Conservancy of exceeding mitigation requirements and contributing to the recovery of covered species (as is required because the plan is an NCCP and by state law NCCP's must contribute to recovery, etc.)). Staff proposes a Contribution to Recovery in the amount of \$2,751.92. This amount is equal to the mitigation fees required for the impacts and Staff believes this is consistent with the amount of Contribution to Recovery charged in previous, similar Participating Special Entity projects.

- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys for San Joaquin kit fox and western burrowing owl.
- The Agreement provides a number of detailed measures to avoid impacts to special status plant species covered by the HCP/NCCP. The required rare plant surveys during the appropriate blooming season was infeasible prior to submission of the application. Given the urgent nature of the project as well as the short duration of the proposed impacts, Conservancy staff has worked with the applicant to develop a number of detailed measures beyond those required by the HCP/NCCP which seek to limit and avoid potential impacts to special status plant species. These additional measures include:
 - Rare plant surveys will be conducted in April and August of 2013 during the appropriate blooming season for each of the covered rare plants that require a rare plant survey to be conducted. The rare plant surveys will assess the repair site plus a 200 foot buffer around the repair site (See Figure 4 in the PSR). The results of the surveys will be documented in a rare plant survey report to be submitted to the Conservancy by September 30, 2013. If special-status plant species are identified on or within 200 feet of the project area, the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 "Plant Salvage when Impacts are Unavoidable," Section 6.31. "Covered and No-Take Plants," and Table 5-20 "Protection Requirements for Covered Plants" in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that this species is protected.

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

- Wildlife agencies review the PSE Agreement and are asked to concur with the Conservancy's determination that the Agreement imposes all applicable conditions of the HCP/NCCP onto the project. Note: Participating Special Entity Agreements, unlike the granting of take authorization by a participating City or County, requires wildlife agency concurrence.
- Phillips 66 pays all required mitigation fees and administrative costs, as outlined in the PSE Agreement.
- The Conservancy issues Phillips 66 a Certificate of Inclusion. Take coverage would then be in effect, subject to the terms of the PSE Agreement.

- A rare plant survey report will be submitted to the Conservancy by September 30, 2013 in accordance with the PSE Agreement and Exhibit 1.

Attachments:

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

PARTICIPATING SPECIAL ENTITY AGREEMENT

Between

**THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
and the
PHILLIPS 66 PIPELINE LLC**

1.0 PARTIES

This Agreement is made and entered into by the East Contra Costa County Habitat Conservancy (“Conservancy”) and Phillips 66 Pipeline LLC (“Participating Special Entity” or “PSE”) as of the Effective Date.

2.0 RECITALS

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

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

or threatened, or that have some other special status under federal or state laws.

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, for the Take of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with participating special entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE is responsible for the Phillips 66 Pipeline Repair Project 196,920.27.22 and seeks extension of the Conservancy’s permit coverage to conduct operational and safety repairs at a single repair site (Site ID 196,920.27.22) that is located along the existing Phillips 66 Line 200 Mainline trunk pipeline in the Vasco Caves Regional Park in East Contra Costa County, as further described in Exhibit 1.
- 2.8 The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference.

3.0 **DEFINITIONS**

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

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

to the Conservancy pursuant to California Fish and Game Code section 2835.

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

- 3.13 **“HCP/NCCP”** or **“Plan”** means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.
- 3.14 **“Implementing Agreement”** or **“IA”** means the “Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan,” dated January 22, 2007.
- 3.15 **“Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- 3.16 **“Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.17 **“NCCPA”** means the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.18 **“Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.19 **“Party”** or **“Parties”** means any or all of the signatories to this Agreement.
- 3.20 **“Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.21 **“Permits”** means the Federal Permit and the State Permit.
- 3.22 **“Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.23 **“Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.24 **“Project”** means the Phillips 66 Pipeline Repair Project 196,920.27.22, as described in Section 2.7.

- 3.25 “State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.
- 3.26 “Take”** has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.27 “Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. “Unforeseen Circumstances” under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.28 “USFWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.29 “Wildlife Agencies”** means USFWS and CDFG.

4.0 PURPOSES

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

5.0 AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS

5.1 General Framework

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

{00157899.DOC.}

5.2 Surveys and Avoidance Measures

Planning surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted a planning survey report for approval by the Conservancy in accordance with Chapter 6.2.1 of the HCP/NCCP. This planning survey report is contained within the Application, which describes the results of the planning survey and describes in detail the pre-construction surveys, construction monitoring, avoidance measures and mitigation measures that apply to the Project and shall be performed by PSE. Based on the Application, the Conservancy has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

5.3 No Take of Extremely Rare Plants or Fully Protected Species

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

5.3.1 Golden Eagle

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

5.4 Fees and Dedications

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of \$5,503.85, which amount includes all HCP/NCCP mitigation fees necessary for the Project. The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). The overall payment amount is the sum of the following:

Development Fee: \$2,751.92

Contribution to Recovery: \$2,751.92

The payment must be paid in full before any ground-disturbance associated with the Project occurs. Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, 2013 and construction of the Project commences before March 15, 2013, the amount due will be as stated above. If PSE pays on or after March 15, 2013 or construction of the Project does not commence before March 15, 2013, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland mitigation fee. Based on these adjustments, if PSE pays before March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be

required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

6.0 TAKE AUTHORIZATION

6.1 Extension of Take Authorization to PSE

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

6.1.1 Compliance with the California Environmental Quality Act

The Conservancy's issuance of a Certificate of Inclusion to the PSE is a public agency action that must comply with CEQA. For purposes of the Project, the Conservancy is the CEQA lead agency. The Conservancy has determined the Project is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

6.2 Duration of Take Authorization

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

6.3 Section 7 Consultations with USFWS

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

The Project is not authorized, funded, or carried out by a federal agency and therefore PSE is required to comply with Section 7 of FESA with regard to the Project.

7.0 RIGHTS AND OBLIGATIONS OF PSE

7.1 Rights

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

7.2 General Obligations

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

7.3 Obligations In The Event of Suspension or Revocation

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

7.4 Interim Obligations upon a Finding of Unforeseen Circumstances

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

7.5 Obligations In The Event Of Changed Circumstances

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Chapter 7 and Chapter 10 of the HCP/NCCP,

and PSE shall implement any measures for such circumstances as called for in the HCP/NCCP, as described in Section 12.2 of the IA.

7.6 Obligation to Compensate Conservancy for Administrative Costs

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy's "Administrative Costs"). Conservancy's Administrative Costs shall not exceed \$5,000 in the aggregate. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy's discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

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

7.7 Indemnification

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

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

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

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

7.7.1 Enforcement of Indemnification Provision

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

7.7.2 Compliance Costs

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

7.7.3 Obligations in the Event of Litigation

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

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

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

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

8.0 REMEDIES AND ENFORCEMENT

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

9.0 FORCE MAJEURE

In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Party ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be

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considered a material violation or breach, provided that nothing in this section shall be deemed to authorize either Party to violate FESA, CESA or NCCPA, and provided further that:

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

10.0 MISCELLANEOUS PROVISIONS

10.1 Calendar Days

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

10.2 Notices

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

John Kopchik
East Contra Costa County Habitat Conservancy
c/o Contra Costa County Department of Conservation and Development
651 Pine Street, North Wing, 4th Floor
Martinez, CA 94553
Email: john.kopchik@dcd.cccounty.us
Phone: 925-335-1227

Frank L. Nichols
Phillips 66 Pipeline LLC
1232 Park Street, Suite 300
Paso Robles, CA 93446
Email: frank.l.nichols@p66.com

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

10.3 Entire Agreement

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

10.4 Amendment

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

10.5 Attorneys' Fees

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

10.6 Governing Law

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

10.7 Duplicate Originals

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

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

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

10.9 No Third Party Beneficiaries

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

10.10 References to Regulations

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

10.11 Applicable Laws

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

10.12 Severability

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

10.13 Due Authorization

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

10.14 No Assignment

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

10.15 Headings

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

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

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
JOHN KOPCHIK, Executive Director

DATE: _____

PHILLIPS 66 PIPELINE LLC

By: _____
BILL A. HALLETT, Attorney-In-Fact

DATE: _____



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Template prepared by the
ECCC Habitat Conservancy

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

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

Project Applicant Information:

Project Name: Phillips 66 Pipeline Repair Project 196,920.27.22
Project Applicant's Company/Organization: Phillips 66 Pipeline, LLC
Contact's Name: Terry Elrod
Contact's Phone: (559) 935-0388 Fax: (559) 935-8638
Contact's Email: terry.w.elrod@p66.com
Mailing Address: 256 East Polk Street
Coalinga, CA 93210

