



*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***

**Monday, December 9, 2013**  
**1:30 p.m.**

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

## **AGENDA**

**1:30 p.m. Convene meeting and adjourn to Closed Session**

### **Closed Session**

**CS1) Conference with Legal Counsel – Existing Litigation (Gov. Code, § 54956.9(d)(1))**

Discovery Builders, Inc. v. City of Brentwood, California; City Council of the City of Brentwood, et al.; Contra Costa County Superior Court, Case No. N13-1781

**CS2) Conference with Real Property Negotiators**

Property: APNs 078-050-003, -004, -006 and 078-100-002, -003, and -007; 6401 Briones Valley Road, Brentwood, CA  
Agency Negotiators: John Kopchik and Abigail Fateman  
Negotiating Parties: Conservancy and East Bay Regional Park District  
Under negotiation: Payment terms

**CS3) Conference with Real Property Negotiators**

Property: APNs 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

### **2:15 p.m. Open Session**

**Item 1 will not begin before 2:15 p.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 August 22, 2013.**
- 5) **Consider the following Governing Board administrative matters:**
  - a) **CONFIRM Conservancy Chair and Vice Chair for 2014.**
  - b) **AUTHORIZE staff to schedule the next Governing Board meeting for February once Board membership for the year has been set. SET the schedule for the remainder of 2014 at the February meeting.**
- 6) **Consider DETERMINING representation on Public Advisory Committee (PAC) for 2014.**
- 7) **Consider APPROVING the 2014 Conservancy Work Plan.**
- 8) **Consider the following actions related to legislative matters:**
  - a) **ADOPT the 2014 Legislative Platform;**
  - b) **ADOPT Resolution 2013-03 to support working together with agencies from across California to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$45 million to \$80 million in the Fiscal Year 2015 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.**
- 9) **Consider the following actions related to Conservancy finances:**
  - a) **APPROVE the 2014 Conservancy Budget.**
  - b) **AUTHORIZE staff to execute annual contracts for on-going consulting services with:**
    - **ICF Jones and Stokes: not to exceed \$290,000 for the term from January 1, 2014 to December 31, 2014;**
    - **H.T. Harvey and Associates: not to exceed \$88,000 for the term from January 1, 2014 to December 31, 2014;**
    - **Monk and Associates: not to exceed \$46,000 for the term from January 1, 2014 to December 31, 2014.**
    - **Nomad Ecology: not to exceed \$65,000 for the term from January 1, 2014 to December 31, 2014.**
    - **Sanders Fence Company: not to exceed \$60,000 for the term January 1, 2014 to December 31 2015.**

- 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, 2014 through December 31, 2014.**
- d) **AUTHORIZE staff to amend an existing contract for legal services with Abbott and Kindermann: increase payment limit by \$200,000, from \$75,000 to \$275,000, and extend the term one year to December 31, 2014.**
- e) **AUTHORIZE staff to amend existing contracts to extend the contract term one year to December 31, 2014 for:**
  - **Restoration Resources**
  - **Thunder Mountain Enterprises**

**10) Consider the following actions related to land acquisition:  
AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), one state grant agreement and one federal subgrant agreement with the California Wildlife Conservation Board (WCB) for state and federal funds for acquisition of the Smith Property (APN 078-050-003, -004, -006 and 078-100-002, -003, -007; 6401 Briones Valley Road, Brentwood, CA 94513).**

**11) Consider ACCEPTING joint recommendation of Conservancy staff and the Public Advisory Committee (PAC) regarding process for making future determinations related to take authorizations that are assigned to the Conservancy by the HCP/NCCP.**

**12) Consider the following actions related to extending take coverage to San Francisco Bay Area Rapid Transit District for the East Contra Costa BART Extension Project:**

- a) **AUTHORIZE staff to file a Notice of Exemption for this Board action with the County Clerk.**
- b) **AUTHORIZE Executive Director to execute a Second Amendment to the Participating Special Entity Agreement with Contra Costa Generating Station, LLC, provided the Wildlife Agencies concur with the Agreement.**

**13) Consider the following actions related to extending take coverage to Contra Costa Generating Station, LLC for the Oakley Generating Station Project:**

- a) **AUTHORIZE staff to file a Notice of Exemption for this Board action with the County Clerk.**
- b) **AUTHORIZE Executive Director to execute a Second Amendment to the Participating Special Entity Agreement with Contra Costa Generating Station, LLC, provided the Wildlife Agencies concur with the Agreement.**

**14) Adjourn. Next regular meeting TBA.**

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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:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Governing Board Meeting Record for August 22, 2013.

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**RECOMMENDATION**

**APPROVE** the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of August 22, 2013.

**DISCUSSION**

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes  
ACTION OF BOARD ON: December 9, 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  
 Thursday, August 22, 2013  
 City of Brentwood

The Board convened the meeting at 12:00 pm and announced adjournment to Closed Session.

**1) Introductions.**

*Governing Board members in attendance were:*

Joel Bryant	City Council, City of Brentwood
Hank Stratford	City Council, City of Clayton (Conservancy Chair)
Mary Piepho	Contra Costa County Board of Supervisors(Conservancy Vice Chair)
Randy Pope	City Council, City of Oakley
Salvatore Evola	City Council, City of Pittsburg

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

Seth Adams	Save Mount Diablo
Kevin Fitzgerald	The Golf Club at Roddy Ranch
Bob Nisbet	East Bay Regional Park District
Jack Roddy	

*Conservancy Staff and consultants in attendance were:*

John Kopchik	Conservancy Staff
Krystal Hinojosa	Conservancy Staff
Abigail Fateman	Conservancy Staff
Maureen Parkes	Conservancy Staff
Chris Beale	Conservancy Legal Counsel

- 2) **Report on any actions taken in Closed Session.** There were no actions to report out of Closed Session.
- 3) **Public Comment on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).** There were no public comments.
- 4) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy Governing Board Meeting on June 27, 2013.** The meeting record was approved. (5-0: Bryant, Evola, Piepho, Pope, and Stratford)
- 5) **Consider AUTHORIZING Conservancy’s legal counsel to execute a Defense and Indemnification Agreement with participating cities and the County.** Chris Beale gave an overview of the item outlining specific details of the agreement. He stated that the Conservancy had received a letter from Discovery Builders, Inc. just prior to the meeting which raised several concerns regarding the agreement. Chris Beale responded to the issues brought up in the letter. The item was approved with a condition to allow staff to make minor revisions to the agreement. (5-0: Bryant, Evola, Piepho, Pope, and Stratford)
- 6) **Consider the following actions related to land acquisition:**

**AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), grant agreements with the California Wildlife Conservation Board for state and federal funds and a grant agreement with the Gordon and Betty Moore Foundation for acquisition of the Roddy Ranch Property by EBRPD (APN 007-010-039; 007-010-040; 057-060-022; 057-070-003; 057-070-004; 057-070-005; 057-070-013; 057-070-014; 075-190-010; 075-190-012; 075-190-013; 078-050-009 and 078-050-010; Deer Valley Road and Chadbourne Road, Antioch, CA 94531 and 94413).**

John Kopchik gave a presentation on the proposed Roddy Ranch acquisition, stated that it meets several critical Plan goals, will have a number of public recreation benefits as the proposed core of a new regional park, and is a prudent use of grant funds that either have a deadline for expenditure or are available on a first-come-first-serve basis. Vice Chair Piepho requested confirmation that the proposed acquisition would not interfere with access to the privately owned land within the boundaries of the property. John Kopchik stated that this was a condition of the purchase agreement. Vice Chair Piepho inquired if there had been any comment from Antioch on the acquisition. John Kopchik stated that he hadn’t received any but that the Mayor had written a letter to editor in support of the acquisition. Board Member Bryant stated that he was pleased the property will remain open space. Chair Stratford invited public comment. Kevin Fitzgerald, General Manager of the Golf Club at Roddy Ranch, stated support for the proposed acquisition and said he is looking forward to working with the East Bay Regional Park District, the East Contra Costa County Habitat Conservancy and other agencies toward continued environmental stewardship of the land. Bob Nisbet, East Bay Regional Park District, stated appreciation for the Conservancy’s proposed support in the acquisition of the property and stated that it is a very critical acquisition for the East Bay Regional Park District with substantial public benefits. Jack Roddy, the owner of the ranch for 40 years, stated that he supports the sale of the property and is very proud to be involved with the East Bay Regional Park District to ensure a bright future for the ranch. Seth Adams, Save Mount Diablo, stated that this is a critical acquisition in a key wildlife corridor, that the proposal demonstrates the benefit of the East Contra Costa County Habitat Conservation Plan and may rekindle discussion on the possibility of Antioch joining the East Contra Costa County Habitat Conservancy in the future. He stated that it will be an incredible regional preserve and a gem for East Contra Costa County. Chair Stratford brought the discussion back to the Board, stating that he had always enjoyed the view of the ranch driving on Deer Valley Road and was pleased to see the proposed acquisition. The item was approved. (5-0: Bryant, Evola, Piepho, Pope, and Stratford)

- 7) **Consider AUTHORIZING staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project, Line 200, Spring 2013.** Krystal Hinojosa provided background on the project. The item was approved as recommended. (5-0: Bryant, Evola, Piepho, Pope, and Stratford)
- 8) **Adjourn to next Governing Board meeting scheduled for October 17, 2013.**
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**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Administrative Matters for the Governing Board for 2014

**RECOMMENDATION**

- a) **CONFIRM** Conservancy Chair and Vice Chair for 2014.
- b) **AUTHORIZE** staff to schedule the next Governing Board meeting for February once Board membership for the year has been set. **SET** the schedule for the remainder of 2014 at the February meeting.

**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 2013, Clayton provided the Chair and the County provided the Vice Chair. For 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. That schedule is set on an annual basis to reflect the availability of Board Members for that year. The Governing Board also previously directed that the meeting location rotate among the jurisdictions.

Since the December 9, 2013, Governing Board meeting precedes City/County appointments for 2014, the representatives from the participating jurisdictions for 2014 have not yet been determined. Staff seeks authorization to schedule the first 2014 Board meeting for February once Board representation for 2014 is set.

CONTINUED ON ATTACHMENT: No  
ACTION OF BOARD ON: December 9, 2013  
OTHER \_\_\_\_\_

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

**VOTE OF BOARD MEMBERS**

\_\_\_ UNANIMOUS  
AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

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

ATTESTED \_\_\_\_\_  
*Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY*

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

For Board consideration at the February meeting, staff proposes to prepare a list of potential dates and times for meetings. To reflect the growing need for more frequent meetings, staff suggests the Board consider increasing the number of regularly scheduled meetings from four meetings per year to six meetings per year. Possible months and locations for meetings are outlined below:

<b>Month</b>	<b>Location</b>
February	City of Oakley
April	City of Clayton
June	City of Brentwood
August	City of Pittsburg
October	City of Oakley
December	City of Clayton

Staff recommends that Board Members discuss the issue of meeting frequency and provide guidance to staff on this matter so that options can be developed for the February meeting.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** 2014 Public Advisory Committee

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**RECOMMENDATION**

**DETERMINE representation on Public Advisory Committee (PAC) for 2014.**

**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 changing 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. On January 23, 2013, the Board reaffirmed PAC representation for 2013 without change.

CONTINUED ON ATTACHMENT: YES  
ACTION OF BOARD ON: December 9, 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

The annual review of PAC committee representation was discussed during the PAC meeting on November 14, 2013. PAC members were in agreement that the current composition is satisfactory and recommended that the composition be unchanged in 2014. The PAC wishes to boost attendance of some of the representatives of the PAC and will pursue strategies to achieve this in the next year. Staff concurs with the above PAC recommendations. Consideration and determination by the Board is requested.

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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 (Resident of 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:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Conservancy Work Plan – 2013 Summary & 2014 Work Plan

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**RECOMMENDATION**

**APPROVE the 2014 Conservancy Work Plan.**

**DISCUSSION**

The Conservancy Work Plan: 2013 Summary and 2014 Work Plan provides both a summary of tasks initiated and completed in 2013 and tasks planned for 2014 (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 experience gained during implementation of the HCP/NCCP, staff has developed the 2014 Conservancy Work Plan.

As mentioned, the Work Plan not only describes prospective tasks but also includes a summary of work performed in 2013. The “Actions Taken in 2013” column describes the type of work that has been completed and the end result for actions taken in 2013. The “Actions Proposed for 2014” column provides the goals and type of work planned in 2014. 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: December 9, 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 2014 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: Restoration/creation activities will proceed on three scales in 2014: a) construction of one large and one mid-sized project that were planned in 2013; b) initial planning will commence on one or more larger projects for consideration in the future; and c) opportunities for coordinating with East Bay Regional Park District on one or more small/simple adaptive management and maintenance projects in the late summer of 2014 will be explored.

Preserve Management and Management Planning: The first preserve management plan has been drafted and Conservancy staff are working with the wildlife agencies and EBRPD to finalize and implement initial actions in the plan. The plan will come to the Conservancy Governing Board in 2014 for approval

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

**Attachment:**

- Conservancy Work Plan: 2013 Summary and 2014 Work Plan

<b>Conservancy Work Plan: 2013 Summary and 2014 Work Plan</b>			
	<b>TASK</b>	<b>ACTIONS TAKEN IN 2013</b>	<b>ACTIONS PROPOSED FOR 2014</b>
<b><i>Program Administration (General)</i></b>			
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. The Conservancy continued to publicize activities via its website and other means.</p> <p>Created the 2012 Year in Review document to accompany the 2012 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.</p> <p>The Conservancy and EBRPD hosted the California Habitat Conservation Planning Coalition (CHCPC) event at Roddy Ranch in early October, which celebrated accomplishments since passage of the NCCP Act.</p> <p>The Antioch City Council invited a presentation from Conservancy staff on the ECCC HCP/NCCP and prospects for an Antioch plan. The presentation was made in October.</p>	<p>PAC meetings will continue to be held quarterly.</p> <p>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. A Year in Review document will be prepared for 2013.</p> <p>Conservancy staff will continue to assist Antioch with exploration of an Antioch HCP that could be coordinated with the ECCC HCP/NCCP, leading to more consistent permitting in the region and perhaps in cost efficiencies.</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 CDFW and USFWS.	Conservancy Staff prepared the 2013 annual budget and the 2013 work plan for Board discussion in January 2013. Conservancy prepared and published the 2012 Annual Report in the spring of 2013.	Conservancy Staff prepared the 2014 annual budget and this 2014 Work Plan for Board discussion in December 2013. The 2015 versions of these documents will be prepared for Board consideration in December 2014. Conservancy will also prepare and publish the 2013 Annual Report.

	TASK	ACTIONS TAKEN IN 2013	ACTIONS PROPOSED FOR 2014
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 2013 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 was considered by the Board in January 2013 and April 2013. The Board approved the 2013 Audit in July 2013 and made a recommendation to the cities/County on fees.	Provide support to cities and County in their review process related to the 2013 Fee Audit approved by the Conservancy. Perform the calculations for the 2014 automatic annual fee adjustments.
5	Pursue State, Federal, foundation and other 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 2013. More than \$4.9 million in new grants were approved in 2013.	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 2014. 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.  Conservancy staff will assist the City of Antioch with pursuing grant funding for a possible Antioch HCP, if requested.
6	Administer grants already awarded.	Grant revenues actually received in 2013 is estimated at \$1.4 million, requiring a number of agreements, invoices, forms and other grant management duties. Since 2007, the total grant funding approved for the Conservancy is greater than \$52 million, with almost \$33.6 million of that spent to date and around \$18.5 million remaining (included are the Roddy Ranch WCB funds, which have been approved but not yet spent).	Staff will continue with these tasks in 2014.
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.  Continued active participation with the California Habitat Conservation Plan Coalition (CHCPC) which is coordinating efforts across the state to improve funding opportunities for HCPs, promoting coordination of wetlands permitting with HCPs and share lessons learned among HCPs. Hosted CHCPC's anniversary celebration of HCPs/NCCPs at Roddy Ranch in October.  Implemented 2013 Legislative Platform and attended annual CHCPC legislative trip to Washington in April and intensively collaborated with CHCPC on efforts to restore funding for the Section 6 program, working with Congressman McNerney who lead efforts in the House. Proposed 2014 Platform.	Continue to participate in the CHCPC to pursue common policy objectives and to learn from the experiences of other HCP's. Attend NCCPP conference and CHCPC meetings in 2014. Implement 2014 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.

	TASK	ACTIONS TAKEN IN 2013	ACTIONS PROPOSED FOR 2014
8	Provide accounting services for the Conservancy.	Staff continued to manage Conservancy finances. The Conservancy conducted an audit of the 2012 Financial Statements. The auditor's written statements were presented to the Board and filed with appropriate agencies.	As well as preparing the 2015 Budget and managing finances consistent with the approved Budget for 2014, day to day management of debits and deposits will continue. The Conservancy will conduct an audit of the 2013 Financial Statements. The auditor's written statements will be presented to the Board.
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.	Progress made in 2012 continued in 2013. The Sacramento District of the U.S. Army Corps of Engineers issued a Regional General Permit (RGP) linked to the HCP/NCCP in May 2012. A number of public and private projects have been permitted under the RGP since it was approved. The Corps also approved a short term mechanism which relies on the Conservancy's exiting restoration projects to enable payment of HCP fees by applicants to satisfy Corps regulatory requirements. This procedure was approved for use until May of 2013 by which time the Corps wished to replace it with adoption of an In-Lieu Fee Instrument which will formalize this arrangement. The Conservancy continued to coordinate 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. The Conservancy was invited to work with the Water Boards in drafting a programmatic certification of the RGP that would address the state wetland regulatory process and that work is in progress. The Water Boards have also expressed interest in participating in development of the In Lieu Fee Instrument. The Conservancy hosted several field trips for wetland agencies.	Pursue as a top Conservancy priority the goal of completing regional permitting instruments in 2014 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.
<b><i>Program Administration (HCP/NCCP Permit Issuance)</i></b>			
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.

	TASK	ACTIONS TAKEN IN 2013	ACTIONS PROPOSED FOR 2014
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 2013. 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 in 2014. As the pace of permits appears to be increasing, the level of effort for this task may need to increase.
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 2014.
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 2014.
14	Expand GIS database to track land acquisitions and Permitting Program database to track projects, impacts, and take coverage.	Both databases were comprehensively updated in 2013.	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 2013	ACTIONS PROPOSED FOR 2014
<b><i>Preserve Acquisition and Management</i></b>			
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 work 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	Conduct 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 2013, assessments of preserve system lands included detailed, thorough surveys for wetlands and covered plants.	In 2014, the pre-acquisition assessments and resource inventories will continue. These surveys are essential to ensure HCP/NCCP requirements are being met.
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. The deed restriction refers to a management plan. Development of the management plan is in progress, complicating the timing for recording the deed restriction. The wildlife agencies and EBRPD are addressing this complication to enable recording of the deed restrictions to commence. 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 2014.

	TASK	ACTIONS TAKEN IN 2013	ACTIONS PROPOSED FOR 2014
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 \$500,000 and agreed that a portion of this lease revenue would set aside for long-term management. Contributions to recovery collected from Participating Special Entities can also be applied in part to long term management. The action taken by the Conservancy Board in the 2013 Fee Audit also called for an acceleration of planning for funding long-term management, calling for completing this work before the Year 10 Fee Audit (2017).	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 Vasoc Hills - Byron Vernal Pools Preserve Management Plan. The working draft VHBVP incorporates recreation, exotic plant and monitoring elements that subsequently also be addressed at the system-wide level. The wildlife agencies reviewed the working draft and are providing input.	In 2014, next steps on the Preserve Management Plan are to incorporate input from the state and federal wildlife agencies, present the plan draft to the PAC and the Conservancy Board. A second preserve management plan covering other portions of the Preserve System will be initiated in 2014.

	TASK	ACTIONS TAKEN IN 2013	ACTIONS PROPOSED FOR 2014
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 Vasco Hills - Byron Vernal Pools Preserve Management Plan and subsequently expanded. This plan will likely be based on and coordinated with existing policies and programs such as 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 Vasco Hills - Byron Vernal Pools Preserve Management Plan is including comprehensive evaluation of and planning for public access.	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.

	TASK	ACTIONS TAKEN IN 2013	ACTIONS PROPOSED FOR 2014
<b><i>Habitat Restoration/Creation</i></b>			
24	Design habitat restoration and creation projects and perform additional environmental compliance for habitat restoration if needed.	Like land acquisition, habitat restoration and creation continues to 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. Likewise progress on this task is an essential foundation to completion of efforts to coordinate wetlands permitting with the HCP. Staff worked with consultants and other partners to assess acquisitions for restoration opportunities. Two restoration projects were designed in 2013 with expected construction in 2014.	Staff will work with consultants and other partners to assess new acquisitions for restoration opportunities and to explore and develop restoration concepts for future restoration projects.
25	Implement habitat restoration and habitat creation projects.	In 2013, the Conservancy focused on planning for a number of small projects and one large project. Staff worked with maintenance crews to adaptively manage recently constructed habitat restoration projects.	Two restoration projects were designed in 2013 for probable 2014 construction: a) riparian habitat restoration, pond repair and improved cattle watering on Ang; and b) Hess Creek stream restoration south of Kirker Pass.
<b><i>Monitoring and Adaptive Management Program</i></b>			
26	Design Monitoring and Adaptive Management Program	Preserve monitoring and adaptive management measures were designed as part of development of the Vasco Hills - Byron Vernal Pools Preserve Management Plan. In addition, the Conservancy designed adaptive management measures for restoration projects. Conservancy staff worked with consultants to design a small erosion repair on Souza 2, and expects to construct it in 2014.	Work on this effort will continue through 2014. The components of a comprehensive monitoring strategy are being developed as part of the Vasco Hills - Byron Vernal Pools Preserve Management Plan, which will be released for comment in 2014.
27	Monitoring and adaptive of restoration projects and new preserves.	The previously constructed restoration projects were monitored throughout 2013.  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. EBRPD staff have provided reports on their monitoring and presented interim results to the PAC in November.	Monitoring on all projects will continue. The Souza 1 and Lentzner sites have been monitored for 5 years and the frequency of site visits will decrease. The Conservancy will work with contractors to repair an erosional feature on Souza 2.  The golden eagle study will continue.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Legislative Issues

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**RECOMMENDATION**

- a) ADOPT the 2014 Legislative Platform;
- b) ADOPT Resolution 2013-03 to support working together with agencies from across California to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$45 million to \$80 million in the Fiscal Year 2015 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 items 1-8 proposed in the Platform. However, the language has been updated throughout the Platform and a new item 9 has been proposed as a consequence of the water bond proposals under consideration by the State. 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: December 9, 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 KUTSUIRS, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
 HABITAT CONSERVANCY

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

**Item (b):** Conservancy staff is also recommending approval of Resolution 2013-03 which is a more formal expression of Item 1 on the 2014 Legislative Platform suitable for submission Members of Congress and the federal administration. Resolution 2013-02 is virtually identical to the resolution approved last year.