Project Description:

Lead Planner: Krystal Hinojosa
Project Location: Vasco Caves Regional Park
Project APN(s) #: 005-090-006
Number of Parcels/Units: N/A
Size of Parcel(s): N/A
Project Description/Purpose (Brief): Phillips 66 Pipeline, LLC is proposing to complete an operational and safety repair at a single repair site (Site ID 196,920.27.22) that is located along the existing Line 200 Mainline trunk pipeline in the Vasco Caves Regional Park in East Contra Costa County. This pipeline transports crude oil from the Bakersfield area to a Phillips refinery in Richmond. The U.S. Department of Transportation pipeline safety regulations require Phillips to perform pipeline repairs within legally-mandated timeframes that range from immediately to 180 days. **This particular repair must be conducted in January, 2013.**

Biologist Information:

Biological/Environmental Firm: Monk & Associates, Inc.
Lead Contact: Brian Spirou
Contact's Phone: (925) 947-4867 x_223 Fax: (925) 947-1165
Contact's Email: brian@monkassociates.com
Mailing Address: 1136 Saranap Ave. Suite Q
Walnut Creek, CA 94595

East Contra Costa County HCP/NCCP Planning Survey Report for Phillips 66 Pipeline Repair 196,920.27.22 Participating Special Entity

I. *Project Overview*

Project proponent: Terry Elrod

Project Name: Phillips 66 Pipeline Repair Project 196,920.27.22

Application Submittal Date: December 4, 2012 and as revised on January 11, 2013

Jurisdiction: Contra Costa County Participating Special Entity¹
 City of Oakley
 City of Pittsburg
 City of Clayton
 City of Brentwood

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

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

Total Parcel Acreage: N/A

Acreage of land to be permanently disturbed²: None

Acreage of land to be temporarily disturbed³: 0.13 acres

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

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

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

Project Description

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

City/County Application Number:

Not applicable

Anticipated Construction Date:

January, 2013

Project Description

Phillips 66 Pipeline, LLC (the applicant) proposes to complete an operational and safety repair to its Line 200 Mainline trunk pipeline. This pipeline currently transports crude oil from the Bakersfield area to the Phillips 66 refinery in Richmond. The pipeline is located along the west side of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) jurisdictional area. The repair project consists of one pipeline repair site (hereinafter referred to as “repair site”), which is identified by the Site ID 196,920.27.22; its location is depicted in the regional map provided in Figure 1A. Figure 1B illustrates the repair site location with more specificity, showing the repair site location in the Byron Hot Springs USGS 7.5-minute quadrangle. Figure 2 shows an aerial photograph of the repair site location, along with the impact footprint associated with the repair itself and the overland access route between the repair site and the existing gravel access road. Photographs of the repair site are also attached as Figure 3B.

All proposed work and all impacts are temporary. For the most part, work would be conducted with a backhoe and pick-up trucks with welding equipment and supplies/parts. The repair site will be accessed over approximately 100 linear feet (2,260 square feet) of grassland that connects an existing gravel access road with the repair site. In addition to the 2,260 square feet of temporary impact for the access route, the repair site itself will incur impacts to an area that is approximately 60 feet by 60 feet (3,600 square feet) (the “project footprint”). Within the project footprint, the applicant will dig a hole of approximately 10 feet by 20 feet. A shoring box will be installed in the hole to prevent it from collapsing. Earthen ramps will be installed at each end of the trench to provide wildlife an escape route in the event that they should become entrapped. The portion of the footprint that has not been dug will be considered the work area. A backhoe and pickup truck would be the only equipment that would enter the work area.

The project footprint and the temporary access route will be staked and fenced with silt fencing backed by orange construction fencing prior to the commencement of the repair. All construction equipment and work will be limited to the area within the fenceline. As the repair site is situated on hillslope above an ephemeral drainage, the silt fencing will be stapled to the ground to prevent de minimus fill and sediment runoff from entering the drainage. All construction equipment and work will be limited to the area within the fenceline. The overland access route and work area would be covered in ¾-inch plywood to protect the soil from tire traction.

Best Management Practices (BMPs) will be implemented as part of the project to ensure that there are no impacts to wetlands. BMPs will include the installation of silt fence along the project footprint boundary. Hay bale walls will be installed between the project footprint and adjacent wetlands to ensure that no de

minimus fill enters adjacent wetlands. In addition, the refueling area will be established to contain any fuel spills during fueling. The location of the BMPs will be mapped with a GPS unit and submitted to the Conservancy to demonstrate compliance with conditions set forth in the HCP/NCCP.

Although not required for participation in the HCP/NCCP but rather as a condition of the encroachment permit from the Park District, Phillips 66 will ensure that a qualified biologist will be at the repair site during all pipeline repair activities. The biological monitor will be responsible for ensuring that the project is in compliance with the terms and conditions of the HCP/NCCP. This includes directing the crew as to the appropriate location of the BMP's and ensuring that they are not compromised during the repair. The biological monitor will also ensure that special-status wildlife is not impacted by the repair, and that all special-status plant avoidance measures are implemented.

Any installed erosion control materials will not include plastic netting, which could result in entanglement and death of California tiger salamanders and other reptiles or amphibians within the material. All trash items will be removed from the repair site to reduce the potential for attracting predators, such as crows and ravens.

Any contaminated soils and materials will be excavated and removed from the site and disposed of appropriately to prevent California tiger salamanders and other wildlife from becoming exposed or killed by the effects of petroleum products.

Once the pipeline repair is complete, the repair site will be re-contoured to its original condition, and all impacted areas will be hydroseeded with the native hydroseed mix prescribed below:

<u>Seed Type</u>	<u>Approximate Seeding Rate</u>
California brome (<i>Bromus carinatus</i>)	15 lbs/acre
Idaho fescue (<i>Festuca idahoensis</i>)	15 lbs/acre
Creeping wild rye grass (<i>Elymus triticoides</i>)	5 lbs/acre
Small Fescue (<i>Festuca microstachys</i>)	5 lbs/acre
Purple needle grass (<i>Stipa pulchra</i>)	10 lbs/acre
Meadow barley (<i>Hordeum brachyantherum</i>)	12 lbs/acre

Seed mix shall be applied at a minimum rate of 60 pounds per acre (seeds above can be adjusted in proportion, or as seed availability dictates). Note: California brome and Idaho Fescue are fixed, non-adjustable prescriptions. Others may be adjusted to meet 60 pounds per acre.

Fertilizer shall be 16-20-0 with 13% sulfur and applied at a rate of 250 pounds per acre.

Jute matting and/or straw shall be placed over hydroseed mix on slopes greater than 5 percent to prevent winter erosion. The straw shall be applied at a rate of 2 tons per acre.

Following the spreading of straw, and for areas where straw is not applied, an organic tackifier, such as M-binder, shall be sprayed (over the straw) using the techniques and application rate specified by the manufacturer.

II. Existing Conditions and Impacts

Land Cover Types

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

Land cover types and habitat elements identified with an ^(a) in Table 1 require identification and mapping of habitat elements for selected covered wildlife species. In Table 2a and 2b below, check the land cover types and habitat elements found in the project area and describe the results. Insert a map of all land cover types present on-site and other relevant features overlaid on an aerial photo below as Figure 3.

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

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Grassland^a				
<input checked="" type="checkbox"/> Annual grassland		0.13		
<input type="checkbox"/> Alkali grassland				
<input type="checkbox"/> Ruderal				
<input type="checkbox"/> Chaparral and scrub				
<input type="checkbox"/> Oak savanna^a				
<input type="checkbox"/> Oak woodland				
Jurisdictional wetlands and waters				
<input type="checkbox"/> Riparian woodland/scrub				
<input type="checkbox"/> Permanent wetland ^a				
<input type="checkbox"/> Seasonal wetland ^a				
<input type="checkbox"/> Alkali wetland ^a				
<input type="checkbox"/> Aquatic (Reservoir/Open Water) ^a				
<input type="checkbox"/> Slough/Channel ^a				
<input type="checkbox"/> Pond ^a				
<input type="checkbox"/> Stream (acres) ^{a, d}				
<input type="checkbox"/> Total stream length (feet) ^{a, d}				
Stream length by width category				
<input type="checkbox"/> ≤ 25 feet wide				
<input type="checkbox"/> > 25 feet wide				
Stream length by type and order ^e				
<input type="checkbox"/> Perennial				
<input type="checkbox"/> Intermittent				
<input type="checkbox"/> Ephemeral, 3 rd or higher order				
<input type="checkbox"/> Ephemeral, 1 st or 2 nd order				
Irrigated agriculture^a				

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

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Potential nest sites (trees or cliffs) ^a	—	—		—
Total (Temporarily Impacted Acres)		0.13		

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

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

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

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

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

Field-Verified Land Cover Map

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

Figure 3A depicts the field-verified land cover map for the repair site. Photographs of the repair site are attached as Figure 3B.

Jurisdictional Wetlands and Waters

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

Indicate agency that certified the wetland delineation:

USACE, RWQCB, or the ECCC Habitat Conservancy.

Wetland delineation is attached (Jurisdictional Determination)

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

Monk & Associates assessed the repair site using U.S. Army Corps of Engineer's parameters for delineation of other waters and wetlands. No Jurisdictional Wetlands or Waters are present at the site and none will be impacted by the proposed project.

Species-Specific Planning Survey Requirements

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

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

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
<input checked="" type="checkbox"/> Grasslands, oak savanna, agriculture, ruderal	San Joaquin kit fox	Assumed if within modeled range of species	Identify and map potential breeding and denning habitat and potential dens if within modeled range of species (see Appendix D of HCP/NCCP).
	Western burrowing owl	Assumed	Identify and map potential breeding habitat.
	California tiger salamander	Possible over summer habitat in proposed project location.	Identify potential breeding habitat
	California Red-legged Frog	Possible over-summer habitat in proposed project location.	Identify potential breeding habitat
<input type="checkbox"/> Aquatic (ponds, wetlands, streams, slough, channels, & marshes)	Giant garter snake	<input type="checkbox"/> Aquatic habitat accessible from San Joaquin River	Identify and map potential habitat.
	California tiger salamander	<input type="checkbox"/> Ponds and wetlands in grassland, oak savanna, oak woodland <input type="checkbox"/> Vernal pools <input type="checkbox"/> Reservoirs <input type="checkbox"/> Small lakes	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.

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

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

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

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

The repair site is located in the Vasco Caves Regional Park. Habitat consists of rolling hills vegetated by annual grassland, and associated stock ponds and ephemeral drainages. Windmill farms are common in this region.

The repair site is located between a gravel access road (Figures 2 and 3A) and an ephemeral drainage. The vegetation in the area of the repair site is dominated by ruderal grasses, such as slender wild oats (*Avena fatua*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), Italian thistle (*Carduus pycnocephalus*) and dove weed (*Croton setigerus*). Several California ground squirrel (*Spermophilus beecheyi*) burrows are located in the area of the repair site. This site constitutes suitable habitat for the San Joaquin kit fox (*Vulpes macrotis mutica*) and western burrowing owl (*Athene cunicularia*). It is also assumed that the California tiger salamander (*Ambystoma californiense*) and the California red-legged frog (*Rana draytonii*) could over-summer in this grassland habitat.

The project footprint will be staked and fenced prior to the commencement of the repair. All construction equipment and work will be limited to the area within the fenceline.

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

See Figure 4, attached.

Covered and No-Take Plants

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

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

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
<input type="checkbox"/> Oak savanna	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
<input type="checkbox"/> Oak woodland	Brewer’s dwarf flax (<i>Hesperolinon breweri</i>)	C		May–Jul
	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
	Showy madia (<i>Madia radiata</i>)	C		Mar–May
<input type="checkbox"/> Chaparral and scrub	Brewer’s dwarf flax (<i>Hesperolinon breweri</i>)	C		May–Jul
	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr–Sep; uncommonly Nov–Dec.
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
	Mount Diablo Manzanita (<i>Arctostaphylos auriculata</i>)	C	Elevation between 700 and 1,860 feet; restricted to the eastern and northern flanks of Mt. Diablo ^b	Jan–Mar
<input type="checkbox"/> Alkali grassland	Brittlescale (<i>Atriplex depressa</i>)	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area ^b	May–Oct
	Caper-fruited tropidocarpum (<i>Tropidocarpum capparideum</i>)	N		Mar–Apr
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun
	Recurved larkspur (<i>Delphinium recurvatum</i>)	C		Mar–Jun
	San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	C		Apr–Oct
<input type="checkbox"/> Alkali wetland	Alkali milkvetch (<i>Astragalus tener</i> ssp. <i>tener</i>)	N		Mar–Jun
	Brittlescale (<i>Atriplex depressa</i>)	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area ^b	May–Oct
	San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	C		Apr–Oct
<input checked="" type="checkbox"/> Annual grassland	Alkali milkvetch (<i>Astragalus tener</i> ssp. <i>tener</i>)	N		Mar–Jun
	Big tarplant (<i>Blepharizonia plumosa</i>)	C	Elevation below 1500 feet ^b	Jul–Oct
	Brewer’s dwarf flax (<i>Hesperolinon breweri</i>)	C	Restricted to grassland areas within a 500+ buffer from oak woodland and chaparral/scrub ^b	May–Jul
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
	Diamond-petaled poppy (<i>Eschscholzia rhombipetala</i>)	N		Mar–Apr
	Large-flowered fiddleneck (<i>Amsinckia grandiflora</i>)	N		Apr–May
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr–Sep; uncommonly Nov–Dec
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 ^b	Apr–Jun
	Round-leaved filaree (<i>California macrophylla</i>) ¹	C		Mar–May
	Showy madia (<i>Madia radiata</i>)	C		Mar–May
<input type="checkbox"/> Seasonal wetland	Adobe navarretia (<i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i>)	C	Generally found in vernal pools ^b	Apr–Jun
	Alkali milkvetch (<i>Astragalus tener</i> sp. <i>tener</i>)	N		Mar–Jun
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun

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

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

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

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

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

- Description and number of occurrences and their rough population size.

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

In accordance with the HCP/NCCP, a total of 10 covered and no-take species have the potential to occur in the grasslands in the project area. These species include big tarplant (*Blepharizonia plumosa*), Contra Costa goldfields (*Lasthenia conjugens*), showy madia (*Madia radiata*), large-flowered fiddleneck (*Amsinckia grandiflora*), alkali milkvetch (*Astragalus tener* var. *tener*), round-leaved filaree (*California macrophylla*), Mt. Diablo fairy lantern (*Calochortus pulchellus*), Brewer’s dwarf flax (*Hesperolinon breweri*), diamond-petaled California poppy (*Eschscholzia rhombipetala*), and Mt. Diablo buckwheat (*Eriogonum truncatum*).

As Phillips 66 is on an urgent timeline to complete the federally mandated repair, rare plant surveys will not be completed prior to the repair work. Rather, we are proposing to conduct rare plant surveys at the repair site in April and August of 2013, after the required repair is completed. Special-status plant surveys shall follow all HCP/NCCP guidelines and shall be conducted when the special-status plants under consideration are known to be flowering and readily identifiable. Rare plant surveys shall be conducted within the project footprint and access area of the repair site, and within a 200 foot buffer around the repair site. Although rare plant surveys would be conducted after the project is completed, M&A believes that, in the unlikely event that a rare plant does occur within the project footprint, it would likely be part of a larger population that extends beyond the project footprint. This larger population would be detectable during the Spring 2013 surveys. M&A believes that conducting these rare plant surveys will provide an accurate assessment of impacts to special-status plant species.

To further minimize impacts to rare plants, Phillips 66 will salvage and stockpile the topsoil of the repair area. The topsoil would be replaced over the repair area after ground-disturbing activities are completed to replace the existing seed bank. Please refer to the avoidance measures below for additional details on soil stockpiling.

A rare plant survey report shall be submitted to the East Contra Costa County Conservancy by September 30, 2013. If special-status plant species are identified on or within 200 feet of the repair areas and access areas, the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 “Plant Salvage when Impacts are Unavoidable,” Section 6.31. “Covered and No-Take Plants,” and Table 5-20 “Protection Requirements for Covered Plants” in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that this species is protected.

Avoidance Measures for Special-Status Plant Species

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

- All plants and their associated bulbs, seed and soil will be salvaged from the repair site footprint prior to construction by a qualified botanist. Any topsoil removed will be stored separately from the subsoil and placed on matting to ensure that it remains separated from adjacent topsoil. The salvaged topsoil will be replaced over the disturbed area after the ground-disturbing activities are completed. Finally, the area will be re-seeded/vegetated with any salvaged seeds/blubs.