**Item (c):** If the Governing Board approves the 2014 Platform and Resolution 2013-03, 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 2014 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 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 2014 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 2014 Conservancy Budget.

**Item (d):** Staff is recommending payment of CHCPC's \$5,000 membership dues again in 2014. 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 2013, the California Habitat Conservation Planning Coalition's fifth 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. This work included orchestrating a Washington D.C. advocacy trip, planning the HCP/NCCP anniversary celebration event hosted by the Conservancy and EBRPD at Roddy Ranch, convening a Coalition business meeting in July, 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 FY2014 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 FY2015 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 Institute for Ecological Health as well as by dues paid by members. Several documents are attached to provide more information on the voluntary contributions and the products the Coalition has generated recently.

Each year, a CHCPC member agency takes a turn hosting the Coalition's 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 Coachella Valley and San Diego County. The CHCPC has asked the Western Riverside County Regional Conservation Authority to host the meeting in 2014. Staff recommends that the Conservancy attend the 2014 meeting in Riverside County. The cost of attending is reflected in the Proposed 2014 Budget.

**Attachments:**

- Proposed 2014 Conservancy Legislative Platform
- Resolution 2013-02
- CHCPC's Briefing Book for the FY2014 Section 6 campaign (this is the document for last year, it is being updated for FY2015)
- Document explaining CHCPC Voluntary 2014 Membership Contributions
- 4-12-13 Dear Colleague letter from Members of Congress to the Chair and Ranking Member of the House Interior Appropriations Subcommittee
- Accomplishments of Regional Conservation Plans & Natural Community Conservation Plans



EAST CONTRA COSTA  
COUNTY HABITAT  
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

# 2014

## Federal & State Legislative Platform

The 2014 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 2014, 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 FY2015, an increase relative to the \$45 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 Conservation 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 almost \$9.3 million approved 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 four 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/NCCPs as a suitable means for fulfilling the requirements of SB375.

- Item 6:** *Advocate* for HCP/NCCPs 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/NCCPs 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.
- Item 9:** *Advocate* for HCP/NNCPs to be eligible for funding from the watershed protection component of a potential future California Water Bond at a level equal to or greater than the funding afforded such plans by Proposition 84 (\$90 million), if such Water Bond is proposed and approved by the voters.

## 2014 LEGISLATIVE PLATFORM DETAILS

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

#### LEGISLATIVE POSITION:

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 other 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 2015 by providing \$80 million in the Fiscal Year 2015 Senate Interior, Environment and Related Agencies Appropriations Bill. This funding level would restore much of the cut from the last three 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 FY2015, 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 CESCOF 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 CESCOF 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 CESCOF land acquisition grants providing a total of \$33,494,990 toward critical land acquisition under the East Contra Costa County HCP/NCCP. CESCOF 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 CESCOF very substantially, making a 30 percent cut in the fiscal year 2011 appropriations and another 20 percent cut in the fiscal year 2012 appropriations. Across the board, the automatic budget cuts in FY2013 resulted in additional cuts to the CESCOF, bringing the projected FY2013 level to about \$45 million, down from \$85 million in FY10. This is a far greater cut than overall federal or total U.S. Fish and Wildlife Service funding. The fiscal year 2014 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 CESCOF 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 Four Approved and Active Federal Section 6 Grants**

##### LEGISLATIVE POSITION:

Request the California Wildlife Conservation Board to provide a substantial contribution of approximately \$20 million toward the required non-federal match for the Conservancy's four 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 five local government-led NCCPs in the state are actively seeking WCB funds for land acquisition, and the East Contra Costa County HCP/NCCP is one of two 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 six separate grant awards for six acquisitions, WCB has awarded the Conservancy \$9,283,276. 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 FY2011-2012 and FY2013-2014 appropriation processes, attempts were 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.

**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 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/NCCPs to be viewed as a suitable place to spend funds collected pursuant to future state and federal climate change legislation as HCP/NCCPs 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. However, this support could be improved if HCP/NCCPs were as a 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.

**Item 9: Habitat Conservation Plans and Natural Community Conservation Plans as eligible for funding from a potential future California Water Bond.**

## LEGISLATIVE POSITION:

Advocate for HCP/NNCPs to be eligible for funding from the watershed protection component of a potential future California Water Bond at a level equal to or greater than the funding afforded such plans by Proposition 84 (\$90 million), if such Water Bond is proposed and approved by the voters.

## BACKGROUND:

The proposed 2014 water bond is the product of a comprehensive legislative package crafted in 2009 by Governor Schwarzenegger and state lawmakers to meet California's growing water challenges. The package was composed of four policy bills and an \$11.14 billion bond. The water bond measure was originally set to be on the state's 2010 ballot and was later moved to the 2012 ballot. The California State Legislature, on July 5, 2012, approved a bill to take the measure off the 2012 ballot and put it on the 2014 ballot to provide a public cost share for elements of the package that benefit the public.

Two measures seek to replace the \$11.14 billion water bond currently slated for the 2014 ballot. AB 1331 is a \$6.5 billion proposed water bond titled the Climate Change Response for Clean and Safe Drinking Water Act of 2014. The bill would fund clean and safe drinking water projects; protection

of rivers, lakes, streams and watersheds; climate change preparedness for regional water security (integrated regional water management); and water storage for climate change. SB 42 proposes a \$6.475 billion water bond for the 2014 ballot that would be known as the Safe Drinking Water, Water Quality and Flood Protection Act of 2014. SB 42 would fund similar programs.

As was the case with voter-approved Proposition 84, should a future water bond be approved by the voters and funds become available, HCP/NCCPs should be considered as a sound investment that will ensure that watershed protection dollars are spent effectively and efficiently.

Resolution No: 2013-03

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 2015 Interior, Environment and Related Agencies Appropriations bill anticipated to be passed by Congress in 2014.

Approved by the following vote on: December 9, 2013.

Ayes:

Noes:

Abstain:

Attest: \_\_\_\_\_  
John Kopchik, Executive Director

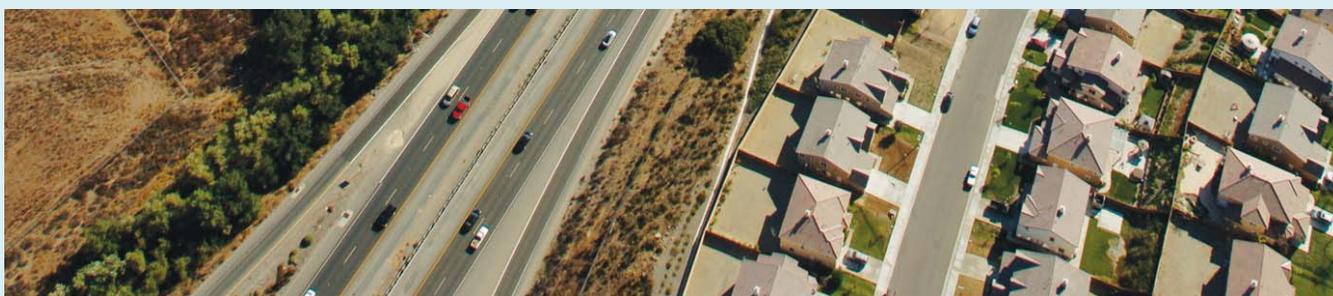
# **CALIFORNIA HABITAT CONSERVATION PLANNING COALITION**

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

## **CONSERVING NATURAL RESOURCES**



## **FACILITATING ECONOMIC DEVELOPMENT**

**March 2013**

# REQUEST

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

## HABITAT CONSERVATION PLANS

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



## SUPPORTED BY

### Local Agencies:

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

### Conservation Organizations:

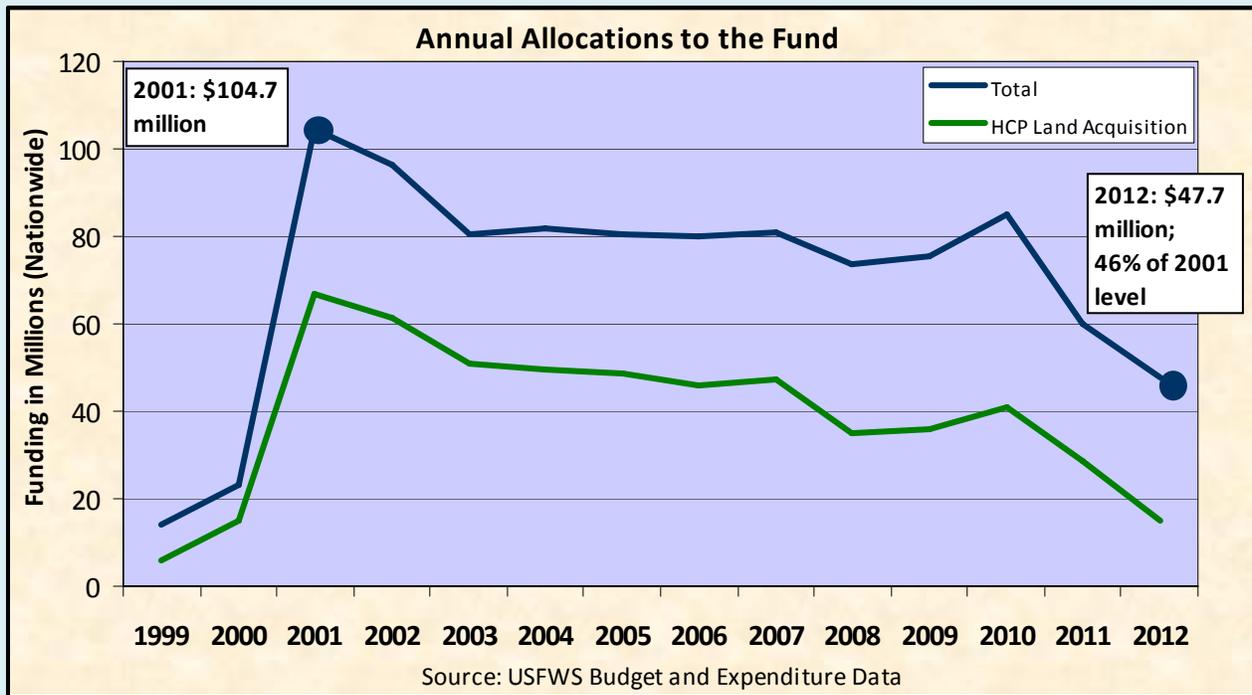
California Land Conservancy  
 California Native Plant Society  
 Endangered Habitats League  
 Friends of the Desert Mountains  
 Institute for Ecological Health  
 The Nature Conservancy

### Business/Infrastructure:

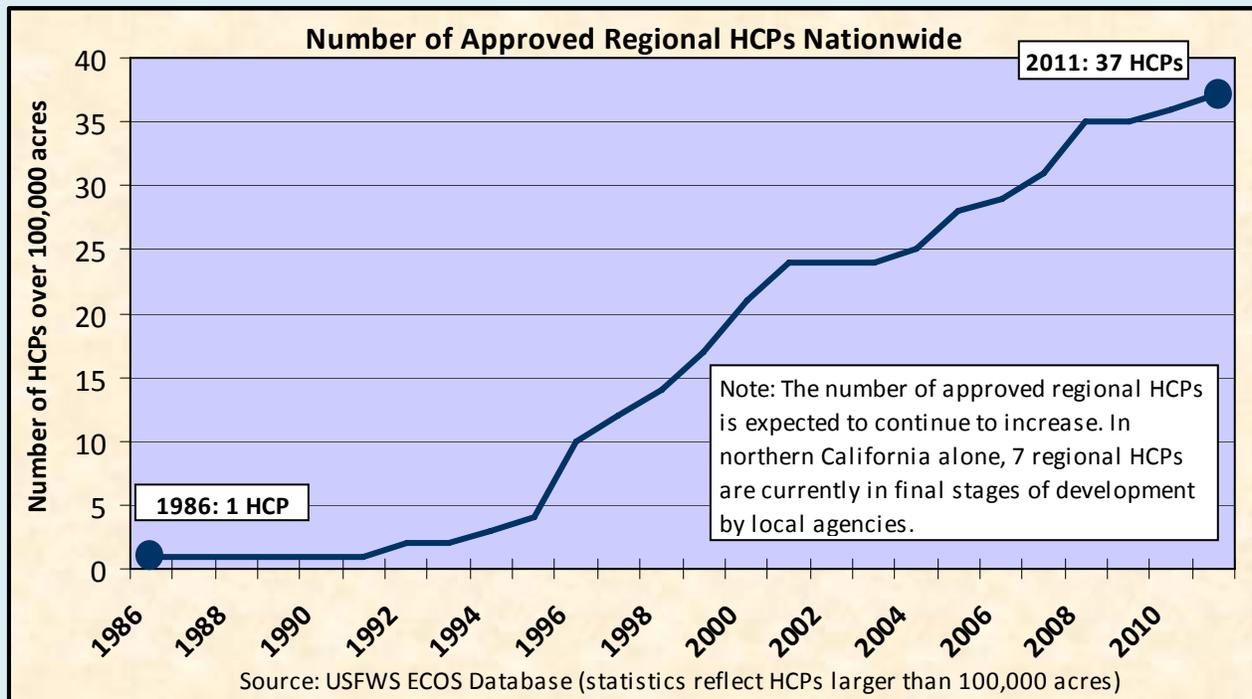
Building Industry Association of the Bay Area  
 Building Industry Association of San Diego County  
 Building Industry Association of Southern  
 California, Inc.  
 East County Renewables Coalition  
 Pacific Gas and Electric Company

# WHY THE FUND ALLOCATION NEEDS TO INCREASE

## A) FUNDING LEVELS HAVE DECLINED DRAMATICALLY



## B) THE NUMBER OF APPROVED HCPS CONTINUES TO GROW



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

# ECONOMIC AND CONSERVATION BENEFITS OF HCPs

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

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

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



## HCPs Are Good for Businesses and Jobs

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

In the long term, streamlined permitting expedites:

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

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



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

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

# ECONOMIC AND CONSERVATION BENEFITS OF HCPs



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

## HCPs Are a Better Way to Conserve Natural Resources

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

## HCPs Facilitate Infrastructure Projects

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

## HCPs Provide Support for Working Farmers and Ranchers

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



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

*- Jim Whalen, J. Whalen Associates Inc.*

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

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

# CONSERVATION OUTCOMES AND SAMPLE ACCOMPLISHMENTS OF CALIFORNIA HCPs

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

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

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

Key Regional HCPs	Covered Species	Acres To Be Conserved
Butte Regional Conservation Plan	41	150,000
City of San Diego MSCP Subarea Plan	85	52,727
Coachella Valley MSHCP/NCCP	27	745,000
East Contra Costa County HCP/NCCP	28	30,000
Natomas / Metro Air Park HCPs	22	9,000
Placer County Conservation Plan	33	60,000
San Diego County Multiple Habitat Conservation Open Space Plan NCCP	263	158,000
San Diego MSCP - County Sub Area Plan	85	98,000
San Diego North County MSCP / NCCP	63	107,000
San Joaquin County Multi-species Conservation and Open Space Plan	97	101,000
Santa Clara Valley HCP/NCCP	19	49,390
Solano HCP	36	30,000
South Sacramento HCP	30	58,000
Western Riverside County MSHCP/NCCP	146	500,000
Yolo Natural Heritage Program	64	under development
<b>TOTAL</b>		<b>2,148,117</b>

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



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

# ECONOMIC OUTCOMES AND SAMPLE ACCOMPLISHMENTS OF CALIFORNIA HCPs



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



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



Key Regional HCPs	Regional Permits* Thru...	Est. Value of Covered Activities**
Butte Regional Conservation Plan	2041	under development
City of San Diego MSCP Subarea Plan	2047	\$37 billion
Coachella Valley MSHCP/NCCP	2083	\$300 billion
East Contra Costa County HCP/NCCP	2037	\$12 billion
Natomas / Metro Air Park HCPs	2053	\$18 billion
Placer County Conservation Plan	2061	\$115 billion
San Diego County Multiple Habitat Conservation Open Space Plan NCCP	2061	\$228 billion
San Diego MSCP - County Sub Area Plan	2047	\$118 billion
San Diego North County MSCP / NCCP	2060	\$104 billion
San Joaquin County Multi-species Conservation and Open Space Plan	2051	\$109 billion
Santa Clara Valley	2060	\$20 billion
Solano HCP	2040	\$12 billion
South Sacramento HCP	2061	\$45 billion
Western Riverside County MSHCP/NCCP	2079	\$500 billion
Yolo Natural Heritage Program	2041	under development
<b>TOTAL</b>		<b>\$1.6 trillion</b>

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

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

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



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

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



**California Habitat Conservation Planning Coalition**

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

**Contact:**

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

## California Habitat Conservation Planning Coalition

### Voluntary 2014 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.

### 2014 Program and use of Voluntary Membership Contributions

Contributions will pay for staff time provided by Institute for Ecological Health, as well as other expenses. Staff will provide support for our 2014 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 periodic meetings with regional U.S. Fish and Wildlife Service [USFWS] and with California Department of Fish and Wildlife [CADFW] leadership.
- \* 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 and an October business meeting.

\* 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 2013 Activity**

Our Federal Funding Campaign Work Group focused on the Fiscal 2014 Cooperative Endangered Species Conservation Fund (Section 6) appropriations. We requested \$80 million in funding. 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 lead for this letter was Rep McNerney (D). Twenty-eight additional Members signed the letter. Congress has not finalized the Fiscal 2013 appropriations as of late November 2013.

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.

The Coalition organized a well-attended event in Contra Costa County commemorating the 10-year anniversary of the NCCP Act and 30 years of HCPs. A broad and diverse group of speakers and attendees participated, including California Natural Resources Secretary John Laird.

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 sought and received funding from the Resources Legacy Fund to evaluate and document 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.

The Coalition held, a July business meeting in Sacramento. At this meeting Coalition leaders discussed our various issues and activities and made decisions on future work.

### **Voluntary 2014 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 2014 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.

**2013 Membership Contributions**

The coalition received total of \$40,000.00 in voluntary membership dues from California Land Conservancy, Coachella Valley Conservation Commission, County of San Diego, East Contra Costa County Habitat Conservancy, Endangered Habitats League, ICF International, Institute for Ecological Health, Pacific Gas and Electric, Sand Diego Association of Governments (SANDAG), San Joaquin Council of Governments, Santa Clara Valley Habitat Agency, Solano County Water Agency, and The Nature Conservancy.

**Management and Reporting**

The Coalition’s Steering Committee oversees spending of the Coalition’s funds. There are quarterly reports and there will be a 2013 annual report. Contributors will receive the annual report and, if they wish, the quarterly reports.

**Congress of the United States**  
**Washington, DC 20515**

April 12, 2013

The Honorable Michael Simpson  
Chairman  
Subcommittee on Interior,  
Environment, and Related Agencies  
B-308 Rayburn HOB  
Washington, DC 20515

The Honorable Jim Moran  
Ranking Member  
Subcommittee on Interior,  
Environment, and Related Agencies  
1016 Longworth HOB  
Washington, DC 20515

Dear Chairman Simpson and Ranking Member Moran:

We are writing to emphasize the importance of the Cooperative Endangered Species Conservation Fund (CESCF) in facilitating economic development and job creation in areas where there are endangered and rare species of animals and plants.

The CESCF includes subaccounts that provide vital funding to regional Habitat Conservation Plans (HCPs) through competitive grants. Regional HCPs, which are led by local governments, facilitate urban-suburban infrastructure building, development and job creation through coordinated permitting for endangered species impacts. They are important in areas where there is a large and growing population and also many species of rare animals and plants that often are found nowhere else. Both the HCPs and the CESCF are strongly supported by the involved local governments and by the development and environmental communities.

These HCPs provide a vital win-win solution, balancing the need for economic growth and jobs with conservation of important natural resources. Regional HCPs maintain local control over land use decision-making by delegating enforcement of federal and state wildlife protection laws to local jurisdictions. In addition, large-scale HCPs provide coordinated permitting for projects related to transportation, energy and water delivery projects. They provide vital streamlining and certainty to the development community and local governments.

The CESCF is one of the most successful grant programs within the U.S. Fish and Wildlife Service and one of the most important federal partnerships with local governments. It allows any state with a Fish and Wildlife Service cooperative agreement to apply for grants and participate in a wide array of voluntary projects for conservation of threatened, endangered, candidate, and at-risk species conservation.

The CESCF program has recognized the importance of providing grants to cities, counties, conservation organizations, and non-federal partners for the conservation and protection of threatened and endangered species. These partners bring their own resources to the table, which are combined with federal funds to achieve both protection

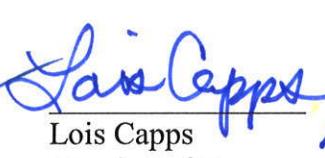
of natural resources and creation of jobs through facilitation of development. This results in significant leveraging of federal dollars.

There are an increasing number of large-scale HCPs in the planning phase around the country and several plans that have been approved recently or are nearing completion. As a result there is increasing demand for the CESCO's HCP planning grants and HCP land acquisition grants. These competitive grants are vital to the success of large-scale HCPs and the ability of local jurisdictions to prepare and implement the plans.

As Congress works to address our nation's fiscal situation, we would appreciate your consideration of the importance of the Cooperative Endangered Species Conservation Fund.