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

III. Species-Specific Monitoring and Avoidance Requirements

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

Preconstruction Surveys for Selected Covered Wildlife

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

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

Species	Preconstruction Survey and Notification Requirements
<input type="checkbox"/> None	
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Map all dens (>5 in. diameter) and determine status. Determine if breeding or denning foxes are in the project area. Provide written preconstruction survey results to FWS within 5 working days after surveying.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Map all burrows and determine status. Document use of habitat (e.g. breeding, foraging) in/near disturbance area (within 500 ft.)
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate aquatic habitat up to 200 ft. from water’s edge. Document any sightings of garter snake.
<input checked="" type="checkbox"/> California tiger salamander (p. 6-46) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input checked="" type="checkbox"/> California red-legged frog (p. 6-47) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Document and evaluate use of all habitat features (e.g., vernal pools, rock outcrops). Document occurrences of covered shrimp.
<input type="checkbox"/> Townsend’s big-eared bat (p. 6-37)	Determine if site is occupied or shows signs of recent occupation (guano).
<input type="checkbox"/> Swainson’s hawk (p. 6-42)	Determine whether nests are occupied.
<input type="checkbox"/> Golden eagle (p. 6-39)	Determine whether nests are occupied.

Preconstruction Surveys as Required for Selected Covered Wildlife in Table 3

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

San Joaquin Kit Fox

Prior to any ground disturbance related to covered activities, a USFWS/CDFG–approved biologist will conduct a preconstruction survey in areas identified in the planning survey as supporting suitable breeding or denning habitat for San Joaquin kit fox. The survey will establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service 1999). Preconstruction survey will be conducted within 30 days of ground disturbance. On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. Adjacent parcels under different land ownership will not be surveyed. The status of all dens will be determined and mapped. Written results of preconstruction surveys will be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to initiation of covered activities.

Western Burrowing Owl

Prior to any ground disturbance related to covered activities, a USFWS/CDFG—approved biologist will conduct a preconstruction survey in areas identified in the planning survey as having potential burrowing owl habitat. The survey will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFG survey guidelines (California Department of Fish and Game 2012).

On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFG guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

California Tiger Salamander

[The Project will not impact California Tiger Salamander (CTS) breeding habitat, but rather only potential estivation habitat. The HCP/NCCP minimization measure for CTS only requires notification if breeding habitat will be impacted.]

California Red-legged Frog

[The Project will not impact California red-legged frog (CRLF) breeding habitat, but rather only potential estivation habitat. The HCP/NCCP minimization measure for CRLF only requires notification if breeding habitat will be impacted.]

Construction Monitoring & Avoidance and Minimization Measures for Selected Covered Species

If preconstruction surveys for key covered wildlife species establish the presence of any such species, construction monitoring will be necessary. In Table 4, check the boxes for the

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

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

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

Table 4. Applicable Construction Monitoring Requirements

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> None	N/A
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Establish exclusion zones (>50 ft) for potential dens. Establish exclusion zones (>100 ft) for known dens. Notify USFWS of occupied natal dens.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Establish buffer zones (250 ft) around nests. Establish buffer zones (160 ft) around burrows.
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate 200-ft buffer around potential habitat. Provide field report on monitoring efforts. Stop construction activities if snake is encountered; allow snake to passively relocate. Remove temporary fill or debris from construction site. Mandatory training for construction personnel.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Establish buffer around outer edge of all hydric vegetation associated with habitat (50 feet of limit of immediate watershed supporting the wetland, whichever is larger). Mandatory training for construction personnel.
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Establish 1,000-ft buffer around active nest and monitor compliance.
<input type="checkbox"/> Golden eagle (p. 6-39)	Establish 0.5-mile buffer around active nest and monitor compliance.

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

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

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

San Joaquin Kit Fox

Construction Monitoring

If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones, unless avoidance measures indicated below are implemented. Exclusion zone radii for potential dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

Avoidance and Minimization Measures

- If a San Joaquin kit fox den is discovered in the proposed development footprint, the den will be monitored for 3 days by a USFWS/CDFG-approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.
- Unoccupied dens should be destroyed immediately to prevent subsequent use.
- If a natal or pupping den is found, USFWS and CDFG will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFG.
- If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

Western Burrowing Owl

Avoidance and Minimization and Construction Monitoring

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

Mitigation for unavoidable impacts include:

If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to

excavation. The project area should be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

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

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

For All Projects

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

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

No waters of the U.S. and/or State (i.e., wetlands or other waters) will be impacted by the proposed project. However, a first-order ephemeral drainage is located downslope of the repair site, approximately 100 feet to the north and 125 feet to the east.

Best Management Practices (BMP's) will be implemented as part of the project to ensure that there are no impacts to the adjacent drainage. Hay wattles will be installed between the project footprint and the drainage to ensure that there is no de minimus fill in the drainage. BMP's will include the installation of silt fencing along the project footprint boundary. In addition, refueling areas will be contained with fuel blankets to prevent any fuel spills during fueling. Finally, a California native seed hydroseed mix will be applied to all disturbed areas upon completion of the project. A qualified biologist will be at the repair site during all pipeline repair activities. The biological monitor will be responsible for directing the crew as to the appropriate location of the BMP's and ensuring that they are not compromised during the repair. The location of the BMP's will be mapped with a GPS unit and submitted to the Conservancy in the Construction Monitoring Plan to demonstrate compliance with conditions set forth in the HCP/NCCP for maintaining hydrologic conditions and minimizing erosion.

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

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

Complete details of the potential for rare plants and mitigation for potential impacts are provided on pages 13-14 of the PSR. Please refer to the "Results of Covered and No-Take Plant Species Planning Surveys Required in Table 2b." Marginal rare plant habitat is located on the repair site. However, rare plant surveys will be conducted in accordance with HCP/NCCP guidelines in April and June of 2013, and the results will be submitted to the Conservancy by July 30, 2013.

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

The grasslands in the area of the repair site provides suitable nesting habitat for ground-nesting birds. Impacts to common ground-nesting birds and raptors such as northern harrier (*Circus cyaneus*) and western meadowlark (*Sturnella neglecta*) are not addressed in the HCP/NCCP; however, all of these birds are protected under the Migratory Bird Treaty Act (50 CFR 10.13) and their eggs and young are protected under California Fish and Game Codes Sections 3503, 3503.5. Potential impacts to these species from the proposed project include disturbance to nesting birds, and possibly death of adults and/or young. No active nests have been identified in the adjacent grasslands; however, no specific surveys for ground nesting passerine birds or raptors have been conducted.

In order to avoid impacts to ground-nesting birds and raptors, a nesting survey shall be conducted 15 days prior to commencing with proposed repair work if this work would commence between March 15th and September 15th, the results of which shall be contained within the Construction Monitoring Plan. The nesting survey shall include examination of the area within 200 feet of the repair site and/or their associated access areas. If ground-nesting birds are identified during the surveys, a qualified biologist shall determine whether the repair work could negatively impact the nest. If the repair has the potential to negatively impact the nest, all repair work on the repair site shall be delayed until a qualified biologist determines that the young have fledged the nest or that it is otherwise no longer in use.

If more than 15 days elapse between the date of the nesting survey and the start of the pipeline repair, the nesting survey shall be repeated until the site no longer supports potential nesting habitat.

For Projects on or adjacent to Streams or Wetlands

HCP/NCCP Conservation Measure 1.7. Establish Stream Setbacks

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

The repair site project footprint is located approximately 100 feet from a first-order ephemeral drainage. As such, no impacts would occur within the 25 foot setback of this drainage. Construction fencing backed by silt fencing shall be installed between the project footprint and the drainage, to prevent equipment and any side-cast material from entering the drainage.

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

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

No impacts will occur to waters of the U.S./State as a result of the proposed pipeline repair. See HCP/NCCP Conservation Measure 1.10 for a description of the BMP's that will be installed between the repair site and the adjacent first-order ephemeral drainage.

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

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

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

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

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

The proposed project consists of conducting a repair for an existing pipeline utility. All impacts will be temporary.

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

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

The proposed project consists of conducting a repair for an existing pipeline utility. All impacts will be temporary.

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

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

The proposed project consists of conducting a repair for an existing pipeline utility. All impacts will be temporary.