Sincerely,

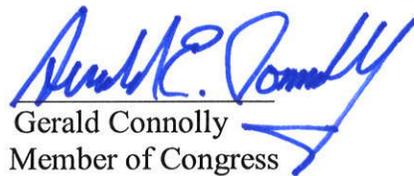
  
Jerry McNerney  
Member of Congress

  
Lois Capps  
Member of Congress

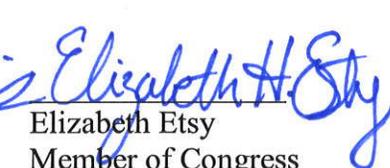
  
Matt Cartwright  
Member of Congress

  
Judy Chu  
Member of Congress

  
David Cicilline  
Member of Congress

  
Gerald Connolly  
Member of Congress

  
Susan Davis  
Member of Congress

  
Elizabeth Etsy  
Member of Congress

  
Sam Farr  
Member of Congress

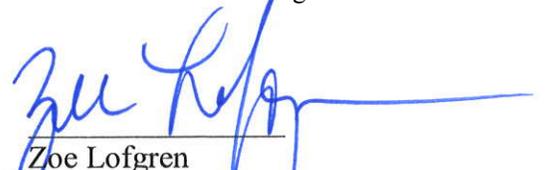
  
John Garamendi  
Member of Congress

  
Raul Grijalva  
Member of Congress

  
Alcee Hastings  
Member of Congress

  
Jared Huffman  
Member of Congress

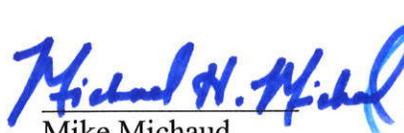
  
Barbara Lee  
Member of Congress

  
Zoe Lofgren  
Member of Congress

  
Carolyn Maloney  
Member of Congress

  
Edward Markey  
Member of Congress

  
Doris Matsui  
Member of Congress

  
Mike Michaud  
Member of Congress

  
George Miller  
Member of Congress

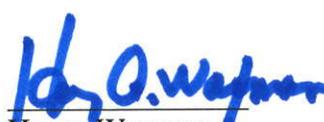
  
Scott Peters  
Member of Congress

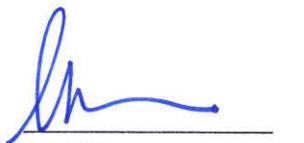
  
Raul Ruiz  
Member of Congress

  
Loretta Sanchez  
Member of Congress

  
Jan Schakowsky  
Member of Congress

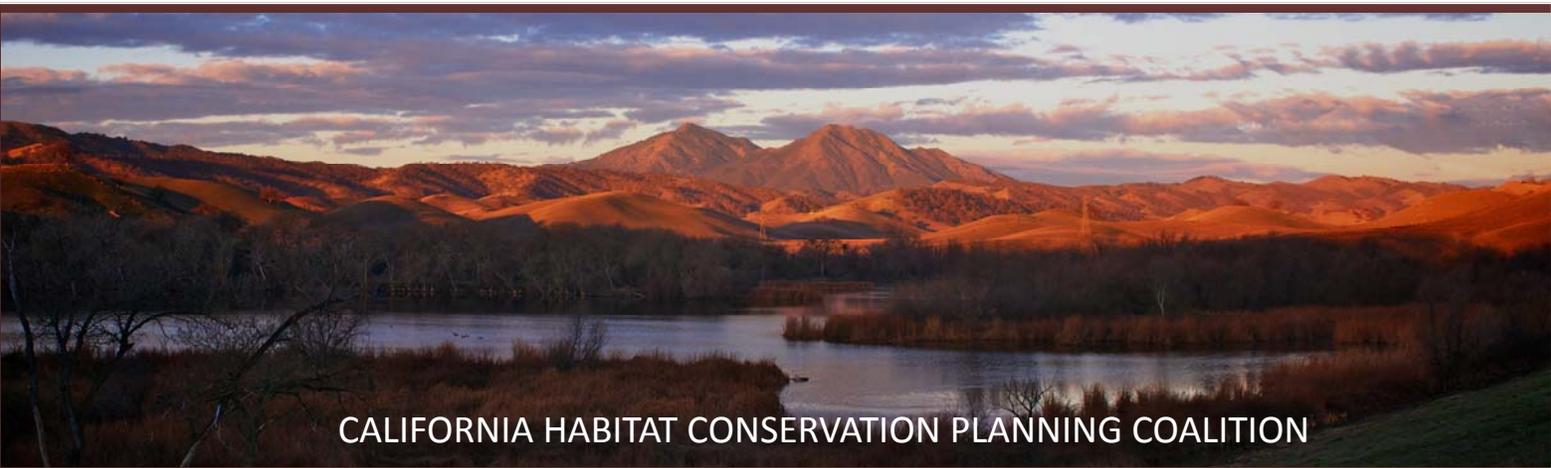
  
Mark Takano  
Member of Congress

  
Henry Waxman  
Member of Congress

  
Ami Bera  
Member of Congress

  
Carolyn McCarthy  
Member of Congress

  
Charles Rangel  
Member of Congress



CALIFORNIA HABITAT CONSERVATION PLANNING COALITION

# ACCOMPLISHMENTS OF REGIONAL HABITAT CONSERVATION PLANS & NATURAL COMMUNITY CONSERVATION PLANS



Conserving Natural Resources



Facilitating Economic Development

**2013 is the 10-year anniversary of the NCCP Act and marks 30 years since the adoption of the first HCP.**

Regional Conservation Plans are in place or under preparation in 22 California Counties. Planning areas total 11.7 million acres and encompass habitat for more than 700 rare and imperiled species. These plans will conserve more than 2 million acres of habitat and provide streamlined permitting for projects with a total market value in excess of \$1.6 trillion.

October 2013

# Regional Conservation Plans

Regional Conservation Plans conserve endangered species and streamline the permitting and mitigation associated with economic development. The comprehensive, scientific, and transparent conservation planning and permitting process made possible by regional plans creates conservation opportunities and regulatory streamlining opportunities that are not possible under the more conventional project-by-project approach.

*Regarding the San Joaquin County Habitat Plan, San Joaquin County Building Industry Association Executive Director John Beckman says simply, "It's extremely beneficial to the development community. You can quote me on that".*



**Wildlife Protection History** The Federal and California Endangered Species Acts (CESA and FESA) were enacted in 1973 and 1984 respectively. The stated purposes of the Acts are to protect species and also the ecosystems upon which species depend; however, most protection efforts were historically focused on a single species. By the late 1980s, both CESA and FESA were under fire both for failing to prevent the decline of wildlife populations and for conflicting with economic activity.

**First HCPs** A refinement to FESA, initiated in the early 1980s, was collaborative Habitat Conservation Planning, which served the dual purpose of conserving multiple species and habitats while streamlining permitting for development. The first HCP in the nation was authorized in 1983, and laid the groundwork for all Regional Conservation Plans to come.

**The New NCCP Approach** Natural Community Conservation Planning (NCCP) Act of 2003 also aims at protecting multiple species, but it additionally uses an ecosystem, stakeholder-driven approach to habitat preservation. This legislation strengthened and expanded the pioneering Southern California program, encouraging NCCPs to proliferate throughout California.

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

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

**Economic and Conservation Benefits** Regional Conservation Plans bring together developers, environmental stakeholders and public officials to create a long-term plan that protects imperiled wildlife and plants and functioning ecosystems as it permits economic development. The plans 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 and transfer authority to local government. Conservation Plans provide economic and conservation benefits. More specifically, Plans:

- Streamline permitting for development and infrastructure projects
- Purchase, restore and permanently protect large, interconnected and biologically rich blocks of land
- Purchase conservation easements and protect agricultural landscapes, helping maintain rural economies.



# Conservation & Economic Success Stories

Regional Conservation Plans in California are expected to permit projects with a cumulative value of \$1.6 trillion while conserving more than 2 million acres of land for wildlife and future generations. Specific examples are provided below.

**Leveraging Funding** Plans are designed to leverage funding from a variety of sources to conserve species and their habitat. Over five years, the East Bay Regional Park District and the East Contra Costa County Habitat Conservancy have acquired or secured purchase agreements for more than 10,000 acres of natural lands. Funding for completed transactions totaling \$46 million has come from a wide variety of federal (47%), state (15%) local (26%) and foundation (12%) sources.

**Infrastructure Improvements** The new I-15/French Valley Interchange relied heavily on the Western Riverside County MSHCP for permit coverage under the Endangered Species Act. Without the MSHCP, this project would have likely have taken years to receive species incidental take permitting. This new \$17 million interchange broke ground in June 2012 with a completion schedule for 2014.

The eBART project, permitted though the East Contra Costa County HCP/NCCP is a 10-mile extension of the commuter rail system to the City of Antioch. This \$462 million project will generate over 600 construction jobs and 40-80 permanent jobs.



**Habitat Connectivity** The 1,905-acre Hidden Valley property was acquired in 2012 under the San Diego Multiple Species Conservation Program for open space preservation and the protection of species. The Hidden Valley property is now part of the San Diego National Wildlife Refuge, an 11,000-acre-plus block of habitat long recognized for its rich and unique biodiversity. The Hidden Valley site fills in the missing links between the National Wildlife Refuge and the Rancho Jamul Ecological Reserve.



## Measuring Conservation & Economic Benefits

Key Regional HCPs	Acres to be Conserved	Est. Value of Projects to be Permitted*
Butte Regional Conservation Plan	150,000	under development
City of San Diego MSCP Subarea Plan	52,727	\$37 billion
Coachella Valley MSHCP/NCCP	745,000	\$300 billion
East Contra Costa County HCP/NCCP	30,000	\$12 billion
Natomas / Metro Air Park HCPs	9,000	\$18 billion
Placer County Conservation Plan	60,000	\$115 billion
San Diego County Multiple Habitat Conservation Open Space Plan NCCP	158,000	\$228 billion
San Diego MSCP - County Sub Area Plan	98,000	\$118 billion
San Diego North County MSCP / NCCP	107,000	\$104 billion
San Joaquin County Multi-species Conservation and Open Space Plan	101,000	\$109 billion
Santa Clara Valley HCP/NCCP	49,390	\$20 billion
Solano HCP	30,000	\$12 billion
South Sacramento HCP	58,000	\$45 billion
Western Riverside County MSHCP/NCCP	500,000	\$500 billion
Yolo Natural Heritage Program	under development	under development
<b>TOTAL</b>	<b>2,148,117</b>	<b>\$1.6 trillion</b>

\* 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.

# California Habitat Conservation Planning Coalition

The California Habitat Conservation Planning Coalition includes local agencies, conservation organizations and businesses supporting regional Habitat Conservation Plans.

## Coalition Goals

- Secure adequate federal, state and local funding to assist preparation and implementation of Natural Community Conservation Plans (NCCPs) and Habitat Conservation Plans (HCPs).
- Coordinate NCCPs and HCPs with other federal, state and regional natural resource protection and permitting programs, including climate change and wetlands permitting.
- Facilitate the development and improve the effectiveness of NCCPs and HCPs.
- Strengthen understanding of and support for NCCPs and HCPs among decision makers, stakeholders and the public.



*"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*



Photo Credits: Cover: Kristin McCleary, Loren Clark, Bill Havert. All other photos are courtesy of Coalition members

**Contact: John Hopkins, Director,  
California Habitat Conservation Planning Coalition,  
409 Jardin Place, Davis, California 95616 / Phone: 530-756-6455 Email: [ieh@cal.net](mailto:ieh@cal.net)**

The California Habitat Conservation Coalition Members:

California Department of Fish and Wildlife, California Land Conservancy, City of Chula Vista, City of San Diego, Coachella Valley Conservation Commission, East Contra Costa County Habitat Conservancy, Endangered Habitats League, Friends of Harbors, Beaches and Parks, ICF International, Institute for Ecological Health, Marine Corps Base Camp Pendleton, Environmental Plans Branch, The Nature Conservancy, The Nature Reserve of Orange County, Placer County Conservation Plan, Pacific Gas and Electric, Resources Law Group, San Diego Association of Governments, San Diego County, Santa Clara Valley HCP-NCCP, San Joaquin HCP, The Sauls Company, Solano County HCP, Tejon Ranch Conservancy, U.S. Fish and Wildlife Service, Western Riverside County Regional Conservation Authority, J Whalen and Associates, Wildlife Conservation Board, Yolo Natural Heritage Program

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** 2014 Budget and Finances

**RECOMMENDATION**

Consider the following items related to Conservancy finances:

- a) **APPROVE the 2014 Conservancy Budget.**
- b) **AUTHORIZE staff to execute annual contracts for on-going consulting services with:**
  - **ICF Jones and Stokes: not to exceed \$290,000 for the term from January 1, 2014 to December 31, 2014;**
  - **H.T. Harvey and Associates: not to exceed \$88,000 for the term from January 1, 2014 to December 31, 2014;**
  - **Monk and Associates: not to exceed \$46,000 for the term from January 1, 2014 to December 31, 2014.**
  - **Nomad Ecology: not to exceed \$65,000 for the term from January 1, 2014 to December 31, 2014.**
  - **Sanders Fence Company: not to exceed \$60,000 for the term January 1, 2014 to December 31 2015.**
- 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, 2014 through December 31, 2014.**
- d) **AUTHORIZE staff to amend an existing contract for legal services with**
  - **Abbott and Kindermann: increase payment limit by \$200,000, from \$75,000 to \$275,000, and extend the term one year to December 31, 2014.**
- e) **AUTHORIZE staff to amend existing contracts to extend the contract term one year to December 31, 2014 for:**
  - **Restoration Resources**
  - **Thunder Mountain Enterprises**

CONTINUED ON ATTACHMENT: YES  
ACTION OF BOARD ON: December 9, 2013 APPROVED AS RECOMMENDED: \_\_\_\_\_  
OTHER: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

   UNANIMOUS  
A YES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

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

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

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

## **DISCUSSION**

**Item (a):** Please find attached a proposed 2014 Conservancy Budget (Table I-1) and supporting tables prepared by staff for discussion by the Board.

**Table I-1:** The 2014 Conservancy Budget, Table I-1, provides recommended expenditures by program area from the various funding sources controlled by the Conservancy or related to the HCP, including the Development Fee Account, the Wetland Mitigation Fee Account, and contributions to recovery from Participating Special Entities 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 \$3.5 million. The wildlife agencies control disbursements from this account. The 2014 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 well as from the 2013 Fee Audit, as two points of comparison with the detailed estimates provided for the proposed 2014 Budget (see additional background information below on comparison with HCP and Fee Audit estimates).

The 2014 estimates that form the basis for the 2014 Budget are shaded light blue. Prior Conservancy Budget amounts are also provided for comparison purposes. Tables I-2(a) and I-2(b) summarize 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 detailed tables is to provide more information on what these program areas encompass and how the estimates were derived.

**Background on HCP and Fee Audit 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 2014 Budget. Cost estimate information for years 6 to 10 of implementation was compiled from Exhibit G for the Initial Urban Development Area Scenario. The Year 6 to 10 cost estimates were divided by five to calculate the average annual costs during this five-year period.

This year, for the 2014 Budget, we have also included cost estimates from the East Contra Costa County HCP/NCCP Mitigation Fee Audit and Nexus Study, completed March 2013. The Fee Audit cost model provides an update to the one in the HCP/NCCP, and provides more current estimates. Cost estimate information for years 6 to 10 of implementation was compiled from Appendix D: Initial Cost Model Update for the Initial Urban Development Area Scenario. As

with HCP/NCCP estimates, 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 and the Fee Audit 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. habitat restoration/creation and land management), the annual average of the five-year cost estimate may over or under-estimate needs in certain years.
- The estimates from the HCP are in 2005 and 2006 dollars. The Consumer Price Index has increased about 20% since 2005/2006.
- 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. Higher than average (relative to the 30-year term of the HCP) land acquisition costs early in the life of the HCP/NCCP will result in lower than average land acquisition costs in later years. The HCP and Fee Audit estimates do not reflect funding variability and assume a steady level of effort during the Plan term.

**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 \$52,147,482. Of this amount, \$33,572,917 has been spent (this total includes approximately \$40,000 that has been spent by the Conservancy but not yet reimbursed by grant funders). Awarded grant funds not yet spent total \$18,483,779, but of this amount, approximately \$12.1 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 (\$9,283,276). The Conservancy has adopted a medium-term goal through its Legislative Platform of securing \$20 million from Proposition 84 (e.g. \$10 to 11 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 2013 Budget with actual expenditures that had cleared the accounting process by early November 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 2013 will be within the approved Budget.

**Table IV:** This Table, new this year, pertains to revenues from wind power, communications and residential leases from properties acquired by the East Bay Regional Park District with financial support from the Conservancy and its grant funding partners. These lease revenues belong to EBRPD but must be spent on specified tasks within the HCP/NCCP Preserve System. The grant agreements describe eligible expenditures to include day to day management of the land, a reserve fund for long term management and additional land acquisition for the Preserve System. The funding agreements between EBRPD and the Conservancy provide that the two agencies cooperatively develop a budget for EBRPD expenditure of these funds. Table IV is intended to accomplish that need. It should be noted that these lease revenue funds are not

Conservancy funds and are not reflected in Tables I-III. These funds will help accomplish the goals of the HCP/NCCP, but are matching funds similar to EBRPD contributions to land acquisition and preserve management.

Table IV documents actual and projected revenues and expenditures of funds generated by these leases. This table was developed jointly with EBRPD. Total actual and projected revenues from 2010 (when the first such lease revenues were collected) through 2014 is \$1,895,000. The projected revenues for 2014 is \$500,000. Expenditures fall into three categories and are proposed to be allocated generally as follows: preserve management (includes ranger staff managing the preserve, outside services such as weed abatement, and supplies) (60%), reserve fund for long term preserve management (25%) and future acquisition of additional HCP/NCCP preserves (15%). For 2014, \$306,000 is proposed for Preserve Management, \$125,000 is proposed to be allocated to a reserve fund for long term preserve management and \$75,000 is proposed to be allocated to future acquisition of additional HCP/NCCP preserves.

The lease revenues fill a critical cash flow need. With land acquisition well ahead of pace, but mitigation fee revenues far below the projected average annual pace, the Conservancy lacks fee funding to pay significant preserve management costs. The lease revenue enables EBRPD to pay for a portion of the added cost of managing approximately 10,000 new acres. The lease revenue funding proposed for current management is small relative to EBRPD management costs for their regional parks in the HCP area. Management of these parks costs about \$120 per acre per year. The lease revenue provides about \$30 per acre per year for management of the current HCP/NCCP lands.

**Considerations in developing the 2014 Budget:** The proposed 2014 Budget has been adapted from the 2013 Budget approved last year. Noteworthy aspects of the allocations proposed for 2014 include the following:

- Recommended expenditures for Land Acquisition remain high and have increased. 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 and we have one large acquisition approved previously (Roddy Ranch) that is set to close by mid-year next year and another large acquisition proposed for consideration on the December 9 agenda (Smith, which would also close next year). The approved Roddy Ranch project alone will account for more than \$10 million of the land acquisition budget. 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 has 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.
- Planning and Design for Management and Restoration is up 26% while Restoration and Creation is up 276%. 2013 was a light year for these two categories
- Preserve Management and Maintenance has increased 75% from 2013. We anticipate our share of costs for preserve staff will increase.

- Program Administration has increased 33% from 2013. This is entirely due to the need to defend the City of Brentwood in litigation filed regarding HCP/NCCP fees, pursuant to the terms of the Defense and Indemnification Agreement approved in August. \$200,000 has been budgeted for this defense, but it is too soon to know with any precision how much actual cost will be incurred and this budget amount may need to be revisited in 2014.
- Overall, Budget allocations have increased 61% from the 2013 Budget. The increase to the land acquisition budget accounts for almost 90% of the increase to the overall Budget. The approved Roddy Ranch project accounts for most of the increase to the land acquisition budget.

**Recommendation on 2014 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 \$825,305 (\$647,645 plus \$177,660), should also be designated by the Board as an expenditure limit that may not be exceeded without further approval of a revised amount. This recommendation is offered to be consistent with the Joint Exercise of Powers Agreement forming the Conservancy which provides that the Governing Board shall set an annual limit on the amount of County staff costs that may be recovered from the Conservancy.

**Item (b):**

In mid- September 2013 the Conservancy put out a request for proposals (RFP) for “On-Call Conservation Planning Services and Preserve Establishment and Management Services.” Responses to the RFP were due on October 31<sup>st</sup>. Seventeen firms submitted proposals to work with the Conservancy on these tasks. All firms were scheduled for interviews and interviews were conducted in November. Firms that have worked with the Conservancy submitted proposals and were interviewed as did a series of new firms the Conservancy has not had the pleasure of working with previously. The Conservancy will be completing some ongoing tasks in 2014 as well embarking on several new tasks, and the consultant recruitment is providing and will continue to provide an excellent range of choices for future work.

Four of the five contracts recommended at this time are to continue on-going tasks with firms that have been working with the Conservancy and received a positive evaluation following the interviews and proposals. The fifth contract listed below, Sanders Fence Company, is involved in a federal funding cost-share opportunity to do restoration work on the Ang property, and the tasks were not included in the RFP (see additional description below). Conservancy staff anticipates bringing additional contracts to the Board for approval in 2014 to complete new and additional tasks and will also make those recommendations on the basis of this recent recruitment.

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 2014 Budget.

**ICF Jones and Stokes:**

The recommendation is to execute a contract for \$290,000 for a one year term from January 1, 2014 through December 31, 2014. Please find an overview below:

Contract amount: \$290,000

Primary tasks: Full-time contract planner to continue to manage HCP/NCCP permitting program; preparation of annual report based on established template and procedures, completion of first preserve management plan and associated monitoring program plan / exotic pest control plan; and on-going support to the effort to secure certification by the water boards of the Regional General Permit issued by the U.S. Army Corps of Engineers for the HCP/NCCP.

Funding sources: Conservancy funds, administrative charges collected from applicants.

ICF Jones and Stokes has provided a range of services to the Conservancy since 2007 and a continuation of that support is vital in 2014. Staff worked with ICF to develop cost projections for key tasks that will continue in 2014 and used this information as background in crafting the Proposed 2014 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 2014. Key tasks for ICF Jones and Stokes in 2014 include:

- Completion of the Vasco Hills- Byron Vernal Pools Preserve Management Plan as required by the HCP; a first draft of the Plan was completed in late 2012 and a final plan will be approved in 2014. [Approximately \$35,000 for this task]
- Completion of the Vasco Hills- Byron Vernal Pools Preserve Monitoring Program Plan/Exotic Pest Control Plan, as required by the HCP/NCCP [Approximately \$20,000 for this task]
- Continued provision of a consulting planner to assist the Conservancy five days a week for 12 months for management of the permitting program, development and management of comprehensive tracking databases, and general program support (in lieu of the Conservancy hiring a full-time planner); [Approximately \$180,000 for this task]
- Continued 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 2013 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 2014 Conservancy Budget.