For Rural Infrastructure Projects

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

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

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

Not applicable

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

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

Not applicable

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

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

Not applicable

V. Mitigation Measures

Complete and Attach Exhibit 1 (Permanent Impact Fees) and/or Exhibit 2 (Temporary Impact Fees) Fee Calculator(s) for Permanent and Temporary Impacts.

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

Table 5. Project Disturbance Table

Project Footprint (sq. ft.)	Road Access (sq. ft.)	Total Impact (sq. ft.)	Total Impact (Acres)	Type of Impact on Access Route
3,600	2,260	5,860	0.13	Overland

Table 5 above provides a summary of the area of impact for the repair site and the associated access route. Total project impacts will be 0.13-acre. Although all impacts are temporary, the applicant is planning to mitigate for the 0.13-acre of temporary impacts by paying the full development fee, which is provided as an option in the HCP/NCCP in lieu of calculating the area of indirect effects, in order to determine a project impact area subject to the temporary fee. Please refer to Exhibit 1: HCP/NCCP Fee Calculator Worksheet, attached.

Temporary Impact Recovery Plan

At completion of the pipeline repair project, all disturbed soils will be stabilized by compaction of soils and re-contouring to pre-existing grades. All salvaged topsoil will be replaced over the disturbed areas after the ground-disturbing activities are completed, as described in “Results of Covered and No-Take Plant Species Planning Surveys Required

in Table 2b.” Finally, the area will be re-seeded/vegetated with any salvaged seeds/bulbs. A California native seed hydroseed mix will be applied to disturbed areas upon completion of the project. Jute matting and/or straw shall be placed over hydroseed mix to prevent winter erosion. The straw shall be applied at a rate of 2 tons per acre.

Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

PROJECT APPLICANT INFO:

Project Applicant: Phillips 66 Pipeline LLC

Project Name: Phillips 66 Pipeline Repair 196,920.27.22

APN (s): 005-090-006

Date: January 9, 2013

Jurisdiction: Participating Special Entity

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

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

	Full Development Fee		Fee per Acre (subject to change on 3/15/13)	=	
Fee Zone 1		x	\$10,584.32	=	\$0.00
Fee Zone 2	0.13	x	\$21,168.64	=	\$2,751.92
Fee Zone 3		x	\$5,292.61	=	\$0.00
Fee Zone 4 ²		x	\$15,876.48	=	\$0.00
Development Fee Total =					\$2,751.92

**WETLAND MITIGATION FEE

	Acreage of wetland		Fee per Acre (subject to change on 3/15/13)	=	
Riparian woodland / scrub		x	\$69,992.40	=	\$0.00
Perennial Wetland		x	\$120,428.10	=	\$0.00
Seasonal Wetland		x	\$252,178.50	=	\$0.00
Alkali Wetland		x	\$234,680.40	=	\$0.00
Ponds		x	\$120,428.10	=	\$0.00
Aquatic (open water)		x	\$59,699.40	=	\$0.00
Slough / Channel		x	\$127,633.20	=	\$0.00
Linear Feet					
Streams					
Streams 25 Feet wide or less (Fee is per Linear Foot)		x	\$418.93	=	\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)		x	\$630.96	=	\$0.00
Wetland Mitigation Fee Total =					\$0.00

FEE REDUCTION

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

CALCULATE FINAL FEE

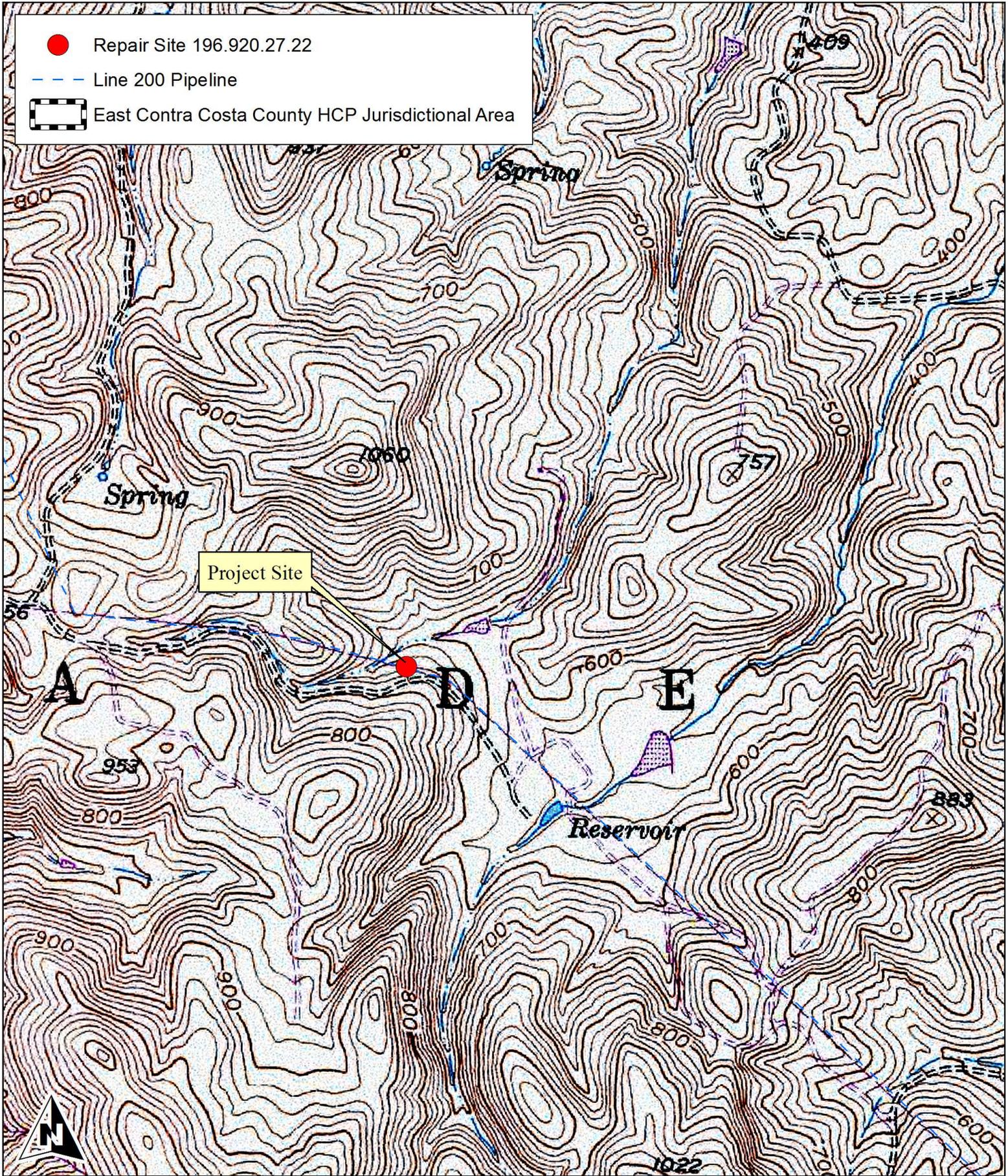
Development Fee Total	\$2,751.92
Wetland Mitigation Fee Total +	\$0.00
Fee Subtotal	\$2,751.92
Contribution to Recovery +	\$2,751.92
TOTAL AMOUNT TO BE PAID =	\$5,503.85

Notes:

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

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

Template date: March 15, 2012



- Repair Site 196.920.27.22
- Line 200 Pipeline
- East Contra Costa County HCP Jurisdictional Area

Monk & Associates
 Environmental Consultants
 1136 Saranap Avenue, Suite Q
 Walnut Creek, California 94595
 (925) 947-4867

Figure 1B. Phillips 66 Pipeline LLC
 Pipeline Repair 196,920.27.22 Vicinity Map
 East Contra Costa County, California

County: Contra Costa
 7.5 Minute Byron Hot Springs Quadrangle
 Map Preparation Date: November 28, 2012

- Pipeline Marker
- Repair Site 196.920.27.22
- ▨ Proposed Repair Footprint (Access Route: 2,260 Sq. Ft., 0.05-acre / Repair Area: 3,600 Sq. Ft. 0.08-acre)
- Ephemeral Drainage
- ▨ Stock Pond



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Monk & Associates
Environmental Consultants
1136 Saranap Avenue, Suite Q
Walnut Creek, California 94595
(925) 947-4867



Figure 2. Phillips 66 Pipeline LLC
Repair Site 196,920.27.22 Site Plan
East Contra Costa County, California