**H.T. Harvey & Associates:**

The recommendation is to execute a contract for \$88,000 for the term January 1, 2014 through December 31, 2014. Please find an overview below:

Contract Amount: \$88,000

Primary tasks: Support for of the Hess Creek and Wetland Restoration Project bid package and process based on plans and specifications developed by H.T. Harvey, construction oversight for the Hess project, vegetation landscape plan finalization, restoration opportunities analysis, CEQA species analysis, on-call biological work

Funding sources: California 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 on-going tasks that will continue in 2014 and used this information as background in crafting the Proposed 2014 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 Creek and Wetland Restoration Project on the portion of the former Land Waste Management Property which is south of Kirker Pass Road is planned to go to construction in 2014 and H.T. Harvey (who designed the project) will provide integral support through the construction process. The Board approved a contract with H.T. Harvey and Associates in 2013 to plan and permit this project and this new contract is recommended primarily to continue that work and see the project through to final construction.

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

- Finalization of the construction plans, bid package preparation and support, and construction oversight for the Hess Creek and Wetland Restoration project [Approximately \$60,000 for this task]
- Finalization of vegetation landscape element of the Hess Creek Wetland Restoration project [Approximately \$10,000 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 \$8,000 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 2014 Budget.

**Monk and Associates:**

The recommendation is to authorize staff to execute a contract with Monk and Associates for \$46,000 for the term January 1, 2014 through December 31, 2014. Please find an overview below:

Contract amount: \$46,000

Primary tasks: Continued monitoring of Souza I, Upper Hess, Souza II Corral, and Vaquero Farms South wetland projects. 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. The Souza I project has met success criteria so the monitoring efforts of that project will be reduced. Monk and Associates designed and oversaw the construction/restoration in late 2012 of three small vernal pools on Souza II and Vaquero Farms South and will continue to manage the monitoring responsibilities associated with these three pools.

- Monitoring hydrology and vegetation Souza I, Upper Hess, Souza II Corral and Vaquero Farms South wetland restoration projects [Approximately \$28,000 for this task]
- Conservancy properties restoration assessment, [Approximately \$5,000]
- Crustacean survey/monitoring [Approximately \$8,000]
- On-call biological tasks [Approximately \$5,000]

The proposed contract is consistent with the Conservancy's proposed 2014 budget.

**Nomad Ecology:**

The recommendation is to authorize staff to execute a contract with Nomad Ecology for \$65,000 for the term January 1, 2014 through December 31, 2014. If awarded additional funding through a Department of Fish and Wildlife Local Assistance Grant staff may return to the Board to expand this contract. The proposed contract with Nomad maintains contiguity on critical implementation and monitoring tasks.

Contract amount: \$65,000

Primary tasks: Monitoring of Souza 2 and Lentzner wetland restoration projects; comprehensive wetland and rare plant survey on new acquisitions, contribution of botanical expertise to development of management, monitoring and restoration plans, and on-call biological services related to unanticipated botanical and wildlife tasks that may be encountered on properties or projects;

Funding sources: Department of Fish and Wildlife grant (pending) and Conservancy funds.

The recommended 2014 contract would continue the preserve inventory tasks that Nomad Ecology has performed for the past three years and the monitoring of the Souza II and Lentzner Spring restoration projects. Additional funds would be available in the contract for on-call

biological services and review of restoration and management plans. Key tasks for Nomad Ecology include:

- Continue monitoring hydrology and vegetation on Souza II and Lentzner wetland project [Approximately \$15,000 for this task]
- Continue preserve-wide wetland inventory (necessary to document the location and extent of wetland preservation that has occurred on acquired properties; this information will also help with future wetland restoration planning) [Approximately \$15,000 for this task]
- Continue botanical surveys required by the HCP/NCCP to document covered and no-take plant populations on acquired lands [Approximately \$23,500 for this task]
- Review of management, monitoring and restoration plans [Approximately \$3,500 for this task]
- On-call biological services [Approximately \$8,000 for this task]

The proposed contract is consistent with the Conservancy's proposed 2014 budget.

**Sanders Fence Company:**

The recommendation is to authorize staff to execute a contract with Sanders Fence Company for up to \$60,000 for the term January 1, 2014 through December 31, 2016.

Brody Sanders is the grazing tenant on the Ang property and has been working with Conservancy staff to secure federal funds from the Environmental Quality Improvement Program through the Natural Resources Conservation Service (NRCS, a branch of the USDA). Sanders has been awarded a \$75,585 cost-share award to make improvements to the Ang property that will enhance and restore habitat for wildlife. The award from NRCS runs through December 2016, and so it is proposed that this contract also parallel that award. The Conservancy has been awarded a \$95,000 grant from the California Department of Fish and Wildlife to help fund components of these conservation actions and this will be the source of funding for this contract.

Contract amount: \$60,000

Primary tasks: The actions proposed include: installation of riparian exclusion fencing, riparian planting, pond repair, well and livestock trough systems, and ranch road access repair.

Funding Source: California Department of Fish and Wildlife Local Assistance Grant

The proposed contract is consistent with the Conservancy's proposed 2014 Budget.

**Item (c):**

**Resources Law Group:**

The recommendation is to execute a contract with Resources Law Group for \$90,000 for a one year term from January 1, 2014 through December 31, 2014. Please find an overview below:

Contract amount: \$90,000

Primary tasks: General legal support including support to the Governing Board and preparation and review of various 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, support to Legislative Program and 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 \$30,000 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 2013 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 as the Conservancy continues work on regional wetlands permitting. This recommended contract amount is consistent with the recommended 2014 Conservancy Budget.

**Item d)**

**Abbott & Kindermann:**

The recommendation is to execute a contract amendment with Abbott & Kindermann to increase payment limit by \$200,000, from \$75,000 to \$275,000, and extend the term one year to December 31, 2014.

Contract amount: Increase by \$200,000, from \$75,000 to \$275,000

Primary tasks: Litigation support

Funding Source: Contributions to recovery from Participating Special Entities

Abbott & Kindermann have expertise in local government fees and exactions and have been advising and assisting the Conservancy on legal issues related to the HCP/NCCP fees and the periodic fee audit. Additional service is needed at this time as a result of litigation filed against the City of Brentwood related to HCP/NCCP fees. The Conservancy and the City of Brentwood have signed the Defense and Indemnification Agreement authorized by the Board in August. Pursuant to that agreement, the Conservancy will defend the City of Brentwood and other signatories in the event of certain legal challenges such as the litigation filed against the City of Brentwood, which also names the Conservancy and Conservancy Governing Board as a real parties in interest (*Discovery Builders, Inc. v. City of Brentwood, California; City Council of the City of Brentwood, et al.; Contra Costa County Superior Court, Case No. N13-1781*). Since the litigation was only recently filed (late November), it is still too early to make a precise estimate of costs. Staff is recommending a \$200,000 contract amendment at this time. This amount is at the lower end of a wide range of costs for litigation of this general type. It may be necessary to adjust this contract limit (and the Program Administration Budget) in 2014 as work proceeds. The recommended contract amendment is consistent with the proposed 2014 Conservancy Budget.

**Item e)** The recommendation is to extend the contract expiration dates for the existing contracts with two contractors that provide on-call maintenance services for Conservancy restoration projects and preserves (no change to expenditure limits).

**Restoration Resources, Inc.:** The recommendation is to authorize staff to amend the existing \$50,000 contract with Restoration Resources, Inc. for on-call maintenance tasks to extend the term through December 31, 2014. Please find an overview below:

Primary tasks: Maintenance and Adaptive Management work on Souza 1, Souza 2, Upper Hess and future restoration projects

Funding sources: Conservancy funds (no change in the previously-approved expenditure limit is proposed)

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 exclosures to protect resources, 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 2014 Budget.

**Thunder Mountain Enterprises:** The recommendation is to authorize staff to extend the existing \$50,000 contract with Thunder Mountain Enterprises for on-call maintenance tasks to extend the term through December 31, 2014. Please find an overview below:

Primary tasks: Maintenance and Adaptive Management work on Lentzner Spring restoration site and future restoration and adaptive management projects

Funding sources: Conservancy funds (no change in the previously-approved expenditure limit is proposed)

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 2014 budget.

**Attachments:**

- Proposed 2014 Conservancy Budget and supporting tables

**Proposed 2014 Conservancy Budget: Recommended Expenditures and Comparison to Budgets From Previous Years**

Table I-1

Cost Category	Proposed 2014 Expenditures						Approved 2013 Conservancy Budget		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 & Contributions to Recovery	TOTAL (2014)	% of Total	% Change from 2013	TOTAL (2013)	% of Total	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	\$613,923	\$0	\$200,000	\$813,923	3%	33%	\$609,840	4%	\$609,596	5%	\$606,981	4%	\$514,189	3%	\$493,665	3%	\$494,575	4%
Land Acquisition	\$274,765	\$0	\$22,160,000	\$22,434,765	88%	60%	\$14,029,084	88%	\$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	\$161,937	\$80,000	\$150,000	\$391,937	2%	26%	\$310,136	2%	\$271,029	2%	\$303,259	2%	\$232,139	1%	\$328,170	2%	\$338,322	3%
Habitat Restoration/Creation	\$0	\$313,719	\$650,000	\$963,719	4%	276%	\$256,609	2%	\$331,069	3%	\$843,259	5%	\$331,920	2%	\$980,239	6%	\$407,326	3%
Environmental Compliance	\$73,249	\$40,000	\$50,000	\$163,249	1%	-5%	\$171,086	1%	\$155,921	1%	\$165,770	1%	\$151,303	1%	\$166,495	1%	\$109,000	1%
HCP/NCCP Preserve Management and Maintenance	\$203,630	\$0	\$180,000	\$383,630	1%	75%	\$219,318	1%	\$209,202	2%	\$264,257	2%	\$298,151	2%	\$293,247	2%	\$404,100	3%
Monitoring, Research, and Adaptive Management	\$110,384	\$40,000	\$150,000	\$300,384	1%	16%	\$259,756	2%	\$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%	\$6,000	0%
Contingency Fund (5% of non-land acquisition costs)	\$150,842	\$0	\$0	\$150,842	1%	65%	\$91,337	1%	\$92,601	1%	\$122,367	1%	\$84,863	1%	\$117,808	1%	\$90,141	1%
<b>TOTAL 2014 EXPENDITURES</b>	<b>\$1,594,730</b>	<b>\$473,719</b>	<b>\$23,540,000</b>	<b>\$25,608,449</b>	<b>100%</b>	<b>61%</b>	<b>\$15,953,166</b>	<b>100%</b>	<b>\$13,218,838</b>	<b>100%</b>	<b>\$16,600,808</b>	<b>100%</b>	<b>\$15,834,433</b>	<b>100%</b>	<b>\$16,526,464</b>	<b>100%</b>	<b>\$11,816,631</b>	<b>100%</b>

**Personnel Summary: Comparison of HCP Cost Projections With Conservancy's Approach to Staffing<sup>1</sup>**

Table I-2a

**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
<b>Administrative Personnel</b>				
Executive Director ("E.D.")	\$134,640	1	\$134,640	County Deputy Director
IT- Database / GIS Manager	\$87,516	0.5	\$43,758	County GIS staff, IT staff, and contract planner
Budget Analyst	\$74,052	0.5	\$37,026	County Deputy Director and County accountants
Acquisition Specialist	\$100,980	1	\$100,980	County Deputy Director and Assistant Planner; outsourced to EBRPD/others
Grant Specialist / Conservation Planner	\$94,248	1	\$94,248	County Senior Planner and contract planner
Admin - Secretary	\$60,588	0.5	\$30,294	County secretaries
<b>Total administrative personnel</b>		<b>4.5</b>	<b>\$440,946</b>	
<b>Restoration Planning, Design, &amp; Implementation and Monitoring Personnel<sup>2</sup></b>				
Senior Specialist	\$107,712	1	\$107,712	Outsourced to consultants
Project Manager	\$99,054	2	\$198,108	County Deputy Director, Senior Planner, and consultants
Technical Support	\$67,320	2	\$134,640	Outsourced to consultants
<b>Total restoration personnel</b>		<b>5</b>	<b>\$440,460</b>	
<b>Preserve Management and Maintenance Personnel</b>				
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
<b>Total Management and Maintenance Personnel</b>		<b>4.5</b>	<b>\$292,842</b>	
<b>TOTAL PERSONNEL (FROM HCP)</b>		<b>14</b>	<b>\$1,174,248</b>	

**County Staff Cost Estimates for the 2014 Conservancy Budget**

	Projected average billing rate					Estimated FTE					Estimated Annual Cost				
	2014	2013	2012	2011	2010	2014	2013	2012	2011	2010	2014	2013	2012	2011	2010
Deputy Director	\$168	\$157	\$159	\$152	\$193	0.5	0.80	0.80	0.80	0.70	\$157,544	\$236,342	\$239,684	\$228,104	\$254,120
Senior Planner	\$126	\$128	\$129	\$123	\$161	0.8	0.80	0.80	0.80	0.70	\$189,038	\$191,873	\$193,775	\$185,511	\$211,534
Associate Planner	n/a	n/a	n/a	\$131	\$135	0	0.10	0.10	0.10	0.25	\$0	\$0	\$0	\$24,628	\$63,345
Assistant Planner	\$83	n/a	n/a	n/a	n/a	0.9	n/a	n/a	n/a	n/a	\$140,842	n/a	n/a	n/a	n/a
Planning Technician	\$85	n/a	n/a	n/a	n/a	0.3	n/a	n/a	n/a	n/a	\$47,844	n/a	n/a	n/a	n/a
GIS staff	\$135	\$137	\$130	\$121	n/a <sup>4</sup>	0.25	0.25	0.25	0.25	n/a <sup>4</sup>	\$63,403	\$64,354	\$61,142	\$56,964	\$0
Accounting staff	\$104	\$98	\$98	\$87	n/a <sup>4</sup>	0.25	0.25	0.25	0.25	n/a <sup>4</sup>	\$48,974	\$46,207	\$45,924	\$40,784	\$0
IT staff	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>
Secretarial staff	n/a <sup>4</sup>	n/a <sup>4</sup>	N/A <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>
Senior management staff / HR	n/a <sup>4</sup>	n/a <sup>4</sup>	N/A <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>
<b>TOTAL COUNTY PERSONNEL</b>						<b>3.0</b>					<b>\$647,645</b>	<b>\$540,789</b>	<b>\$542,537</b>	<b>\$538,002</b>	<b>\$531,009</b>

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) Costs for these staff services are not billed directly. They are included in the rates for the staff that are billed directly.

**Personnel Summary: Comparison of HCP Fee Audit Cost Projections With Conservancy's Approach to Staffing<sup>1</sup>**

Table I-2b

**Personnel Cost estimates from the Fee Audit**

	Estimated FTEs From Fee Audit Years 6-10	How These Functions Are/Will Be Performed in the Conservancy
<b>Personnel</b>		
Principal Planner (Executive Director)	1	Deputy Director (0.5 FTE) Assistant Planner (0.9 FTE has assumed some duties)
Senior Planner	1	Senior Planner (0.8 FTE)
Senior GIS Planner	0.25	Senior GIS Planner (0.25 FTE)
Associate Planner	0.8	Contract Planner (0.9 FTE)
Assistant Planner	0.25	Assistant Planner (0.9 FTE)
Accountant	0.25	Accountant (0.25 FTE)
Senior Scientist	0.5	Senior Planner and consultants handle for now
Project Manager	0.5	Senior Planner and consultants handle for now
Technical Support	0.5	Planning Technician (0.3 FTE)
Preserve Manager	1	Outsourced to Conservancy land partners
Preserve Maintenance Staff	3	Outsourced to Conservancy land partners
<b>TOTAL PERSONNEL(FROM FEE AUDIT)</b>	<b>9.05</b>	

**County Staff Cost Estimates for the 2014 Conservancy Budget**

	Projected average billing rate					Estimated FTE					Estimated Annual Cost				
	2014	2013	2012	2011	2010	2014	2013	2012	2011	2010	2014	2013	2012	2011	2010
Deputy Director	\$168	\$157	\$159	\$152	\$193	0.5	0.80	0.80	0.80	0.70	\$157,544	\$236,342	\$239,684	\$228,104	\$254,120
Senior Planner	\$126	\$128	\$129	\$123	\$161	0.8	0.80	0.80	0.80	0.70	\$189,038	\$191,873	\$193,775	\$185,511	\$211,534
Associate Planner	n/a	n/a	n/a	\$131	\$135	0	0.10	0.10	0.10	0.25	\$0	\$0	\$0	\$24,628	\$63,345
Assistant Planner	\$83	n/a	n/a	n/a	n/a	0.9	n/a	n/a	n/a	n/a	\$140,842	n/a	n/a	n/a	n/a
Planning Technician	\$85	n/a	n/a	n/a	n/a	0.3	n/a	n/a	n/a	n/a	\$47,844	n/a	n/a	n/a	n/a
GIS staff	\$135	\$137	\$130	\$121	n/a <sup>4</sup>	0.25	0.25	0.25	0.25	n/a <sup>4</sup>	\$63,403	\$64,354	\$61,142	\$56,964	\$0
Accounting staff	\$104	\$98	\$98	\$87	n/a <sup>4</sup>	0.25	0.25	0.25	0.25	n/a <sup>4</sup>	\$48,974	\$46,207	\$45,924	\$40,784	\$0
IT staff	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>
Secretarial staff	n/a <sup>4</sup>	n/a <sup>4</sup>	N/A <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>
Senior management staff / HR	n/a <sup>4</sup>	n/a <sup>4</sup>	N/A <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>	n/a <sup>4</sup>
<b>TOTAL COUNTY PERSONNEL</b>						<b>3.0</b>					<b>\$647,645</b>	<b>\$540,789</b>	<b>\$542,537</b>	<b>\$538,002</b>	<b>\$531,009</b>

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,
- (3) 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 Program<sup>1</sup>**

Table I-3

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes	
					2014	2013	2012	2011	2010	2009		
<b>Capital Costs</b>												
Office Space	\$28,500	\$5,700	Included in staff and overhead costs	Included in staff and overhead costs	\$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	\$0	Costs included in planner rates
General Office Equipment	\$39,000	\$7,800			\$0	\$0	\$0	\$0	\$0	\$0	\$0	Costs included in planner rates
GIS/Database Equipment	\$32,500	\$6,500			\$0	\$0	\$0	\$0	\$0	\$0	\$0	Costs included in planner rates
Maintenance of General Office Equipment	\$2,275	\$455			\$0	\$0	\$0	\$0	\$0	\$0	\$0	Costs included in planner rates
Maintenance of GIS Database equipment	\$3,250	\$650			\$0	\$0	\$0	\$0	\$0	\$0	\$0	Costs included in planner rates
<b>Capital Subtotal</b>	<b>\$125,725</b>	<b>\$25,145</b>										
<b>Staff and Overhead</b>												
	(4.5 FTE)	(4.5 FTE)	(2.35 FTE)	(2.35 FTE)								
Executive Director	\$673,200	\$134,640	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$0	Principal planner performs these functions	
IT- Database / GIS Manager	\$437,580	\$87,516	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$0	database resp.; IT staff costs included in planner rates	
Budget Analyst	\$370,260	\$74,052	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$0	Duties performed by County finance team	
Acquisition Specialist	\$504,900	\$100,980	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$0	Outsourced to EBRPD; Deputy Director and Assistant Planner provides some of this function	
Grant Specialist / Conservation Planner	\$471,240	\$94,248	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$0	Senior planner perform these functions	
Admin - Secretary	\$302,940	\$60,588	n/a	n/a	\$0	\$0	\$0	\$0	\$0	\$0	Secretary costs included in planner rates	
Deputy Director	n/a	n/a	\$728,500	\$145,700	\$63,018	\$88,628	\$89,881	\$114,052	\$145,211	\$145,978	Deputy Director 20% FTE (position also has budget increments in other categories)	
Senior planner	n/a	n/a	\$355,320	\$71,064	\$59,074	\$71,952	\$72,666	\$69,567	\$90,658	\$59,367	Senior Planner 25% FTE (position also has budget increments in other categories)	
Senior GIS Planner	n/a	n/a	\$317,250	\$63,450	\$38,042	\$38,612	\$36,685	\$34,178	Previously covered in other planner rates		Senior GIS Planner 15% FTE (position also has budget increment in other categories)	
Assistant Planner	n/a	n/a	\$199,750	\$39,950	\$46,947	n/a	n/a	n/a	n/a	n/a	Assistant Planner 30% FTE (position also has budget increments in other categories)	
Accountant	n/a	n/a	\$227,950	\$45,590	\$48,974	\$46,207	\$45,924	\$40,784	Previously covered in other planner rates		Accountant 25% FTE	
Planning Technician	n/a	n/a	n/a	n/a	\$15,948	n/a	n/a	n/a	n/a	n/a	Planning Technician 10% FTE (position also has budget increments in other categories)	
<b>Staff and Overhead Subtotal</b>	<b>\$2,760,120</b>	<b>\$552,024</b>	<b>\$1,828,770</b>	<b>\$365,754</b>	<b>\$272,003</b>	<b>\$245,400</b>	<b>\$245,156</b>	<b>\$258,581</b>	<b>\$235,869</b>	<b>\$205,345</b>		
<b>Operational Costs</b>												
Travel	\$32,813	\$6,563	\$20,000	\$4,000	\$4,000	\$4,000	\$4,000	\$3,000	\$3,000	\$3,000		
Vehicle / Mileage Allowance	\$4,809	\$962	\$20,000	\$4,000	\$4,000	\$4,000	\$4,000	\$5,000	\$3,000	\$3,000		
Insurance	\$203,500	\$40,700	\$100,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$25,000		
Legal Assistance	\$150,000	\$30,000	\$388,800	\$77,760	\$250,000	\$50,000	\$50,000	\$50,000	\$45,000	\$50,000	Incl. legislative and permitting support	
Financial Analysis Assistance	\$15,500	\$3,100	\$115,000	\$23,000	\$20,000	\$20,000	\$20,000	\$40,000	\$20,000	\$10,000	Annual outside audit (no fee audit this year)	
JPA Member Meeting Stipend	\$15,000	\$3,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
In-Lieu funding for Law Enforcement/Fire	\$28,519	\$5,704	\$25,005	\$5,001	\$0	\$0	\$0	\$0	\$0	\$0		
Contractor Assistance with Program Admin.	\$0	\$0	n/a	n/a	\$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	n/a	n/a	\$157,920	\$165,440	\$165,440	\$150,400	\$112,320	\$112,320	Manages take auth. process; manages databases; general coordination role (estimate assumes 80% FTE at \$105/hour)	
Membership in CHCPC	\$0	\$0	\$25,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$0	\$0	Primary method for implementing Legislative Program	
Miscellaneous Equipment and Supplies	\$0	\$0	\$5,000	\$1,000	\$1,000	\$1,000	\$1,000	\$0	\$0	\$0	Dedicated Conservancy laptop/Food for GB meetings/etc.	
East County Water Management Assoc.	\$0	\$0	\$0	\$0	\$5,000	\$10,000	\$10,000	\$10,000	\$0	\$0	Conservancy's projected share of IRWMP grant writing costs	
Public Relations and Outreach	\$125,000	\$25,000	\$145,000	\$29,000	\$15,000	\$25,000	\$25,000	\$5,000	\$15,000	\$25,000	Includes intern for legislative effort, public outreach, web page, publications	
<b>Operational Subtotal</b>	<b>\$575,141</b>	<b>\$115,028</b>	<b>\$843,805</b>	<b>\$168,761</b>	<b>\$541,920</b>	<b>\$364,440</b>	<b>\$364,440</b>	<b>\$348,400</b>	<b>\$278,320</b>	<b>\$288,320</b>		
<b>TOTAL</b>	<b>\$3,460,986</b>	<b>\$692,197</b>	<b>\$2,672,575</b>	<b>\$534,515</b>	<b>\$813,923</b>	<b>\$609,840</b>	<b>\$609,596</b>	<b>\$606,981</b>	<b>\$514,189</b>	<b>\$493,665</b>		