Map Preparation Date: January 9, 2013
Aerial Photograph Source: Bing Maps

- Pipeline Marker
- Repair Site 196.920.27.22
- Proposed Repair Footprint (Access Route: 2,260 Sq. Ft., 0.05-acre / Repair Area: 3,600 Sq. Ft. 0.08-acre)
- Ephemeral Drainage
- Stock Pond



Figure 3A. Phillips 66 Pipeline LLC
Repair Site 196,920.27.22 Land Cover Map
East Contra Costa County, California

Figure 3B. Photopages
Phillips 66 Pipeline LLC
Repair Site 196,920.27.22



View of Pipeline Repair Site Looking Northwest



Zoomed View of Pipeline Repair Site Looking Northwest

Figure 3B. Photopages
Phillips 66 Pipeline LLC
Repair Site 196,920.27.22



View of Pipeline Repair Site Looking East-Northeast

- Pipeline Marker
- Repair Site 196.920.27.22
- Proposed Repair Footprint (Access Route: 2,260 Sq. Ft., 0.05-acre - Repair Area: 3,600 Sq. Ft. 0.08-acre)
- Ephemeral Drainage
- Stock Pond
- 200 Foot Rare Plant Survey Buffer Radius

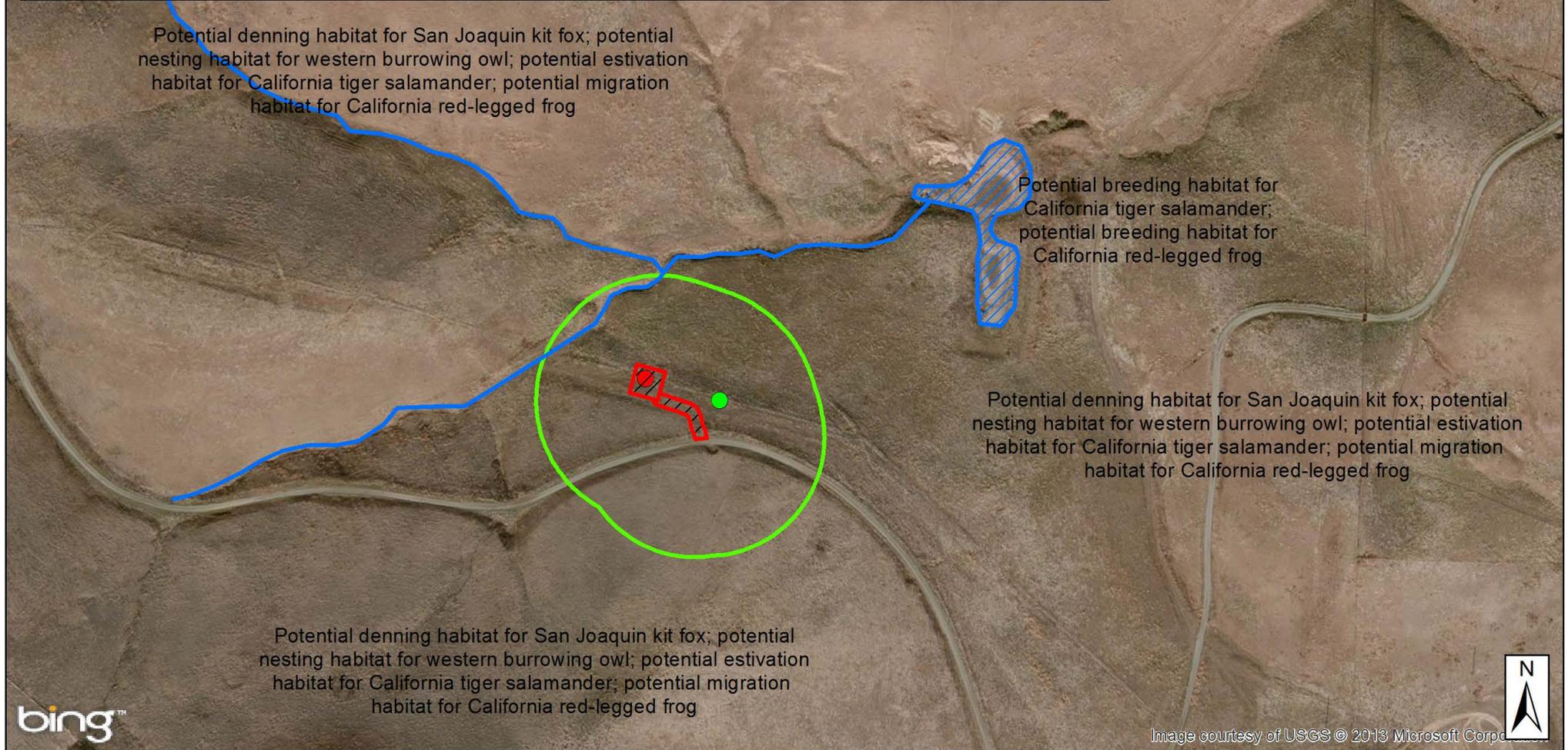
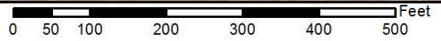


Image courtesy of USGS © 2013 Microsoft Corp



Monk & Associates
 Environmental Consultants
 1136 Saranap Avenue, Suite Q
 Walnut Creek, California 94595
 (925) 947-4867

Figure 4. Phillips 66 Pipeline LLC
 Repair Site 196,920.27.22 Species Habitats Map
 East Contra Costa County, California

Map Preparation Date: January 9, 2013
 Aerial Photograph Source: Bing Maps

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with Pacific Gas & Electric Company to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Pacific Gas and Electric Company for the Pacific Gas and Electric Company’s Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project (“PG&E Reconductoring Project”)

- A. **AUTHORIZE** staff to file a Notice of Determination for this Board action with the County Clerk.
- B. **AUTHORIZE** Executive Director to execute a Participating Special Entity Agreement with Pacific Gas and Electric Company for take coverage of the Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project, as further described in Exhibit 1 (the Planning Survey Report), provided the Wildlife Agencies concur with the Agreement.

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize the Executive Director to execute a Participating Special Entity Agreement and to extend take authorization under the Agreement to Pacific Gas and Electric Company (“PG&E”), for the Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project (“PG&E Reconductoring Project” or “Project”) is a discretionary action subject to CEQA. For the Project, the State Water Resources Control Board (“Water Board”) is the CEQA lead agency. The Water Board prepared the Initial Study/Mitigated Negative Declaration for the Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project (“IS/MND”) (*state clearinghouse number 2011102034*), dated October 17, 2012. The Conservancy is a CEQA responsible agency for purposes of the Project and, as such, will rely on the IS/MND prepared by the Water Board for purposes of fulfilling its responsibilities under CEQA.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

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

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

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

The Conservancy concurs with the Findings adopted by the Water Board on October 17, 2012 and finds that the impacts of the PG&E Project are fully disclosed and analyzed in the IS/MND, and that for each significant impact identified in the IS/MND, PG&E has proposed measures included in the project description and included mitigation measures to reduce the impacts to a less than significant level. Staff will file a Notice of Determination with the County Clerk to reflect this action.

ITEM (B). As part of the Pittsburg-Tesla 230 kV Transmission Line Reconductoring Project (“PG&E Reconductoring Project”), PG&E is seeking take coverage for upgrades to the existing 230 kilovolt (kV) transmission line between the Pittsburg Substation and the Tesla Substation, the Project spans two counties, Contra Costa and Alameda (reference Index Map for Figures 2 and 3 of the PSR). In order to maintain service reliability and meet increasing electric load demands in the City of Pittsburg and surrounding areas in Contra Costa and Alameda Counties, PG&E will replace approximately 31 miles (24 miles in Contra Costa County) of the 230 kilovolt (kV) transmission line between Pittsburg and Tesla Substations on 147 existing towers (111 in Contra Costa County), as further described in Exhibit 1 (the Planning Survey Report). This project will minimize the potential for future power demand overloads and ensure service reliability to the East San Francisco Bay area.

The PG&E Reconductoring Project consists of two main components, summarized as follows:

1. Modifying 35 of 111 existing steel lattice towers in Contra Costa County (43 of 147 towers total). Of the 35 towers to be modified in Contra Costa County, approximately 32 towers will receive 16.5 foot cage extensions, and 3 towers will receive dead end conversions. (On the total project, 43 towers will be modified: 39 towers will receive cage extensions and 4 towers will receive dead end conversions). All modifications are above ground and no foundation improvements will be required. The work performed at the towers will be conducted by helicopter.
2. Reconductoring (replacing wire) on 24 miles of the Pittsburg-Tesla 230 kV Transmission Line in Contra Costa County (31 miles total). Ground access to replace wire will take place at limited areas along the existing rights-of-way.

The application for take coverage is limited to those activities occurring within Contra Costa County and the HCP/NCCP jurisdictional area and does not include any of the activities that will occur in Alameda County. The Project consists of 23.518 acres of temporary impacts of which 19.340 acres require mitigation and 4.178 acres are classified as exempt from mitigation fees as they are urban sites. PG&E has outlined in the Planning Survey Report a detailed plan to restore all the temporarily impact areas to pre-project conditions.

(Reference Figures 1 for the Project Location and Attachment B the Index Maps to Figures 2 and 3, Figures 2-3 for the Land Cover and Habitat Survey Maps, and Attachment A the Project Description in the Planning Survey Report Application for more information on the Project).

The Pacific Gas and Electric Company is requesting take coverage for the PG&E Reconductoring Project through the Conservancy as a Participating Special Entity (or “PSE”). Chapter 8.4 of the HCP/NCCP provides that organizations, including public agencies and private organizations, with projects or ongoing activities within the inventory area that are not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP (known as the “Permittees”), may submit an application to the Conservancy requesting coverage under the HCP/NCCP as a Participating Special Entity. The Pacific Gas and Electric Company does not require any city or county land use permits for the proposed project and are therefore eligible to apply for take coverage as a PSE. As a PSE, Pacific Gas and Electric Company will obtain authorization for take of HCP/NCCP covered species in accordance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits.

In order to apply for take coverage as a Participating Special Entity, the PSE’s project must be an eligible covered activity or specifically named project under the HCP/NCCP. As set forth in Section 2.3.2 of the HCP/NCCP, public and private utility infrastructure projects are an eligible covered activity within the HCP/NCCP inventory area. The Project qualifies as a utility infrastructure project and therefore is an eligible covered activity.

In order to receive permit coverage under the HCP/NCCP, the Conservancy and Pacific Gas and Electric Company must enter into an agreement obligating compliance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits. The agreement must describe and bind Pacific Gas and Electric Company to perform all avoidance, minimization, and mitigation measures applicable to the Project. Conservancy staff has prepared the proposed Participating Special Entity Agreement (“Agreement”) and Pacific Gas and Electric Companies agrees to the terms and conditions therein (attached).

Attached as Exhibit 1 to the Agreement is the completed Planning Survey Report (“PSR”) for the PG&E Reconductoring Project, prepared by PG&E in consultation with Conservancy staff. The PSR documents the results of the planning-level surveys conducted throughout the PG&E Reconductoring Project site where ground disturbing impacts will occur and within a 200 foot radius of all work areas and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the PG&E Reconductoring Project to be covered through the HCP/NCCP. The PSR contains project vicinity and location maps, the project site plans and detailed maps showing the project impacts, land cover types, species habitat, and the fee calculator worksheet (Attachment B). Several attachments are included in the PSR including CNDDDB forms (Attachment C), the wetland delineation (Attachment D), a California Tiger Salamander Study (Attachment E), and the Initial Study/Mitigated Negative Declaration (Attachment F).

Key provisions of the Agreement:

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

Land Cover Type	Impact Type (acres)
	Temporary

Annual Grassland	14.616
Ruderal	0.630
Seasonal Wetland	0.007
Pasture	4.087
Urban (exempt from fees)	4.178
Purple needlegrass grassland (Uncommon vegetation and subtype of grassland)	0.045
Total Impacts (to non-exempt land cover types)	19.340

- The Agreement provides that the Pacific Gas and Electric Company will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$25,000.
- In addition, as set forth in the Agreement (page 6-7), Pacific Gas and Electric Company will pay the Conservancy \$282,045.36, which amount includes all HCP/NCCP development and wetland mitigation fees necessary for the Project, less a credit for PG&E for overpayment of fees for the Contra Costa-Las Positas 230-kV Transmission Line Reconductoring Project in the amount of \$170,233.16. (The credit reflects the amount of HCP/NCCP development fees paid by PG&E for planned temporary impacts that did actually take place as part of the Contra Costa-Las Positas 230-kV Transmission Line Reconductoring Project; the difference of acreage covered verses those impacted was calculated using sub-meter accurate GPS. By minimizing their footprint and worksites, PG&E was able to reduce its temporary impacts by 6.07 acres relative to planned impacts. The PSR contains more detailed information on the credit). The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”).
- Staff proposes a Contribution to Recovery in the amount of \$41,111.68. As set forth in the HCP/NCCP, the Conservancy may charge a Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs born by the Conservancy of exceeding mitigation requirements and contributing to the recovery of covered species (as is required because the plan is an NCCP and by state law NCCP’s must contribute to recovery, etc.). Given the overall scale of the PG&E Reconductoring Project, the proposed ground disturbing impacts associated with the reconductoring work, and the development fee applicable to the project which is around \$21,000 per acre, staff proposed a \$41,111.68 Contribution to Recovery. This amount is 10% of the amount of the mitigation fees required for the development and wetland impacts and staff believes this is consistent with the amount charged in previously covered Participating Special Entity projects. The Contribution to Recovery for the PG&E Contra Costa-Las Positas 230-kV Transmission Line Reconductoring Project was also 10%.

- The table below summarizes the required development and wetland fees, contribution to recovery, the credit owed PG&E, and administrative costs:

FEE SUMMARY for the PG&E Reconductoring Project	
Development fees:	\$409,401.59
Wetland Mitigation Fee:	\$1,765.25
Contribution to Recovery for Endangered Species:	\$41,111.68
Less the credit from the Contra Costa-Las Positas 230-kV Transmission Line Reconductoring Project	(\$170,233.16)
TOTAL FEES AND CONTRIBUTIONS	\$282,045.36
Maximum Administrative Costs	\$25,000.00
MAXIMUM AMOUNT TO BE PAID	\$307,045.36

- The Agreement provides that the Fees and Administrative Costs must be paid before work commences. Pacific Gas and Electric Company anticipates paying fees in April 2013 in order to secure the HCP/NCCP Permit before starting work in late 2013. The PSE Agreement requires the amount of fees to be adjusted annually, including any changes in the first year that occur before work commences, as required by the HCP/NCCP. An adjustment is anticipated in this case, though the amount will depend on Board action on the Periodic Fee Audit.
- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys and applicable avoidance and minimization measures for San Joaquin kit fox, western burrowing owl, Swainson’s hawk, and Golden Eagle. Pacific Gas and Electric Company is requesting a variance from the 1,000-foot setback requirement in the HCP/NCCP for a known Swainson’s hawk nest tree located outside of the project footprint to a reduced setback of approximately 900 feet (the nest is well screened from the Project and construction monitoring has been incorporated to be sure Swainson’s hawk nesting is not affected).

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

- Pacific Gas and Electric Company signs the Agreement.
- Staff will ask the Wildlife agencies to review the Agreement and to concur that the Agreement includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on Pacific Gas and Electric Company to implement them. If, and only if, the Wildlife Agencies concur, the Executive Director of the Conservancy will sign the Agreement. Note: Participating Special Entity

Agreements, unlike the granting of take authorization by a participating City or County, require Wildlife Agency concurrence.

- Pacific Gas and Electric Company pays all required mitigation, contribution to recovery, and administrative costs (to-date, as set forth in an invoice to be provided to PG&E by Conservancy staff), as outlined in the Agreement.
- The Conservancy issues Pacific Gas and Electric Company a Certificate of Inclusion. Take authorization would then be in effect, subject to the terms of the Agreement.
- Pacific Gas and Electric Company conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Pacific Gas and Electric Company develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Pacific Gas and Electric Company implements the Project subject to the terms of the Agreement.

Attachments:

- **PSE Agreement, including:**
 - Main body of agreement
 - Exhibit 1: Planning Survey Report:
 - Main body of planning survey report
 - Project Vicinity Maps and the Impact, Land Cover and Habitat Maps
 - Fee Calculator (Exhibit 1)
 - Attachments A-E
 - Attachment F- Initial Study/Mitigated Negative Declaration (Provided on CD ROM)

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: January 23, 2012
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Letter to East Bay Regional Park District authorizing property sale to Contra Costa County for Vasco Road Safety Project

RECOMMENDATION

AUTHORIZE the Executive Director to send a letter to the East Bay Regional Park District (EBRPD) approving the sale and conveyance of 1.8 acres of land and 2.88 acres of access/maintenance easement from lands previously acquired for the HCP/NCCP Preserve System to Contra Costa County as needed for the construction and operation of the Vasco Road Safety Project.