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

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est. <sup>1</sup>	Cost Estimate Used for Conservancy Budget					
					2014	2013	2012	2011	2010	2009
<b>Capital Costs</b>										
Land Costs	\$29,485,080	\$5,897,016	\$21,558,779	\$4,311,756	\$22,000,000	\$13,750,000	\$11,000,000	\$13,750,000	\$13,750,000	\$13,750,000
Due Diligence	\$1,285,710	\$373,623	\$938,163	\$187,633	\$274,765	\$229,084	\$228,217	\$225,099	\$226,303	\$226,495
Planning Surveys	\$46,425	\$9,285	n/a	n/a	\$0	\$50,000	\$40,000	\$50,000	\$70,000	\$70,000
Site Improvements	\$925,344	\$192,783	\$727,579	\$145,516	\$160,000	\$160,000	\$140,000	\$140,000	\$165,000	\$165,000
<b>TOTAL</b>	<b>\$31,742,559</b>	<b>\$6,472,707</b>	<b>\$23,224,521</b>	<b>\$4,644,904</b>	<b>\$22,434,765</b>	<b>\$14,029,084</b>	<b>\$11,268,217</b>	<b>\$14,025,099</b>	<b>\$14,046,303</b>	<b>\$14,046,495</b>

**Land Cost Estimates and Assumptions**

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget					
					2014 <sup>2</sup>	2013	2012	2011	2010	2009
Number of parcels	40	8	n/a	n/a	30	12	10	12	12	12
Number of properties	n/a	n/a	n/a	n/a	6	6	5	6	6	6
Overall acreage acquired	5,060	1,012	n/a	n/a	4,000	2,500	2,000	2,500	2,500	2,500
Average cost per acre	n/a	n/a	n/a	n/a	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500
<b>TOTAL</b>	<b>\$29,495,080</b>	<b>\$5,899,016</b>	<b>\$21,558,779</b>	<b>\$4,311,756</b>	<b>\$22,000,000</b>	<b>\$13,750,000</b>	<b>\$11,000,000</b>	<b>\$13,750,000</b>	<b>\$13,750,000</b>	<b>\$13,750,000</b>

**Due Diligence**

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget					
					2014	2013	2012	2011	2010	2009
Number of Parcels to be Purchased	40	8.4	n/a	n/a	12	12	10	12	12	12
Number of Parcels Investigated	50	10.6	n/a	n/a	14	14	12	14	14	14
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	\$646,763	\$129,353	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	n/a	n/a
Deputy Director (0.1 FTE)	n/a	n/a	\$291,400	\$58,280	\$31,509	\$29,543	\$29,960	\$28,513	\$36,303	\$36,495
Senior GIS Planner (0.1 FTE)	n/a	n/a	n/a	n/a	\$25,361	\$25,742	\$24,457	\$22,786	n/a	n/a
Contract Planner (0.1 FTE)	n/a	n/a	n/a	n/a	\$0	\$18,800	\$18,800	\$18,800	n/a	n/a
Assistant Planner (0.3 FTE)	n/a	n/a	n/a	n/a	\$46,947	n/a	n/a	n/a	n/a	n/a
Planning Technician (0.10 FTE)	n/a	n/a	n/a	n/a	\$15,948	n/a	n/a	n/a	n/a	n/a
Proposed Agreement with EBRPD	n/a	n/a	n/a	n/a	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Legal support to land acquisition	n/a	n/a	n/a	n/a	\$5,000	\$5,000	\$5,000	\$5,000	\$40,000	\$40,000
Due diligence contingency	n/a	n/a	n/a	n/a	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Due diligence costs with other partners	n/a	n/a	n/a	n/a	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
<b>TOTAL</b>	<b>\$1,790,610</b>	<b>\$373,623</b>	<b>\$938,163</b>	<b>\$187,633</b>	<b>\$274,765</b>	<b>\$229,084</b>	<b>\$228,217</b>	<b>\$225,099</b>	<b>\$226,303</b>	<b>\$226,495</b>

Notes: (1) 2012 Fee Audit assumes 3% flat due diligence costs and does not account for annual variations in level of acquisition costs

(2) The \$14.2 million purchase of Roddy Ranch, approved in 2013 but planned to close escrow in 2014, explains the increase in the 2014 land acquisition budget relative to previous years

Table I-4 (continued)

**Pre-Acquisition Assessment / Planning Surveys**

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget					
					2014	2013	2012	2011	2010	2009
Land cover type surveys	\$0.00	\$0	n/a	n/a	\$0	\$10,000	\$8,000	\$10,000	\$10,000	\$15,000
Covered Species	\$0.00	\$0	n/a	n/a	\$0	\$10,000	\$8,000	\$10,000	\$10,000	\$10,000
Covered Plant Surveys	\$0.00	\$0	n/a	n/a	\$0	\$10,000	\$8,000	\$10,000	\$20,000	\$20,000
Covered Wildlife Surveys	\$0.00	\$0	n/a	n/a	\$0	\$10,000	\$8,000	\$10,000	\$20,000	\$10,000
Assess & document conservation value	\$0.00	\$0	n/a	n/a	\$0	\$10,000	\$8,000	\$10,000	\$10,000	\$15,000
<b>Planning Survey Subtotal</b>	<b>\$0.00</b>	<b>\$0</b>	<b>n/a</b>	<b>n/a</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$40,000</b>	<b>\$50,000</b>	<b>\$70,000</b>	<b>\$70,000</b>

Notes: 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.

These assessment/planning surveys are accounted for in Monitoring, Research, and Adaptive Management

**Site Improvements**

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget					
					2014	2013	2012	2011	2010	2009
Number of Parcels Purchased	40	8	n/a	n/a	12	12	10	12	12	12
Demolition of Old Facilities	\$204,000	\$42,500	\$39,799	\$7,959.80	\$30,000	\$30,000	\$25,000	\$30,000	\$30,000	\$30,000
Repair of Boundary Fence	\$374,544	\$78,033	\$359,439	\$71,887.80	\$60,000	\$60,000	\$55,000	\$60,000	\$60,000	\$60,000
Repair and Replacement of Gates	\$163,200	\$34,000	\$155,879	\$31,175.80	\$30,000	\$30,000	\$25,000	\$30,000	\$30,000	\$30,000
Signs (Boundary, Landmark, ect.)	\$102,000	\$21,250	\$96,181	\$19,236.20	\$20,000	\$20,000	\$15,000	\$20,000	\$20,000	\$20,000
Other Security (e.g., Boarding up barns)	\$81,600	\$17,000	\$76,281	\$15,256.20	\$20,000	\$20,000	\$20,000	\$25,000	\$25,000	\$25,000
<b>TOTAL</b>	<b>\$925,344</b>	<b>\$192,783</b>	<b>\$727,579</b>	<b>\$145,516</b>	<b>\$160,000</b>	<b>\$160,000</b>	<b>\$140,000</b>	<b>\$165,000</b>	<b>\$165,000</b>	<b>\$165,000</b>

Management, Restoration, and Recreation Planning and Design

Table I-5

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
Office Equipment	\$12,583	\$2,517	-	-	\$0	\$0	\$0	\$0	\$0	\$0	Included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$7,333	\$1,467	\$0	\$0	\$0	\$0	\$0	\$0	Included in staff costs
Staff	\$734,100	\$146,820	\$797,747	\$159,549	\$94,312	\$77,511	\$78,404	\$60,634	\$69,514	\$125,545	See detail below
Travel	\$21,875	\$4,375	\$6,667	\$1,333	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$12,667	\$2,533	\$3,833	\$767	\$0	\$0	\$0	\$0	\$0	\$0	Factored into contractor rates
Contractors	\$283,140	\$56,628	\$1,553,599	\$310,720	\$295,000	\$230,000	\$190,000	\$240,000	\$160,000	\$200,000	See detail below
<b>TOTAL</b>	<b>\$1,137,698</b>	<b>\$227,540</b>	<b>\$1,365,238</b>	<b>\$473,835</b>	<b>\$391,937</b>	<b>\$310,136</b>	<b>\$271,029</b>	<b>\$303,259</b>	<b>\$232,139</b>	<b>\$328,170</b>	

Staff

Position	Estimate Costs from HCP Years 6 - 10		Estimate Costs from Fee Audit Years 6 - 10		Cost Estimate Used for Conservancy Budget						Notes
	FTE	Estimate	FTE	Estimate	2014	2013	2012	2011	2010	2009	
Senior Scientist	0.33	\$35,904	0.17	\$41,548	\$0	\$0	\$0	\$0	\$0	\$0	
Project Manager	0.66	\$66,036	0.17	\$27,166	\$0	\$0	\$0	\$0	\$0	\$0	
Technical Support	0.66	\$44,880	0.17	\$15,980	\$0	\$0	\$0	\$0	\$0	\$0	
Senior Planner		\$0	0.2	\$47,376	\$47,259	\$47,968	\$48,444	\$46,378	\$60,438	\$89,050	0.2 FTE
Deputy Director		\$0	0.1	\$29,140	\$15,754	\$29,543	\$29,960	\$14,257	\$9,076	\$36,495	0.05 FTE
Assistant Planner		\$0	n/a	n/a	\$31,298	n/a	n/a	n/a	n/a	n/a	0.2 FTE
<b>TOTAL</b>		<b>\$146,820</b>		<b>\$159,549</b>	<b>\$94,312</b>	<b>\$77,511</b>	<b>\$78,404</b>	<b>\$60,634</b>	<b>\$69,514</b>	<b>\$125,545</b>	

Contractors

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
Management and Recreation planning	\$150,000	\$30,000	\$908,250	\$181,650	\$120,000	\$80,000	\$100,000	\$80,000	\$80,000	\$60,000	Finish 1 preserve mgmt plan and initiate 2nd, 2 systemwide plans
Restoration Planning	\$100,000	\$20,000	\$605,500	\$121,100	\$175,000	\$150,000	\$90,000	\$160,000	\$80,000	\$140,000	Start 1 large and 1 med project, complete 1 large and 1 med project
Restoration Design	\$33,140	\$6,628	\$39,849	\$7,970	\$0	\$0	\$0	\$0	\$0	\$0	Lumped with planning
<b>TOTAL</b>	<b>\$283,140</b>	<b>\$56,628</b>	<b>\$1,553,599</b>	<b>\$310,719.80</b>	<b>\$295,000</b>	<b>\$230,000</b>	<b>\$190,000</b>	<b>\$240,000</b>	<b>\$160,000</b>	<b>\$200,000</b>	

**Habitat Restoration/Creation**

Table I-6

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
Restoration/Creation Construction	\$2,109,868	\$421,974	\$4,174,800	\$834,960	\$650,000	\$80,000	\$120,000	\$580,000	\$150,000	\$650,000	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	\$7,333	\$1,467	\$0	\$0	\$0	\$0	\$0	\$0	Factored into contractor rates
Staff	\$734,100	\$146,820	\$797,747	\$159,549	\$51,094	\$23,984	\$48,444	\$60,634	\$39,295	\$77,614	Senior Planner 0.15 FTE, Assistant Planner .1 FTE
Travel	\$21,875	\$4,375	\$6,667	\$1,333	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$12,667	\$2,533	\$3,833	\$767	\$0	\$0	\$0	\$0	\$0	\$0	Factored into contractor rates
Contractors	\$542,668	\$108,534	\$2,024,778	\$404,956	\$260,000	\$150,000	\$160,000	\$200,000	\$140,000	\$250,000	See detail below
<b>TOTAL</b>	<b>\$3,507,094</b>	<b>\$701,419</b>	<b>\$7,015,158</b>	<b>\$1,403,032</b>	<b>\$963,719</b>	<b>\$256,609</b>	<b>\$331,069</b>	<b>\$843,259</b>	<b>\$331,920</b>	<b>\$980,239</b>	

**Cost of Restoration/Creation Construction**

Project Type	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes/Location
					2014	2013	2012	2011	2010	2009	
Large project (stream, vernal pool, pond, wetland)					\$500,000	\$0	\$0	\$500,000	\$0	\$450,000	Large project at Hess Triangle
Small project (stream / vernal pool)					\$150,000	\$80,000	\$120,000	\$80,000	\$150,000	\$200,000	Riparian at Ang; stream at Souza 2
<b>TOTAL</b>	<b>\$2,109,868</b>	<b>\$421,974</b>	<b>\$4,174,800</b>	<b>\$834,960</b>	<b>\$650,000</b>	<b>\$80,000</b>	<b>\$120,000</b>	<b>\$580,000</b>	<b>\$150,000</b>	<b>\$650,000</b>	

**Contractors**

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
Plans, specifications, and engineering	\$124,275	\$24,855	\$1,252,440	\$250,488	\$70,000	\$50,000	\$20,000	\$50,000	\$20,000	\$50,000	
Development of bid package	\$16,570	\$3,314	\$62,622	\$12,524	\$30,000	\$10,000	\$10,000	\$30,000	\$10,000	\$50,000	
Construction oversight	\$70,423	\$14,085	\$292,236	\$58,447	\$40,000	\$10,000	\$10,000	\$20,000	\$10,000	\$60,000	Includes inspectors and construction manager
Post-construction maintenance	\$331,400	\$66,280	\$417,480	\$83,496	\$120,000	\$80,000	\$120,000	\$100,000	\$100,000	\$90,000	Maintenance of prior projects
<b>TOTAL</b>		<b>\$108,534</b>	<b>\$2,024,778</b>	<b>\$404,956</b>	<b>\$260,000</b>	<b>\$150,000</b>	<b>\$160,000</b>	<b>\$200,000</b>	<b>\$140,000</b>	<b>\$250,000</b>	

## Environmental Compliance

Table I-7

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
NEPA/CEQA	\$380,000	\$76,000	\$460,200	\$92,040	\$8,000	\$8,000	\$10,000	\$3,000	\$3,000	\$3,000	Possible greenhouse gas addendum
CWA 404/401	\$0	\$0	\$13,200	\$2,640	\$8,000	\$8,000	\$2,000	\$15,000	\$10,000	\$20,000	Manage existing permits/ start new
NHPA	\$41,000	\$8,200	\$49,700	\$9,940	\$8,000	\$8,000	\$2,000	\$20,000	\$12,000	\$12,000	Manage existing permits/ start new
CDFG 1600-1607	\$8,000	\$1,600	\$10,100	\$2,020	\$8,000	\$8,000	\$2,000	\$10,000	\$10,000	\$20,000	Manage existing permits/ start new
Other	\$30,000	\$6,000	\$34,400	\$6,880	\$0	\$0	\$0	\$0	\$0	\$0	
Report on non-covered species	\$0	\$0	-	-	\$5,000	\$5,000	\$15,000	\$20,000	\$25,000	\$40,000	Streamlines CEQA for HCP users
Staff support to project permits	n/a	n/a	-	-	\$19,740	\$14,771	\$0	\$0	\$0	\$18,247	Contract Planner (0.1 FTE)
Develop regional wetlands permits	n/a	n/a	-	-	\$40,000	\$40,000	\$35,000	\$40,000	\$55,000	\$35,000	Contractor technical support
Develop regional wetlands permits	n/a	n/a	-	-	\$31,509	\$44,314	\$59,921	\$42,770	\$36,303	\$18,247	Deputy Director (0.1 FTE)
Develop regional wetlands permits	n/a	n/a	-	-	\$35,000	\$35,000	\$30,000	\$15,000	\$0	\$0	Legal support (In Lieu Fee Agreement)
Mid year budget correction	n/a	n/a	-	-	\$0	\$0	\$0	\$0	\$0	\$0	
<b>TOTAL</b>	<b>\$459,000</b>	<b>\$91,800</b>	<b>\$567,600</b>	<b>\$113,520</b>	<b>\$163,249</b>	<b>\$171,086</b>	<b>\$155,921</b>	<b>\$165,770</b>	<b>\$151,303</b>	<b>\$166,495</b>	

**HCP/NCCP Preserve Management and Maintenance**

Table I-8

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
Office Equipment	\$23,600	\$4,720	-	-	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Vehicle Purchase	\$45,000	\$9,000	\$271,200	\$54,240	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Equipment - capital	\$120,000	\$24,000	\$140,000	\$28,000	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Field Facilities (HCP assumes \$750K for years 1-5 and 11-15)	\$0	\$0	\$500,000	\$100,000	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Contractors - Capital	\$360,000	\$72,000	\$424,000	\$84,800	\$60,000	\$50,000	\$50,000	\$50,000	\$40,000	\$45,000	Construction, fencing, etc.
Recreation Facilities	\$302,800	\$60,560	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	Partners
Preserve Staff	\$1,464,210	\$292,842	\$2,068,000	\$413,600	\$250,000	\$100,000	\$100,000	\$200,000	\$200,000	\$180,000	Cost share with partners (costs covered by lease revenues not included)
Conservancy staff coordination/oversight	\$0	\$0	\$382,580	\$76,516	\$23,630	\$38,756	\$39,202	\$14,257	\$18,151	\$0	Senior Planner (0.1 FTE)
Maintenance of Office Equipment	\$0	\$0	-	-	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Travel	\$875	\$175	-	-	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Vehicle Fuel and Maintenance	\$79,250	\$15,850	\$71,300	\$14,260	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Equipment - Operational	\$260,000	\$52,000	\$304,000	\$60,800	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Facilities Maintenance and utilities	\$57,500	\$11,500	\$67,500	\$13,500	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Water Pumping	\$15,000	\$3,000	\$17,620	\$3,524	\$0	\$0	\$0	\$0	\$0	\$0	Partners / lease revenue
Contractors- operational	\$596,800	\$119,360	\$526,470	\$105,294	\$50,000	\$20,000	\$20,000	\$0	\$40,000	\$50,000	Weed abatement, etc/
Recreation - operational	\$264,050	\$52,810	\$0	\$0	\$0	\$10,562	\$0	\$0	\$0	\$0	Partners
<b>TOTAL</b>	<b>\$3,589,085</b>	<b>\$717,817</b>	<b>\$4,772,670</b>	<b>\$954,534</b>	<b>\$383,630</b>	<b>\$219,318</b>	<b>\$209,202</b>	<b>\$264,257</b>	<b>\$298,151</b>	<b>\$275,000</b>	

**Monitoring, Research and Adaptive Management**

Table I-9

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget						Notes
					2014	2013	2012	2011	2010	2009	
Office Equipment	\$12,583	\$2,517	-	-	\$0	\$0	\$0	\$0	\$0	\$0	Factored in staff/contractor rates
Vehicle Purchase	\$73,333	\$14,667	\$7,333	\$1,466.60	\$0	\$0	\$0	\$0	\$0	\$0	Factored in staff/contractor rates
Conservancy staff			\$118,440	\$23,688.00	\$39,384	\$38,756	\$39,202	\$47,817	\$93,565	\$63,345	Deputy Director (0.05 FTE), Sr Planner (0.1 FTE)
Technical staff	\$734,100	\$146,820	\$415,167	\$83,033.40		-	-	-	-	-	
Vehicle Fuel and Maintenance	\$12,667	\$2,533	\$3,833	\$766.60	\$0	\$0	\$0	\$0	\$0	\$0	Factored in staff/contractor rates
Travel	\$21,875	\$4,375	\$6,667	\$1,333.40	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	
Field Data Collection (Contractors)	\$1,455,690	\$291,138	\$887,424	\$177,484.80	\$150,000	\$110,000	\$70,000	\$50,000	\$60,000	\$30,000	Baseline inventory and initiate other monitoring required by preserve management plan
Directed Research	\$375,000	\$75,000	\$454,000	\$90,800.00	\$80,000	\$80,000	\$150,000	\$150,000	\$0	\$0	Grant-funded avian study
Adaptive Management	\$150,000	\$30,000	\$181,500	\$36,300.00	\$30,000	\$30,000	\$15,000	\$15,000	\$15,000	\$0	Based on monitoring results
<b>TOTAL</b>	<b>\$2,835,248</b>	<b>\$567,050</b>	<b>\$2,074,364</b>	<b>\$414,873</b>	<b>\$300,384</b>	<b>\$259,756</b>	<b>\$275,202</b>	<b>\$263,817</b>	<b>\$169,565</b>	<b>\$94,345</b>	

**Remedial Measures**

Table I-10

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget					
					2014	2013	2012	2011	2010	2009
Remedial measures	\$30,000	\$6,000	\$30,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
<b>TOTAL</b>	<b>\$30,000</b>	<b>\$6,000</b>	<b>\$30,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>

**Contingency Fund**

	Est. Costs from HCP Years 6 - 10	One-Fifth of Five-Year HCP Est.	Est. Costs from Fee Audit Years 6 - 10	One-Fifth of Five-Year Fee Audit Est.	Cost Estimate Used for Conservancy Budget					
					2014	2013	2012	2011	2010	2009
Total cost of program excluding land acquisition and habitat restoration capital costs	\$14,463,723	\$2,892,745	\$16,123,945	\$3,224,789	\$3,016,842	\$1,950,082	\$1,852,019	\$2,447,343	\$1,697,267	\$2,356,160
Contingency Fund	\$723,186	\$144,637	\$806,197	\$161,239	\$150,842	\$97,504	\$92,601	\$122,367	\$84,863	\$117,808
<b>TOTAL</b>	<b>\$723,186</b>	<b>\$144,637</b>	<b>\$806,197</b>	<b>\$161,239</b>	<b>\$150,842</b>	<b>\$97,504</b>	<b>\$92,601</b>	<b>\$122,367</b>	<b>\$84,863</b>	<b>\$117,808</b>