DISCUSSION

Contra Costa County is constructing the second phase of the Vasco Road Safety Improvements Project (Project). To build the Project the County needs more land in a few locations adjacent to Vasco Road as well as additional access easements. The property needed for the safety improvements is part of the Souza III property that was acquired by EBRPD with assistance from the Conservancy in late 2010. EBRPD needs approval from the Conservancy to convey the requested property.

Background: Vasco Road has heavy, fast-moving traffic and a history of serious injury accidents. In December 2011, the County completed the first phase of its Vasco Road Safety Improvements Project to address centerline cross-over accidents. The project included construction of a center concrete median barrier and pavement widening along a stretch of the road approximately three miles north of the Contra Costa/Alameda county line.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: January 23, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

For Phase 2, the County plans to accomplish the pavement widening by "laying back" (i.e., excavating) the road embankment slopes, removing approximately 130,000 cubic yards of material instead of constructing large retaining walls. This alternative necessitates the acquisition of property rights from adjacent property owners, including East Bay Regional Park District. The Project will also include drainage improvements, wildlife fences and culverts which will allow protected wildlife species to pass beneath the road. This project is specified as an eligible covered activity in the HCP/NCCP and will be covered.

The County is seeking to acquire six separate fee parcels with a total area of 1.8 acres, plus easement rights on existing roads on portions of the Souza III property (2.88 acres) for its road widening project and subsequent maintenance of the new slopes. An appraisal was completed. The appraised value of these 4.68 acres is \$20,000. A map of the land and easements needed by CCC is attached.

The funding agreement between the EBRPD and the Conservancy associated with the original acquisition of the Souza III parcel states that:

“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.”

Additionally the Funding Agreement specifically identifies the Vasco Road Safety Project and the future need to transfer some acreage to the County:

“Conservancy and District acknowledge that the Proposed Vasco Road Widening along the west boundary of the property may require Contra Costa County (“County”) to expand its right of way. Conservancy and District anticipate the County will request to purchase a narrow portion of the Property along its western edge for this purpose. Conservancy and District acknowledge that one purpose of the right of way purchase may be to enable the County to construct the improvements while minimizing the use of retaining walls, which may be unsightly and may hinder wildlife movement.”

The proposed action is consistent with the intent of the funding agreement and staff recommends that the Conservancy Governing Board authorize the Executive Director to send a letter to EBRPD approving the sale and conveyance of the land and easements to the County for Phase 2 of the Vasco Road Safety Improvements Projects. The letter from the Conservancy to the East Bay Regional Park District should also stipulate that the \$20,000 to be received by EBRPD for this sale be used to acquire lands that will be added to the HCP/NCCP Preserve System to replace the acreage being sold.

The acquisition of Souza 3 was also subject to a Subgrant Agreement with the Wildlife Conservation Board (WCB) that places conditions on sale or transfer of the acquired land. That agreement also memorialized the anticipated need for the County to acquire right of way for the

Project. Conservancy staff is working with EBRPD and WCB to secure necessary approvals for EBRPD for the sale of the land for the Project.

Attachments: Map showing land and easements proposed to be acquired for the Project.

EXHIBIT "B1"

APN 005-160-004
EBRPD
2009-305768



- LEGEND**
- EXISTING R/W OR PARCEL LINES
 - RIGHT-OF-WAY BEING ACQUIRED
 - ACCESS EASEMENT
 - D.E. EXISTING DRAINAGE EASEMENT
 - F.O.C. FINAL ORDER OF CONDEMNATION

NOTE:
Parcels 1a thru 1e are Road Widening
Parcels that are currently being acquired;
parcels 1f and 2a are maintenance/access
easements detailed in Exhibit B-2.

This map does not show all currently
existing County/EBRPD easements in
this vicinity.

APN 005-160-005
EBRPD
2004-0492932

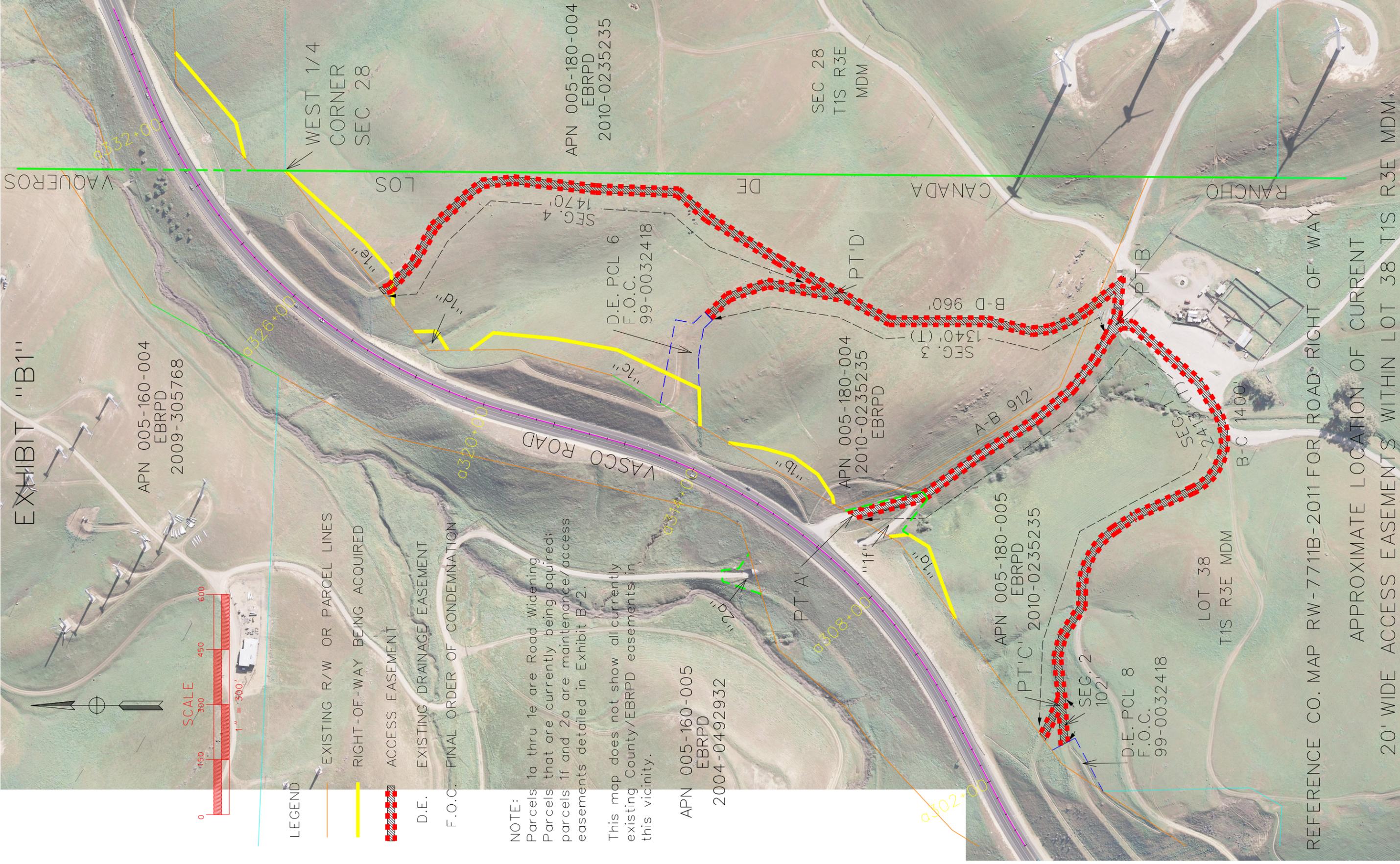
APN 005-180-004
EBRPD
2010-0235235

APN 005-180-005
EBRPD
2010-0235235

D.E. PCL 8
F.O.C.
99-0032418

APN 005-180-004
EBRPD
2010-0235235

SEC 28
T1S R3E
MDM



REFERENCE CO. MAP RW-7711B-2011 FOR ROAD RIGHT OF WAY
APPROXIMATE LOCATION OF CURRENT
20' WIDE ACCESS EASEMENTS WITHIN LOT 38 T1S R3E MDM.

Instrument:

Recorded:

Scale: 1" = 300'

Cad File RW425510.dgn

Document No.

Drawn By: TL

Plot Date: 18-DEC-2012 09:4

Checked By: JS

Drawing: B-7711B-2011