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

**Grants Awarded to Conservancy for Implementation of East Contra Costa County HCP/NCCP<sup>1</sup>**

Table II

Funding Source	Agency	Purpose	Amount	Required Match	Amount Expended (12/31/13)	Remain (12/31/13)	Needs to be used by...	Complete?	Notes
Section 6 (2006)	USFWS admin by WCB	Acquisition	\$6,531,054	\$7,982,399	\$6,531,054	\$0	June 2010	✓	
Section 6 (2007)		Acquisition	\$7,000,000	\$8,555,600	\$7,000,000	\$0	June 2011	✓	
Section 6 (2008)		Acquisition	\$6,000,000	\$7,333,333	\$5,934,114	\$0	Feb 2013	✓	\$65,886 unspent
Section 6 (2009)		Acquisition	\$2,500,000	\$3,055,556	\$0	\$2,500,000	Aug 2014		Extended twice
Section 6 (2010)		Acquisition	\$6,000,000	\$7,333,333	\$1,080,000	\$4,920,000	Aug 2014		Extended once
Section 6 (2011)		Acquisition	\$4,463,936	\$5,455,922	\$0	\$4,463,936	Oct 2014		
Section 6 (2012)		Acquisition	\$1,000,000	\$1,222,222	\$0	\$1,000,000	Sep 2015		
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	\$261,388	\$388,612	Dec 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/maintenance	\$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	\$75,000	\$0	April 2014	✓	
NCCP Local Assistance (2013)	CDFW	Ang pond restoration	\$95,000	\$0	\$0	\$95,000	April 2015		
EQUIP	NRCS	Ang riparian planting, fencing and livestock	\$75,585	\$0	\$0	\$75,585	Dec 2016		
Gordon and Betty Moore Foundation		Acquisition Fox Ridge	\$880,000	50% match desired	\$880,000	\$0	Dec 2009	✓	
Gordon and Betty Moore Foundation		Acquisition and research Souza 3	\$2,250,000	50% match desired	\$2,051,228	\$198,772			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	✓	
Prop 84 NCCP account	WCB	Acquisition of Roddy Ranch	\$4,841,875	\$0	\$0	\$4,841,875	Aug 2014		Approved, not yet spent
<b>TOTAL</b>			<b>\$52,147,482</b>	<b>\$42,831,865</b>	<b>\$33,572,917</b>	<b>\$18,483,779</b>			

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 2013 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 2013 Conservancy Budget</i>	<i>Expenditures as of 11/13/13<sup>1</sup></i>	<i>Projected Expenditures for Remainder of 2013</i>	<i>Total Expenditures thru 12/31/13 (Actual plus Projected)</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration and Permitting Program	\$609,840	\$477,021	\$129,758	\$607,000	\$3,000	0%
Land Acquisition	\$14,029,084	\$1,424,072	\$22,679	\$1,447,000	\$12,582,000	90%
Management, Restoration & Recreation Planning & Design	\$310,136	\$235,495	\$71,773	\$307,000	\$3,000	1%
Habitat Restoration/Creation	\$256,609	\$4,007	\$1,215	\$5,000	\$252,000	98%
Environmental Compliance	\$171,086	\$44,662	\$14,887	\$60,000	\$111,000	65%
HCP/NCCP Preserve Management and Maintenance	\$219,318	\$17,796	\$5,916	\$24,000	\$195,000	89%
Monitoring, Research, and Adaptive Management	\$259,756	\$104,007	\$33,756	\$138,000	\$122,000	47%
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$91,337	\$0	\$0	\$0	\$91,000	100%
<b>TOTAL EXPENDITURES</b>	<b>\$15,953,166</b>	<b>\$2,307,060</b>	<b>\$279,985</b>	<b>\$2,588,000</b>	<b>\$13,365,000</b>	<b>84%</b>
<b>FEE REVENUES FOR 2013 (actual + projected)<sup>2</sup></b>				<b>\$2,060,000</b>		
<b>GRANT REVENUE 2013 (actual + projected)</b>				<b>\$1,360,000</b>		
<b>TOTAL REVENUES 2013 (actual + projected)</b>				<b>\$3,420,000</b>		
<b>DIFFERENCE BETWEEN YTD REVENUES &amp; EXPENDITURES (projected)</b>				<b>\$830,000</b>		
<b>ESTIMATED FUNDS IN CONSERVANCY ACCOUNTS, December 31, 2013<sup>3</sup></b>				<b>\$2,800,000</b>		

**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 more than \$18M in grant revenue that has been approved but not received before 12-31-2013 (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 about \$3.5M.

**Table IV: Budget for Lease Revenue Received and Spent by the East Bay Regional Park District**

(applies to revenue from wind power, communication and residential leases on Preserve System lands acquired by EBRPD in partnership with the Conservancy)

**Revenues**

<u>Description</u>	<u>Amount</u>	
2014 (projected)	\$500,000	
2013 (projected)	\$494,000	
2010-2012 (actual)	\$901,000	
<b>Total Revenue 2010-2014 (actual and projected)</b>	<b>\$1,895,000</b>	

**Expenditures and Allocations**

<u>Description</u>	<u>Amount</u>	<u>Comments</u>
<b>2014</b>		
Ranger Staff Cost for all Preserve System Lands (2014)	\$246,000	Represents cost for one Supervisor II + one Park Ranger II
Maintenance Supplies (2014)	\$20,000	Supplies for maintenance of the land including materials and tools employed by rangers.
Maintenance Services (2014)	\$40,000	Funding for resource improvement projects including access road maintenance, vegetation/weed management, property clean-up and livestock watering.
<b>Management Subtotal (2014)</b>	<b>\$306,000</b>	
Allocation to Reserve for Long Term Management (2014 revenues)	\$125,000	25% of projected revenues
Allocation to Land Acquisition (2014 revenues)	\$75,000	15% of projected revenues
<b>Total (2014)</b>	<b>\$506,000</b>	
<b>2013</b>		
Ranger Staff Cost for all Preserve System Lands (2013)	\$242,000	Represents cost for one Supervisor II + one Park Ranger II
Maintenance Supplies (2013)	\$20,000	Supplies for maintenance of the land including materials and tools employed by rangers.
Maintenance Services (2013)	\$30,000	Funding for resource improvement projects including access road maintenance, vegetation/weed management, property clean-up and livestock watering.
<b>Management Subtotal (2013)</b>	<b>\$292,000</b>	
Allocation to Reserve for Long Term Management (2013 revenues)	\$123,500	25% of projected revenues
Allocation to Land Acquisition (2013 revenues)	\$74,100	15% of projected revenues
<b>Total (2013)</b>	<b>\$489,600</b>	
<b>2010, 2011 &amp; 2012</b>		
Ranger Staff Cost for all Preserve System Lands (2011 & 2012)	\$240,000	Represents cost for one Supervisor II. No expenditures in 2010.
Allocation to Reserve for Long Term Management (2010-2012 revenues)	\$225,250	25% of actual revenues
Allocation to Land Acquisition (2010-12 revenues)	\$135,150	15% of actual revenues
<b>Total (2010-2012)</b>	<b>\$600,400</b>	
<b>Grand Total (projected expenditures and allocations 2010-2014)</b>	<b>\$1,596,000</b>	
<b>Management (2011-2014)</b>	<b>\$838,000</b>	
<b>Allocation to Reserve for Long Term Management (2010-14 revenues)</b>	<b>\$473,750</b>	
<b>Allocation to Land Acquisition (2010-14 revenues)</b>	<b>\$284,250</b>	
<b>Balance (projected unspent and unallocated revenues)</b>	<b>\$299,000</b>	

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Smith Property Acquisition

---

**RECOMMENDATION**

AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), one state grant agreement and one federal subgrant agreement with the California Wildlife Conservation Board (WCB) for state and federal funds for acquisition of the Smith Property (APN 078-050-003, -004, -006 and 078-100-002, -003, -007; 6401 Briones Valley Road, Brentwood, CA 94513).

**DISCUSSION**

**Overview of Property and Potential Acquisition:**

The Smith property (Property) totals 960 acres and is located at 6401 Briones Valley Road, Brentwood, CA 94513. Photos and maps showing the Property, its location and condition are provided in the attached Pre-Acquisition Assessment.

The Property is currently owned by Anna Mae Diffen Smith, Trustee. East Bay Regional Park District (EBRPD) and the Seller (Anna Mae Diffen Smith, Trustee) have reached agreement on the purchase of the Property. EBRPD commissioned an appraisal of the Property which was completed July 2, 2013 and established the fair market value of the Property at \$5,376,000, which is also the purchase price.

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

CONTINUED ON ATTACHMENT: YES  
ACTION OF BOARD ON: December 9, 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

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

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

<b>Source</b>	<b>Total</b>
EBRPD	\$537,600
Federal Section 6 HCP Land Acquisition Grant	\$2,419,200
WCB Proposition 84 Grant	\$2,419,200
<b>Total</b>	<b>\$5,376,000</b>

The Federal Section 6 funds necessary to implement the Proposed Funding Plan are available through previously approved grant awards to the State for implementation of the ECCC HCP/NCCP and the Property is an eligible property under these approved awards. A subgrant agreement with WCB is necessary to expend the federal funds (see additional information on necessary agreements below). The Proposition 84 funds necessary to implement the Proposed Funding Plan have already been appropriated by the Legislature to be available to Delta County NCCPs, but a grant agreement with WCB is necessary to expend the funds. EBRPD would provide its contribution through Measure WW Bond Funds (Measure WW was approved by the voters in 2008). No Conservancy funds would be contributed to the purchase.

Staff recommends the proposed funding plan because:

- The Funding Plan should rely most on those funding sources that are nearest to expiring or otherwise being lost. \$7.04 million in currently unspent Section 6 grant funds are scheduled to expire in 2014. Proposition 84 grant funds are distributed on a first-come-first-serve basis. The Funding Plan relies most heavily on these two sources.
- The Conservancy’s direct contribution is \$0.

**Would Acquisition of the Property Help the Conservancy Achieve the Conservation Goals of the HCP/NCCP?**

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

The 960-acre Smith property (Property) is located in the center of the inventory area and is a high-priority acquisition for the Conservancy. The Property is comprised of a mosaic of important habitat types including annual grassland, chaparral, oak savanna, oak woodland, pond, wetland, and seasonal wetland. The Property would constitute a key piece of the Preserve System by conserving rich habitat important to many HCP/NCCP covered species and by expanding a conservation corridor between Black Diamond Mines Regional Preserve, Marsh Creek State Park, and Round Valley Regional Preserve. The Smith property together with Roddy Ranch encompass three valleys and ridges, providing the potential to create the

body of the future Deer Valley Regional Park as envisioned by EBRPD’s 2013 Master Plan. The Property represents another opportunity to pursue conservation in this critical area.

Most of the Property is located in HCP/NCCP Acquisition Analysis Zone 2 and a small portion in Zone 4. Within Zone 2, the Property lies within subzones 2c, 2d and 2f. The portion of the Property in Zone 4 is within subzone 4c. The Property would be the first acquisition in the 2c and 4c subzones. Stay-Ahead Measurement Method #2, as described in Chapter 8 of the HCP/NCCP, was created to encourage land acquisition in Zone 2 early in the Plan implementation because the land in Zone 2 has high value and risk compared to other zones. It can also be a challenging area in which to acquire habitat lands because rural residential development and speculative investing for suburban development have limited the number of owners interested in selling for public open space. Subzones 2c, 2d and 2f are designated as high priority for acquisition for the Preserve System. High priority Zone 2 acquisitions are of critical importance to the HCP because the area supports a variety of high quality habitat for several key species and serves a critical connectivity function for San Joaquin kit fox.

Within Zone 2, specific conservation targets exist for land cover and species habitat. Acquisition of the Property would contribute to annual grassland requirements in subzone 2c (138 acres, 34.5% of requirement), subzone 2d (253 acres, 31.6% of requirement), and 2f (0.19 acres, 0.02% of requirement). Subzone 2c is the only subzone with a specific requirement to protect ponds due to it having an unusually high density of unprotected ponds compared with the rest of the Inventory Area. Protection of most of these ponds will protect an important core population of California red-legged frog, California tiger salamander, and western pond turtle in the center of the Preserve System. Acquisition of the property will preserve 3 of the 13 ponds in Subzone 2c (43% of the requirement).

The presence of oak woodland (481.18 acres), chaparral (8.64 acres), oak savanna (36.79 acres), seasonal wetland (0.04 acres), wetland (0.67 acres), pond (1.32 acres), and stream (18,966.81 feet) would also contribute to Preserve-wide acquisition requirements.

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

<b>Land Cover Type (acres)</b>	<b>Smith</b>	<b>HCP Land Acquisition Requirements (acres)</b>	<b>Percent of Land Acquisition Requirements</b>
Annual grassland	460.14	16,500	2.6%
Chaparral	8.64	550	1.57%
Oak savanna	36.79	500	7.36%
Oak woodland	481.18	400	120.3%
Pond	1.32	16	8.25%
Wetland	0.67	75	0.9%
Seasonal wetland	0.04	168	0.02%
Intermittent stream (feet)	18,967	2,112	898%

The Property offers substantial recreational benefits. Acquisition of the Property will support a key goal of EBRPD’s Master Plan: creating a park centered in Deer Valley. Acquisition of

the Property would enable a significant expansion of the regional trail network and support regional trail connection between Black Diamonds Mines Regional Preserve and Round Valley Regional Preserve.

Because this acquisition would help achieve the HCP/NCCP land acquisition requirements for annual grassland, chaparral, oak savanna, oak woodland, pond, wetland, seasonal wetland, and streams; help achieve the specific HCP/NCCP requirements for Subzones 2c, 2d, 2f, and 4c, Stay-Ahead Measurement Method #2, Zones 2 and 4; and provides suitable habitat for several covered species, staff finds that acquisition of the Property will help the Conservancy to achieve the conservation goals of the HCP/NCCP.

**Deadline:** The parties hope the transaction can close by May 30, 2014. The principal timing constraints will be the timing of the Conservancy's federal and state funds.

**Conservancy costs and funding sources:** The Conservancy's total out-of-pocket contribution to the acquisition would be \$0. The Conservancy would arrange for its grant funds to cover \$4,838,400.

**Future Conservancy actions:** The Board would need to approve a Management Plan that covers the Property and funding agreements for management.

**Agreements:** The Funding Agreement with EBRPD and the Grant and Subgrant Agreement(s)<sup>1</sup> with WCB would follow the general form shown in the attached templates, with funding amounts matching the Funding Plan described above.

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

- The Property has demonstrated willing sellers. Land acquisition under the HCP/NCCP is on a willing seller basis and must seize opportunities when presented.
- The Property is located in three high priority acquisition subzones and its preservation would help the Conservancy meet a number of the more challenging restoration requirements of the HCP/NCCP, including requirements for preservation of grasslands, oak woodland, chaparral/scrub, streams, and land acquisition and stay-ahead requirements for Zone 2, the highest priority zone in the HCP/NCCP.
- 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.

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<sup>1</sup> WCB may require a separate subgrant agreement for each federal grant award used. Conservancy staff anticipates relying on funding from the 2010 and 2011 federal grant awards.

**Attachments:**

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



East Contra Costa County  
Habitat Conservation Plan  
Natural Community  
Conservation Plan

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

ECCC Habitat Conservancy

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

### SITE IDENTIFICATION

**Site Name:** Smith

**Site Address/location:** 6401 Briones Valley Road, Brentwood, CA

**Property APN(s) #:** 078-050-003, -004, -006 and 078-100-002, -003, and -007

**Size of Parcel(s):** The overall size of the property is approximately 960 acres (comprised of six 160-acre parcels)

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

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

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

**Figures:** The following figures are attached as Appendix B.

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

## LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

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

The Smith property (Property) is comprised of six, 160-acre square-shaped parcels and is located in the center of the HCP/NCCP inventory area. The 960-acre Property is located in the center of the inventory area and is a high-priority acquisition for the Conservancy. The Property is comprised of a mosaic of important habitat types including annual grassland, chaparral, oak savanna, oak woodland, pond, wetland, and seasonal wetland. The Property would constitute a key piece of the Preserve System by conserving rich habitat important to many HCP/NCCP covered species and by expanding a conservation corridor between Black Diamond Mines Regional Preserve, Marsh Creek State Park, and Round Valley Regional Preserve. The Smith property together with Roddy Ranch encompass three valleys and ridges, providing the potential to create the body of the future Deer Valley Regional Park as envisioned by EBRPD's 2013 Master Plan. The Property represents another opportunity to pursue conservation in this critical area.

Over 3.7 miles of Briones Creek and several tributaries cross the property. Briones Creek flows from northwest to southeast and the tributaries to Briones Creek are located in the southern and central areas of the Property.

Most of the Property is located in Zone 2 and a small portion in Zone 4. Within Zone 2, the Property lies within subzones 2c, 2d and 2f. The portion of the Property in Zone 4 is within subzone 4c. This property would be the first acquisition in the 2c and 4c subzones. Stay-Ahead Measurement Method #2, as described in Chapter 8 of the HCP/NCCP, was created to encourage land acquisition in Zone 2 early in the Plan implementation because the land in Zone 2 has high value and risk compared to other zones. It can also be a challenging area in which to acquire habitat lands because rural residential development and speculative investing for suburban development have limited the number of owners interested in selling for public open space. Subzones 2c, 2d and 2f are designated as high priority for acquisition for the Preserve System. High priority Zone 2 acquisitions are of critical importance to the HCP because the area supports a variety of high quality habitat for several key species and serves a critical connectivity function for San Joaquin kit fox.

Within Zone 2, specific conservation targets exist for land cover and species habitat. Acquisition of the Property would contribute to annual grassland requirements in subzone 2c (138 acres, 34.5% of requirement), subzone 2d (253 acres, 31.6% of requirement), and 2f (0.19 acres, 0.02% of requirement). Subzone 2c is the only subzone with a specific requirement to protect ponds due to it having an unusually high density of unprotected ponds compared with the rest of the Inventory Area. Acquisition of most of these ponds will protect an important core population of California red-legged frog, California tiger salamander, and western pond turtle in the center of the Preserve System. Acquisition of the Property will preserve 3 of the 13 ponds in Subzone 2c (43% of the requirement).

The presence of oak woodland (481.18 acres), chaparral (8.64 acres), oak savanna (36.79 acres), seasonal wetland (0.04 acres), wetland (0.67 acres), pond (1.32 acres), and stream (18,966.81 feet) would also contribute to Preserve-wide acquisition requirements.

The Property offers substantial recreational benefits. Acquisition of the Property will support a key goal of EBRPD's Master Plan: creating a park in Deer Valley. Acquisition of the Property would enable a significant expansion of the regional trail network and support a regional trail connection between Black Diamonds Mines Regional Preserve and Round Valley Regional Preserve. These proposed open space and trail resources would be very accessible to residents of East County cities.

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

<b>Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)</b>	<b>Area (acres)</b>
<b>Terrestrial Land Cover Types</b>	
Annual grassland	430.14
Chaparral	8.64
Oak savanna	36.79
Oak woodland	481.18
<b>Total area of terrestrial land cover</b>	<b>956.75</b>
<b>Aquatic Land Cover Types</b>	
Pond	1.32
Wetland	0.67
Seasonal wetland	0.04
<b>Total area of aquatic land cover</b>	<b>2.03</b>

**III. Streams (Figure 4)**

<b>Stream</b>	<b>Length (linear feet)</b>
Intermittent stream	18,967
<b>Total streams (linear feet)</b>	<b>18,967</b>

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

<b>Type of Development (urban, suburban, rural, commercial, etc)</b>	<b>Distance from Site (miles)</b>	<b>General description of development and influence on site.</b>
On-site rural development	On site	The Property's improvements lie along the main ranch road in the flat portion of the Property. Improvements on the Property are heavily deteriorated.
Urban development	approximately 2.5-3 miles	Urban development is located approximately 2.5 miles to the north in the City of Antioch and 3 miles to the east in the City of Brentwood. Future development closer to the Property is planned, but will be buffered by other Preserve System acquisitions (e.g., Roddy Ranch and Fox Ridge). Close proximity to urban development would favor recreational access to the site. Management considerations such as controlling unwanted and illegal use and access (e.g., off-trail access, homeless encampments, pets), fire risk, invasive species management would need to be considered.

**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 Minimum Urban Development Area Scenario**

<i>Sub-Zone Requirement</i>	<i>Total Requirement</i>	<i>Contribution by this Acquisition (acres)</i>	<i>Percentage of Requirement Met by Acquisition</i>
Acquire annual grassland in Subzone 2c	400	138.05	34.5%
Acquire 90% of remaining chaparral in Subzones 2a, 2b, and 2c (90% of 135 acres)	122	3.79	3.12%
Acquire annual grassland in Subzone 2d	800	252.92	31.6%
Acquire annual grassland in Subzone 2f	1,000	0.19	0.02%
San Joaquin kit fox movement corridor in Subzone 2f	1,000	0.19	6.15%
Acquire at least 7 of the 13 ponds in Subzone 2c	7	3	42.9%
Zone 2 estimated minimum requirement	7,500	919	12.25%
Zone 2 estimated maximum requirement	9,550	919	9.62%
Zone 2 alternative stay-ahead measurement	4,900	919	18.76%
Zone 4 estimated minimum requirement	6,050	38.43	0.64%
Zone 4 estimated maximum requirement	8,350	38.43	0.46%
Subzones 4c, 4e, 4f, 4g	3,000	38.43	1.28%

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

<i>Land-Cover Requirement</i>	<i>Total Requirement (acres)</i>	<i>Contribution by this Acquisition (acres)</i>	<i>Percentage of Requirement Met by Acquisition</i>
Preserve-wide Annual Grassland	16,500	430.14	2.6%
Preserve-wide Chaparral	550	8.64	1.57%
Preserve-wide Oak Savanna	500	36.79	7.36%
Preserve-wide Oak Woodland	400	481.18	120.3%

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

<i>Jurisdictional Wetland and Waters Requirement</i>	<i>Total Requirement (acres)</i>	<i>Contribution by this Acquisition (acres)</i>	<i>Percentage of Requirement Met by Acquisition</i>
Preserve-wide Wetland	75	0.67	0.9%
Preserve-wide Seasonal Wetland	168	0.04	0.02%
Preserve-wide Pond	16	1.32	8.25%
Preserve-wide Intermittent stream (feet)	2,112	18,967	898%

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

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

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

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

The Property's large size (960 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use.

The Black Diamond Mines Regional Preserve is located about 0.5 miles to the northwest of the Property. The Property's northeastern border abuts the Roddy Ranch property, which connects to Black Diamond Mines Regional Preserve and Contra Costa Water District-owned mitigation properties to the southeast. Acquisition of the Property will add to existing and proposed open space land.

The Property is approximately 2.5 miles away from existing development. The acquisition of the Smith property, in addition to Roddy Ranch to the north and the Fan and Fox Ridge properties to the east, provide buffer land within their boundaries that could minimize indirect effects from urban development.

The Property fully represents a range of environmental gradients. The terrain is characterized as generally moderately to steeply sloping, interspersed with a series of valleys varying in width between well-defined ridges and canyons.

Briones Creek runs through the property and conservation of the property would allow for increased protection of the water quality both in the stream and within the watershed.

## BUILT FEATURES AND SITE CONSTRAINTS

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

The Property is currently in use as rural agricultural grazing land. Local zoning is A-4 (Agricultural Preserve) with a General Plan designation of AL (Agricultural Land), and is subject to a Conservation Agreement pursuant to a Williamson Act Contract. At least one house existed on the property, but it was reportedly burned down many years ago and little evidence of its existence now remains.

**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:**

Improvements on the Property are concentrated in the western area of APN 078-050-006 and the northern area of APN 078-050-004. Principal improvements consist of a general purpose barn, adjacent corral and paddock fencing, a small shed located to the south of the barn, and a metal livestock shed. All of these improvements are in very poor condition beyond the point of usefulness.

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

Land cover mapping conducted for the site (Figure 4 in Appendix B) does not include any ruderal land cover.

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

No obvious constraints, though the property is very steep in places and significant areas are not accessible by dirt road. The perimeter boundary of the Property is fenced, and the lessee for the cattle grazing lease periodically inspects perimeter fencing as part of the lease obligation.

**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):**

There has been almost no major subdivision activity in the unincorporated area of the County in which the Property is located. Development has typically been limited to minor subdivisions ranging from two to five lots in the general vicinity of the Property. There are rural residential uses to the east. Other adjacent lands consist of rural open space and EBRPD preserves. The property will be buffered from urban uses by other Preserve System lands.

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

None to report at this time. Field work to inventory the natural resources of the site will be performed following acquisition.

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

None to report at this time. Field work to inventory the natural resources of the site will be performed following acquisition and may identify management needs.

There are two operational wells on the property which provide water for livestock purposes.

**Appendices:**

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

## Appendix A



Photo 1:

Looking NW  
toward Mount  
Diablo across the  
Smith Property  
from Roddy Ranch



Photo 2:

View NW toward  
Mount Diablo up  
Briones Valley  
from Roddy Ranch



Photo 3: View south and east down Briones Valley. Meandering Briones Creek is visible as well as the barn on the Property.



Photo 4: View from Briones Valley looking NNW toward shared ridgeline with Roddy Ranch

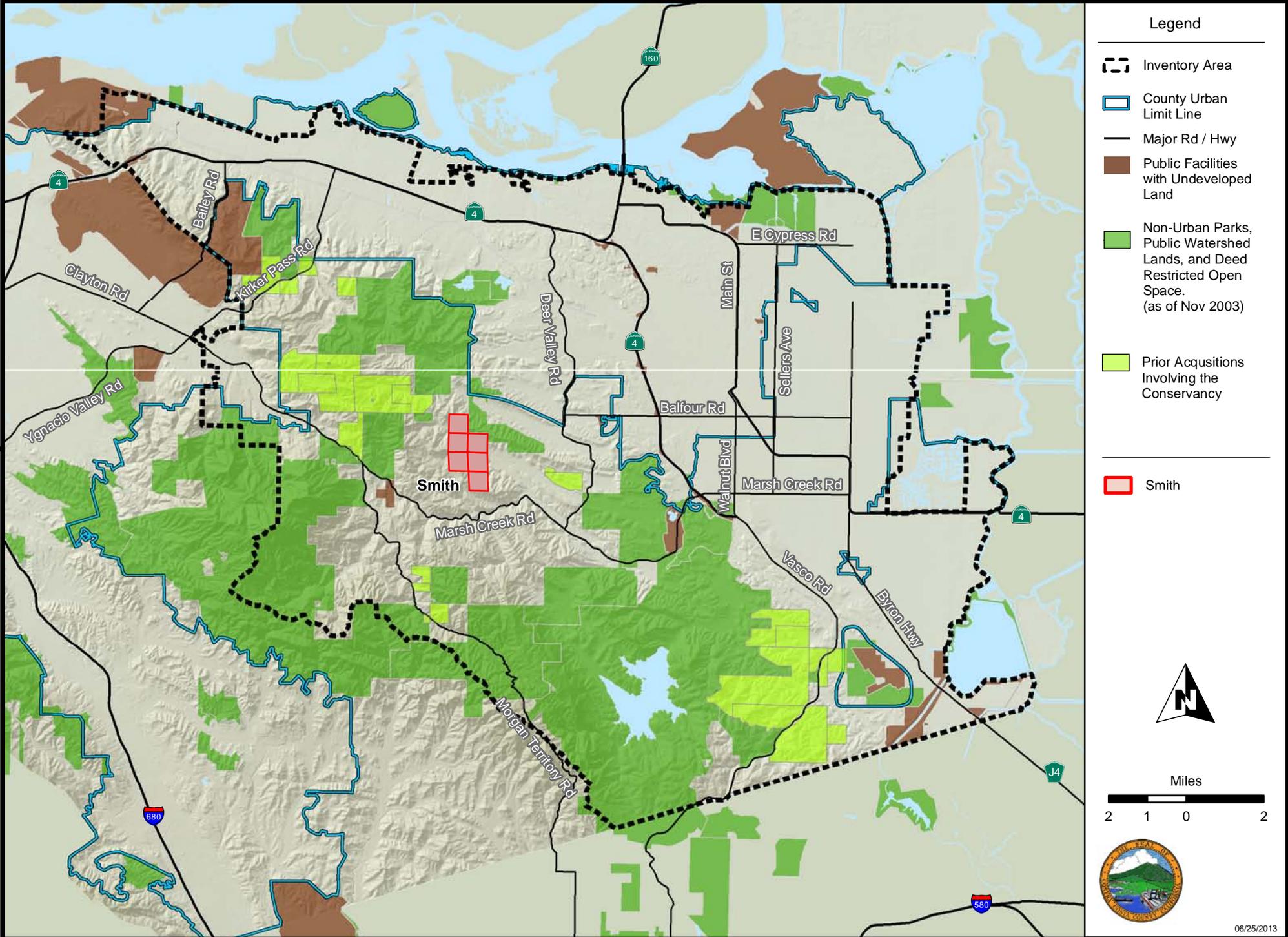


Photo 5: Barn on Smith Property



Photo 6: Briones Creek as it runs through Briones Valley on Smith Property

Figure 1: Smith Parcels - Regional Context

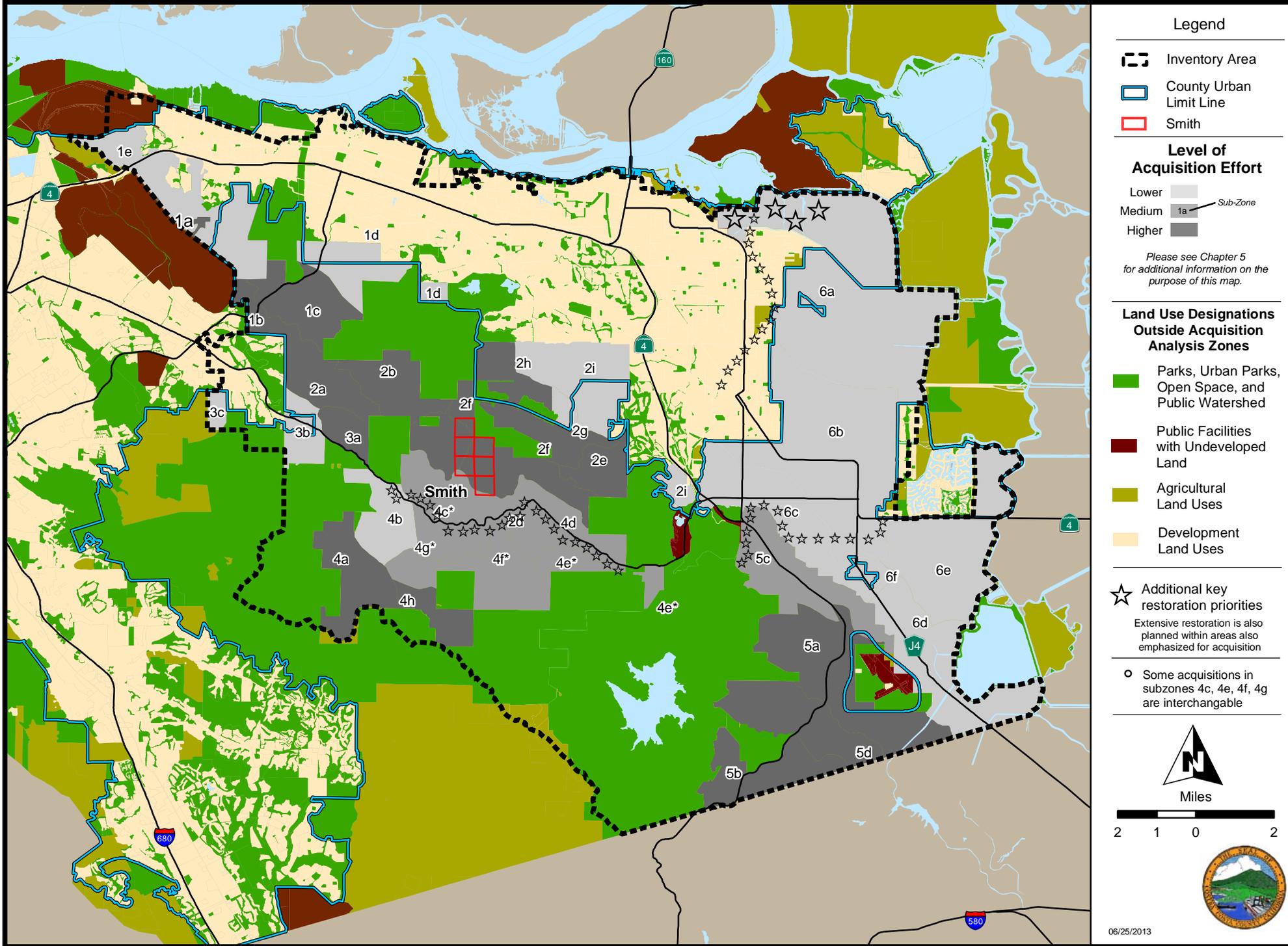


Legend

-  Inventory Area
-  County Urban Limit Line
-  Major Rd / Hwy
-  Public Facilities with Undeveloped Land
-  Non-Urban Parks, Public Watershed Lands, and Deed Restricted Open Space. (as of Nov 2003)
-  Prior Acquisitions Involving the Conservancy
-  Smith



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



**Legend**

- Inventory Area
- County Urban Limit Line
- Smith

**Level of Acquisition Effort**

- Lower
- Medium Sub-Zone
- Higher

*Please see Chapter 5 for additional information on the purpose of this map.*

**Land Use Designations Outside Acquisition Analysis Zones**

- Parks, Urban Parks, Open Space, and Public Watershed
- Public Facilities with Undeveloped Land
- Agricultural Land Uses
- Development Land Uses

Additional key restoration priorities

Extensive restoration is also planned within areas also emphasized for acquisition

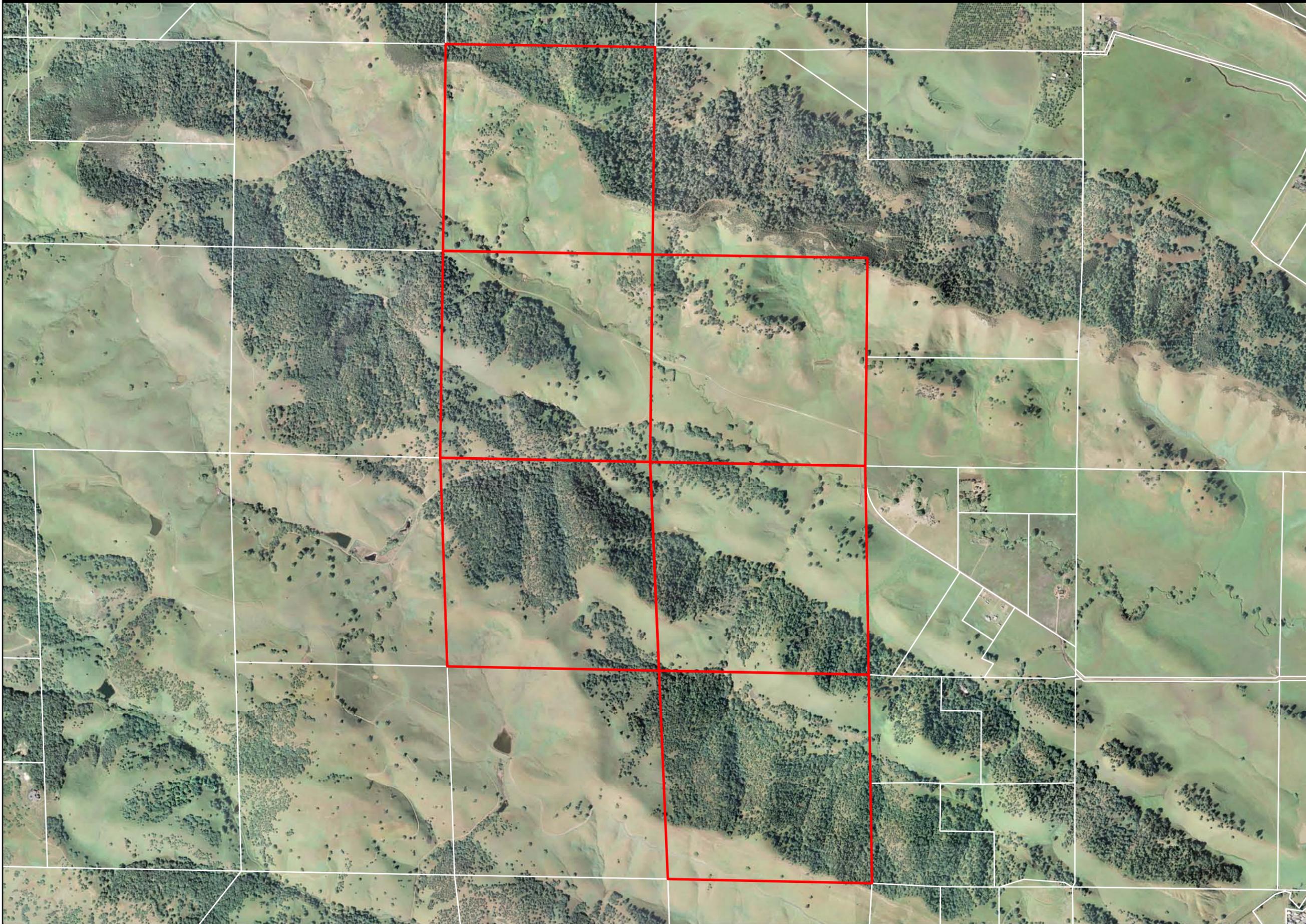
Some acquisitions in subzones 4c, 4e, 4f, 4g are interchangeable



Miles



Figure 3: Smith parcels - April 2008 Orthophotography



**Legend**

 Smith

  
N

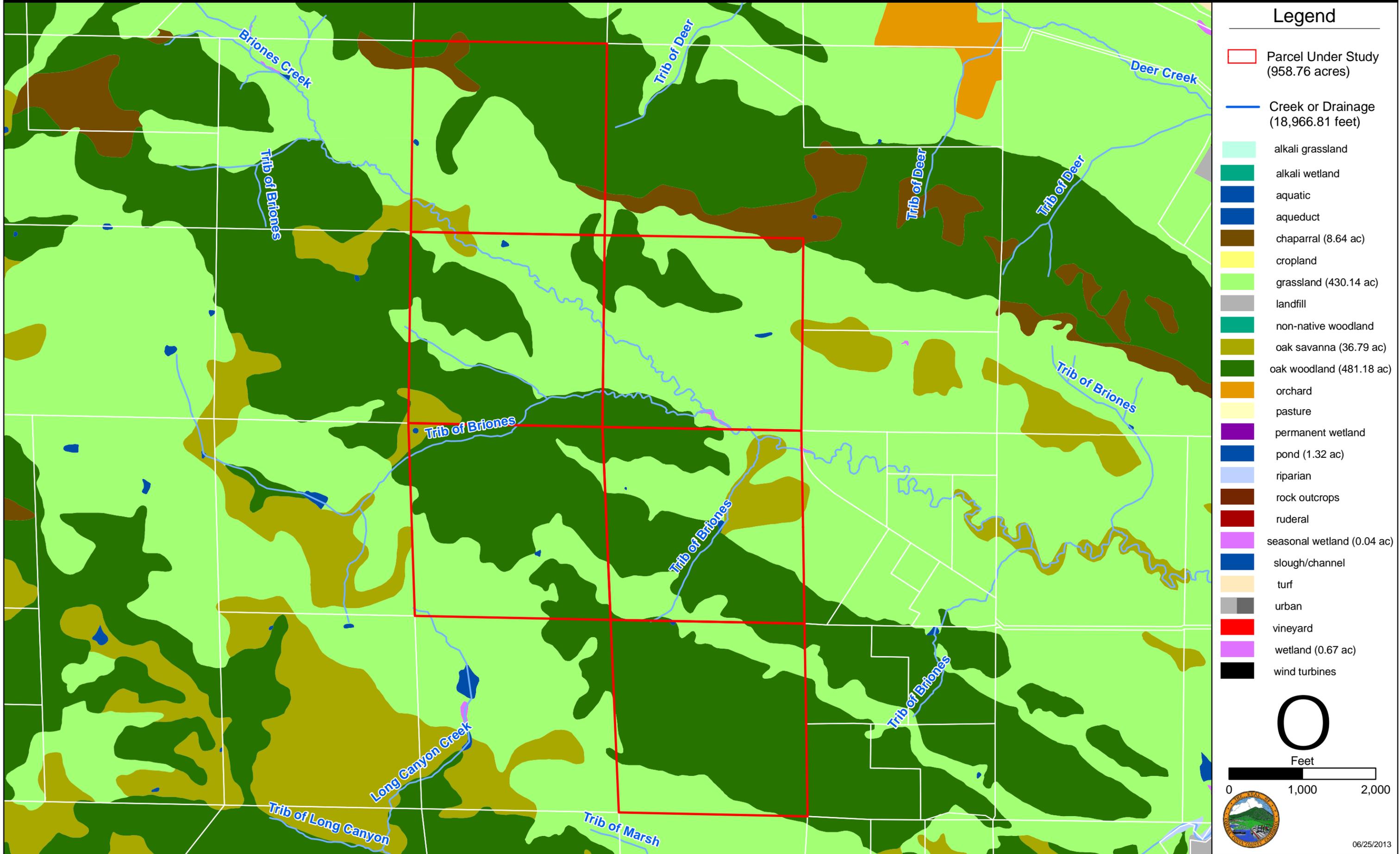
Feet

  
0 1,000 2,000



06/25/2013

Figure 4: Smith parcels - 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 (60) days following the end of each calendar year, District shall deliver to Conservancy an accounting for the immediately preceding calendar year (the **"Annual Accounting"**) which shall set forth (A) the total amount of Lease Revenues collected during such calendar year; (B) how such Lease Revenues were actually expended by District during such year, and (C) the total amount of the Endowment, together with the projected amount of the Endowment Goal. The requirements set forth in this section may be modified and expressly superseded in the funding agreement contemplated under **Section 4(e)** above.

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

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

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

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

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

## 5. Funding Procedure.

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

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

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

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

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

**8. Default and Remedies.**

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

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

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

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

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

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

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

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

If to District:

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

If to Conservancy:

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

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

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

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

**14. Miscellaneous Provisions.**

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

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

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

(d) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the agreements set forth herein and supersedes any and all prior written and oral understandings relating thereto. Any representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the Party to be charged.

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

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

(g) **Invalidity.** If any provision of this Agreement or the application thereof to any person(s) or circumstance(s) shall to any extent be held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, and provided that the essential agreement of the Parties to this Agreement is not materially altered as a result of such holding: (i) neither the remainder of this Agreement nor the

application of such provision to any person(s) or circumstance(s), other than those as to whom or which it is held to be invalid or unenforceable, shall be affected thereby; (ii) this Agreement shall be construed as though such invalid, illegal or unenforceable provision had never been contained in this Agreement; and (iii) every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision is so stricken from this Agreement, the Parties agree to negotiate in good faith any modifications that may be required to effectuate the intent of this Agreement.

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

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

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

**DISTRICT:**

EAST BAY REGIONAL PARK  
DISTRICT, a California special district

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Name: Robert E. Doyle  
Title: General Manager

**CONSERVANCY:**

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

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Name: John Kopchik  
Title: Executive Director

**EXHIBIT A**

**Legal Description of the Property**

**EXHIBIT B**

**Form of Deed Restrictions**

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

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Space Above Line for Recorder's Use Only

**GRANT OF DEED RESTRICTIONS**

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

**RECITALS**

- A. District is the sole owner in fee simple of the Property.
- B. This Grant of Deed Restrictions is being executed, delivered, and recorded in the Official Records of Contra Costa County (“**Official Records**”) to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the “**HCP/NCCP Conservation Instruments**”):
  - (i) East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan (“**HCP/NCCP**”), dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association, and approved by the United States Fish and Wildlife Service (“**USFWS**”) under Section 10 of the Federal Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 *et seq.*) (“**FESA**”) and by California Department of Fish and Game (“**CDFG**”) under California Fish and Game Code Section 2835 (“**DFG**”); and
  - (ii) Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan, by and between East Contra Costa County Habitat Conservancy, County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District, District, USFWS, and CDFG (the “**Implementing Agreement**”); and

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

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

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

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

## AGREEMENTS

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

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

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

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

- (a) Except as permitted in the Plans, unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Purposes of the Restrictions;
- (b) Except as permitted in the Plans, use of off-road vehicles and use of any other motorized vehicles;
- (c) Grazing and agricultural activity of any kind, except for those grazing and/or other agricultural practices and uses consistent with the biological goals and objectives of the HCP/NCCP and specifically permitted in the Plans;
- (d) Except as permitted in the Plans, recreational activities including, but not limited to, hunting or fishing;
- (e) Commercial or industrial uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property or any fee transfer of less than the entire Property;
- (g) Except as permitted in the Plans, construction, reconstruction or placement of any building, billboard, or any other structure or improvement of any kind;
- (h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (i) Except as permitted in the Plans, planting, introduction or dispersal of non-native or exotic plant or animal species;
- (j) Except as permitted in the Plans, , filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, and granting or authorizing any surface entry for any of these purposes;

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

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

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

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

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

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

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

5. **Conveyances of Property.**

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

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

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

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

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

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

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

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

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

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

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

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

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

To District: East Bay Regional Park District  
Land Acquisition Department  
2950 Peralta Oaks Ct.  
Oakland, CA 94605  
Attn: Land Acquisition Manager

To USFWS: United States Fish and Wildlife Service  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To DFG: California Department of Fish and Game  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

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

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

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

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

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

**DISTRICT:**

**EAST BAY REGIONAL PARK DISTRICT, a  
California special district**

By: \_\_\_\_\_  
Name: Robert E. Doyle  
Title: General Manager

**EXHIBITS:**

**Exhibit A -- Legal Description of the Property**

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        )        ss

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

**EXHIBIT C**

**Form of Notice of Unrecorded Agreement**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, PLEASE MAIL TO:

East Contra Costa County  
Habitat Conservancy  
Attn: John Kopchik  
651 Pine Street, North Wing, 4th Floor  
Martinez, CA 94553555

APNs: 075-160-003 & -004, 075-200-003

Space above for Recorder's Use

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

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

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

**TO ALL INTERESTED PARTIES, PLEASE BE ADVISED AS  
FOLLOWS:**

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

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

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

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

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

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

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

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

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

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

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

CONSERVANCY:

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

By: \_\_\_\_\_  
Name: John Kopchik  
Title: Executive Director  
Date: \_\_\_\_\_

DISTRICT:

EAST BAY REGIONAL PARK  
DISTRICT, a California special  
district

By: \_\_\_\_\_  
Name: Robert E. Doyle  
Title: General Manager  
Date: \_\_\_\_\_

**ATTACHMENT 1 TO NOTICE OF UNRECORDED AGREEMENT**

**LEGAL DESCRIPTION OF THE PROPERTY**

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

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

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

Attn: John Kopchik, Executive Director

Phone: (925) 335-1227

Fax: (925) 335-1299

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

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

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

Attn: Nancy Wenninger, Assistant General Manager

Phone: (510) 544-2601

Fax: (510) 612-5441

E-Mail: nwenninger@ebparks.org

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

**Project Name:** [Insert Name of Property]

**Project Location:** Contra Costa County

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

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

**Notices to be delivered to:**

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

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

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

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

## 1. **BACKGROUND**

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

1.2. USFWS has approved the Applications for Federal Assistance submitted by CDFG, [insert grant #] (the “Federal Grant Application”), for Cooperative Endangered Species Conservation Fund (Section 6 of the Federal Endangered Species Act) Grant Program funding (“Federal Grant Funds”) to facilitate the acquisition of real property identified in the Federal Grant Applications. The Notice of Federal Assistance Approval for [insert grant #] (the “Federal Approval Notice”) which USFWS issued to CDFG specifies terms of acceptance of the Federal Grant Funds. CDFG and USFWS have entered into a Grant Agreements for Grant No. [insert grant #], Grant Title: [insert grant title], (the “Federal Grant Agreement”) which specify additional terms and conditions of the grant of Federal Grant Funds. The Federal Approval Notices and Federal Grant Agreement, including the terms and conditions set forth or incorporated directly or by reference in either or both of these instruments, are referred to in this Subgrant Agreement (“Agreement”) individually and collectively as the “Federal Assistance Requirements”.

1.3. Successor Subgrantee has entered into an agreement to purchase the Property described in Section 3.1 of this Agreement, which Property is a portion of the real property identified in the Federal Grant Applications. Subgrantee has requested a subgrant of Federal Grant Funds from CDFG, acting through the Wildlife Conservation Board (“WCB”), to facilitate Successor Subgrantee’s acquisition of the Property (the “Acquisition”).

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

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

## 2. **SCOPE OF AGREEMENT**

2.1. Pursuant to Chapter 4 of Division 2 (commencing with Section 1300) of the California Fish and Game Code and, WCB hereby subgrants to Subgrantee Federal Grant Funds in a sum not to exceed [Insert amount of subgrant funds alphabetically ] ([Insert amount of subgrant funds numerically]) (the "Subgrant Funds"), upon and subject to the terms and conditions of this Agreement.

## 3. **PURPOSES OF SUBGRANT**

3.1. WCB is entering into this Agreement, and the Subgrant Funds shall be used, only for the purpose of facilitating Successor Subgrantee's purchase of fee title to approximately [Insert Number of Acres] acres of land known as the [Insert Name of Property] and designated Assessor's Parcel Numbers [Insert Assessor Parcel Numbers] located in the County of Contra Costa, California (the "Property"). The Property is more particularly described in **Exhibit A** attached to this Agreement.

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

## 4. **CONDITIONS PRECEDENT TO SUBGRANT**

4.1. The obligation of WCB under this Agreement to request disbursement of the Subgrant Funds is conditioned upon and subject to the satisfaction of all of the following conditions precedent:

a. WCB shall have reviewed and approved all documents pertaining to Successor Subgrantee's acquisition of the Property, including but not limited to appraisals, preliminary title reports and items referenced therein, options, agreements for purchase and sale, escrow instructions, closing or settlement statements, and instruments of conveyance. Such review and approval by WCB shall not be unreasonably delayed or withheld. Subgrantee shall have removed or caused to be removed, or otherwise addressed to the satisfaction of WCB, any encumbrances or defects of title that WCB determines are inconsistent or could interfere with the Purposes of Subgrant. Any outstanding security interests or monetary

encumbrances affecting the Property shall have been terminated or the holder of the encumbrance shall have irrevocably committed to remove its security interest or monetary encumbrance prior to the recording of the deed(s) conveying the Property to Successor Subgrantee.

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

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

d. Subgrantee and Successor Subgrantee shall have provided WCB with written certification that the Acquisition is not intended, and shall not serve, to satisfy any local, State or federal regulatory requirement (e.g., mitigation for any local, State or federal permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA (the "Certification"). WCB understands that, following acquisition by Successor Subgrantee, the Property will be preserved and managed in accordance with and will fulfill certain commitments under the ECCC NCCP/HCP, to the extent provided for in the Federal Grant Applications and the Federal Grant Agreements. The Certification shall be attached to this Agreement as **Exhibit B**.

e. Subgrantee shall have provided WCB with a written commitment by Subgrantee and Successor Subgrantee for management of the Property in perpetuity consistent with the Purposes of Subgrant and according to the provisions of the ECCC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, including but not limited to Conservation Measure 1.2, "Prepare and Implement Preserve Management Plans for Natural Habitat Lands".. This commitment shall be attached to this Agreement as **Exhibit C**.

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

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

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

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

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

k. WCB shall have confirmed that the non-Federal share of funding required for the Acquisition has been provided.

## **5. DISBURSEMENT PROCEDURE**

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

- a. Name and address of Subgrantee;
- b. Project Name and Number of Agreement;
- c. Dollar amount and purpose of disbursement;

- d. Name, address and telephone number of the title company or escrow holder, and the account number of the Escrow to which the Subgrant Funds will be disbursed; and
- e. Certifications by Subgrantee and Successor Subgrantee that all funds (exclusive of the Subgrant Funds to be provided under this Agreement) needed to complete the Acquisition have been secured and have been or will be deposited to Escrow at or about the same date as the requested Subgrant Funds.

5.2. After receipt of a complete and proper Disbursement Request, WCB will promptly and timely (estimated to be 45 working days from the date the WCB receives the Disbursement Request) request payment from the federal Payment Management System to the State Treasurer's Office of an amount not to exceed [Insert Amount Alphabetically] ([Insert Amount Numerically]) for deposit into the State Treasury. After such deposit, WCB will promptly and timely request payment of the same amount from the State Treasury for deposit into Escrow.

## **6. SUBGRANTEE'S AND SUCCESSOR SUBGRANTEE'S COVENANTS**

6.1. In consideration of the subgrant of the Subgrant Funds, Subgrantee and Successor Subgrantee hereby covenant and agree as follows:

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

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

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

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

e. Subgrantee and Successor Subgrantee shall recognize the cooperative nature of the Acquisition and shall provide credit to WCB, CDFG, USFWS, and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Subgrantee and/or Successor Subgrantee which reference the Acquisition. Subject to the mutual agreement of WCB and Subgrantee regarding text, design and location, Subgrantee shall, or shall cause Successor Subgrantee to, post

sign(s) on the Property to indicate the participation of WCB, CDFG and USFWS in Successor Subgrantee's purchase of the Property; *provided however*, that the sign(s) shall display the logo of WCB, as shown on **Exhibit F**.

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

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

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

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

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

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

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

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

- (A) Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);
- (B) Fence repair, replacement and construction;
- (C) Maintaining roads and access facilities;
- (D) Control of invasive or exotic species;
- (E) Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;
- (F) Removal of debris & unnecessary structures, including buildings & unnecessary roads;
- (G) Other habitat enhancement activities;
- (H) Monitoring of habitat conditions and of ECC HCP/NCCP covered species; and
- (I) Adaptive management activities guided by monitoring;

and/or

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

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

## 7. **BREACH AND DEFAULT**

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

7.2. If Subgrantee or Successor Subgrantee do not cure the breach within 90 days of the date a notice of breach is given or, if the breach is not curable within said 90-day period, Subgrantee or Successor Subgrantee do not commence the cure within the 90-day period and diligently pursue it to completion, then Subgrantee and Successor Subgrantee shall be in default ("Default") under this Agreement.

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

## **8. REMEDIES**

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

8.1. WCB may seek specific performance of this Agreement. Subgrantee and Successor Subgrantee agree that payment by Subgrantee and/or Successor Subgrantee to WCB of an amount equal to the Subgrant Funds disbursed under this Agreement would be inadequate compensation for any Default because the benefit to be derived from full compliance with the terms of this Agreement is preserving and protecting chaparral, oak woodland, oak woodland savanna, grassland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by way of Subgrant Funds under this Agreement.

8.2. WCB may require Subgrantee to cause Successor Subgrantee to convey a conservation easement over the Property in favor of the State or, at the election of WCB, another entity or organization authorized by California law to acquire and hold conservation easements. Furthermore, WCB may also require Subgrantee to pay, or cause Successor Subgrantee to pay, a sum to WCB which, when combined with the fair market value of the conservation easement, equals the amount of Subgrant Funds provided by this Agreement, together with interest compounded semi-annually starting from the date of default, at a rate equivalent to the higher of (a) that which is being earned at the time of Default on deposits in the State of California's Pooled Money Investment Account or (b) the applicable rate of interest under the Federal Assistance Requirements. The conservation easement shall be for the purposes of preserving and

protecting chaparral, oak woodland, oak woodland savanna, grassland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands. The value of the conservation easement shall be determined by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and acceptable to WCB. The appraisal shall be prepared pursuant to UASFLA and USPAP and approved by DGS.

8.3. Intentionally Left Blank.

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

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

## **9. NONPROFIT ORGANIZATION SUBGRANTEE**

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

## **10. TERM**

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

10.2. The term of this Agreement will commence Effective Date and, unless previously terminated as provided in Section 10.3, will expire on [Insert Date] if escrow has not closed by that date.

10.3. Prior to Successor Subgrantee's close of escrow for acquisition of the Property, any party may terminate this Agreement for any reason or for no reason, by providing the other parties with not less than 15 days' written notice of such termination. Notice shall be given in the same manner as specified in Section 7.1. If this Agreement is terminated after the deposit of the Subgrant Funds into Escrow but before close of escrow for Successor Subgrantee's acquisition of the Property, Subgrantee shall (or shall cause Successor Subgrantee to) cause the escrow holder to immediately return all Subgrant Funds to (or as instructed by) WCB and Subgrantee shall bear all costs and expenses of such termination.

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

10.5. The provisions of this Agreement that are not fully performed as of the close of escrow, including but not limited to Sections 3 (Purposes of Subgrant), 6 (Subgrantee's Covenants), 7 (Breach and Default) and 8 (Remedies) shall survive the close of escrow for Successor Subgrantee's acquisition of the Property and remain in full force and effect.

## **11. LIABILITY, MODIFICATIONS, INTERPRETATION**

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

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

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

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

11.5. Subgrantee, Successor Subgrantee, and their officers, directors, employees, agents and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member, director, officer, agent, employee or representative of WCB, CDFG or the State of California.

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

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

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

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

## **12. CONDEMNATION**

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

## **13. AUDIT**

13.1. Subgrantee and Successor Subgrantor shall each maintain complete and accurate records of its actual project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least four years after the date the Subgrant Funds are deposited into Escrow. During such time, Subgrantee shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours.

Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by WCB shall be borne by Subgrantee. Except to the extent the Federal Assistance Requirements (including, but not limited to, 50 C.F.R. Section 81.15) provide otherwise, the audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

#### **14. UNION ORGANIZING**

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

- a. No state funds (as defined in Government Code Section 16645) disbursed by this subgrant will be used to assist, promote or deter union organizing;
- b. Subgrantee and Successor Subgrantee shall account for state funds disbursed for a specific expenditure by this subgrant, to show those funds were allocated to that expenditure;
- c. Subgrantee and Successor Subgrantee shall, where funds are not designated as described in Section 14.1(b) above, allocate, on a pro-rata basis, all disbursements that support the subgrant program; and
- d. If Subgrantee or Successor Subgrantee makes expenditures to assist, promote or deter union organizing, such party will maintain records sufficient to show that no state funds were used for those expenditures, and that such party shall provide those records to the Attorney General upon request.

#### **15. NON-DISCRIMINATION**

15.1. During the performance of this Agreement, Subgrantee and Successor Subgrantee are subject to all Federal and State laws prohibiting discrimination including but not limited to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12131 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. Section 6101 *et seq.*), the Fair Employment and Housing Act (Government Code Section 12900 (a – f) *et seq.*), and applicable regulations (California Code of Regulations, Title 2, Section 7285 *et seq.*). Subgrantee and Successor Subgrantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subgrantee and Successor Subgrantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are

free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subgrantee and Successor Subgrantee shall comply with the regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations), which are incorporated by reference into this Agreement. Subgrantee and Successor Subgrantee shall each give written notice of its obligations under this non-discrimination clause to labor organizations with which Subgrantee or Successor Subgrantee has a collective bargaining or other agreement, and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Subgrantee and Successor Subgrantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Acquisition.

## 16. **DRUG-FREE WORKPLACE REQUIREMENTS**

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

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and specifying the actions to be taken against employees for violations;
- b. Establishing a drug-free awareness program to inform employees about all of the following:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The organization's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that every employee engaged in the performance of this Agreement :
  - (i) Be given a copy of the organization's drug-free workplace policy statement; and
  - (ii) Must agree to abide by the terms of the organization's statement as a condition of employment in connection with this Agreement.

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

certification; or violates the certification by failing to carry out the requirements set forth above.

**17. EXHIBITS**

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

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

**Exhibit B** – Certification of No Regulatory Requirements

**Exhibit C** – Commitment to Management Funding

**Exhibit D** – Assurances and Certifications

**Exhibit E** – Certified Resolution or Other Action of Governing Body of Subgrantee

**Exhibit F** – WCB’s Logo

**Exhibit G** – Form of Notice of Unrecorded Agreement to Subgrant

**18. AUTHORIZATION**

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

IN WITNESS WHEREOF, this Subgrant Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, in the State of California, by and between the Wildlife Conservation Board and the East Contra Costa County Habitat Conservancy, and the East Bay Regional Park District, each of which does hereby agree to the terms and conditions referenced on pages 1 through 14, along with Exhibits A – G, of this Agreement.

**STATE OF CALIFORNIA  
WILDLIFE CONSERVATION BOARD**

**SUBGRANTEE  
EAST CONTRA COSTA COUNTY HABITAT  
CONSERVANCY**

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

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

Title: Executive Director

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

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

**SUCCESSOR SUBGRANTEE  
EAST BAY REGIONAL PARK DISTRICT**

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

TITLE: General Manager

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

**EXHIBIT A**  
(Legal Description and APNs of Property)

## EXHIBIT B

### Certificate of No Regulatory Requirement

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

Subgrantee's acquisition of the Property (as defined in the Agreement) located in Contra Costa County, California, is not intended, and shall not serve, to satisfy any local, state or federal regulatory requirement (e.g., mitigation for any local, state or federal authorization or permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA, provided that Property acquired with any Subgrant Funds will be preserved and managed in accordance with, and will fulfill certain commitments of, the ECC NCCP/HCP, to the extent consistent with the Federal Grant Application and the Federal Grant Agreement.

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

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

#### SUBGRANTEE

East Contra Costa County Habitat Conservancy

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

Print Name: John Kopchik

Title: Executive Director

#### SUCCESSOR SUBGRANTEE

East Bay Regional Park District

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

Print Name: Robert E. Doyle

Title: General Manager

## **EXHIBIT C**

### **Commitment for Management and Funding**

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

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

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

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

*“preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and the lands covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan”*

Specific management actions for the Property are not known at this time. ECCCHC, with assistance from EBRPD, are in the process of developing a Preserve Management Plan for the Property. Management actions could include removal, repair and replacement of fences, inclusion of improved management conditions in the grazing lease and supervision of the grazing tenant, and control of exotic species. Anticipated costs of land management activities under the ECC NCCP/HCP are set forth in Tables 9-1 and 9-2 and supporting detail is provided in Appendix G.

In furtherance of the commitment set forth above, and in order to manage the property consistent with the Purposes of this Subgrant, Subgrantee and Successor Subgrantee will fund management in perpetuity consistent with the funding plan established in Section 9.3 of the ECC NCCP/HCP. ECCCHC and EBRPD anticipate allocating the costs of such management among the two agencies consistent with the general principle that ECCCHC will pay for those management costs relating to management and monitoring of the species and EBRPD will pay for those management costs relating to public access and public use of the Property. ECCCHC and EBRPD anticipate entering into one or more future agreements confirming their respective obligations to pay management costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment.

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

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

SUBGRANTEE

East Contra Costa County Habitat Conservancy

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

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

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

Print Name: Robert E. Doyle

Title: General Manager

**EXHIBIT D**  
(Assurances and Certifications)

**ASSURANCES - CONSTRUCTION PROGRAMS**

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

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

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

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

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

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

**ASSURANCES - CONSTRUCTION PROGRAMS**

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

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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).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

**EXHIBIT E**

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

**EXHIBIT F**  
(WCB Logo)



**EXHIBIT G**

(Notice of Unrecorded Grant Agreement)

**RECORDING REQUESTED BY:**

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

**WHEN RECORDED, RETURN TO:**

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

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

*Space above line for Recorder's use*

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

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

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

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

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

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

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

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

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

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

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

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

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

WCB, CDFG or USFWS considers appropriate to meet federal requirements to which it is subject.

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

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

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

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

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

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

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

Conservancy

**SUBGRANTEE:**

East Contra Costa County Habitat

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

Print Name: John Kopchik

Title: Executive Director

**SUCCESSOR SUBGRANTEE:**

East Bay Regional Park District

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

Print Name: Robert E. Doyle

Title: General Manager

[Notary Acknowledgment]

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

**Grantee:** East Contra Costa County Habitat Conservancy  
Address: 651 Pine Street, 4<sup>th</sup> Floor, North Wing  
Martinez, CA 94553-0095

Attn: John Kopchik, Executive Director

Phone: (925) 335-1227  
Fax: (925) 335-1299  
E-mail: john.kopchik@dcd.cccounty.us

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

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

Attn: Nancy Wenninger, Assistant General Manager

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

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

**Project Name:** [Insert Name of Property]

**Project Location:** Contra Costa County

**Grant Agreement Number:** [Insert Grant Agreement Number]

**Notices to be addressed to:**

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

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

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

With a copy to: Department of Fish and Game  
 1416 Ninth Street, 12<sup>th</sup> Floor  
 Sacramento, CA 95814  
 Attn: Director

1. SCOPE OF AGREEMENT

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

2. PURPOSES OF GRANT

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

Grantee and Successor Grantee covenant and agree that if Grantor deposits the Grant Funds into escrow and Successor Grantee acquires the Property, the Property shall be held and used for the purposes of preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (“SJMSHCP”) and the lands covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (“ECCC NCCP/HCP”) (individually and collectively, the “Purposes of Grant”).

3. CONDITIONS OF GRANT

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

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

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

3.2. Grantee shall acquire the Property from a willing seller for a purchase price that does not exceed the fair market value of the Property, as established by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code. The appraisal shall be prepared pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) and approved by the Department of General Services. The appraisal shall become part of the project file maintained by Grantor and shall be retained for no less than three years from the date of value.

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

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

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

3.6 Grantee shall have provided WCB with a written commitment by Grantee and Successor Grantee for management of the Property in perpetuity consistent with the Purposes of Subgrant and according to the provisions of the ECCC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, including but not limited to Conservation Measure 1.2, "Prepare and Implement Preserve Management Plans for Natural Habitat Lands". This commitment shall be attached to this Agreement as **Exhibit F**.

3.7 Grantee and Successor Grantee shall have provided WCB with written certification that the Acquisition is not intended, and shall not serve, to satisfy any local, State or federal regulatory requirement (e.g., mitigation for any local, State or federal permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA (the "Certification"). WCB understands that, following acquisition by Successor Grantee, the Property will be preserved and managed in accordance with and will fulfill certain commitments under the ECCC NCCP/HCP, to the extent provided for in the Federal Grant Application and the Federal Grant Agreement. The Certification shall be attached to this Agreement as **Exhibit E**.

#### 4. DISBURSEMENT PROCEDURE

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

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

- a. Name and address of Grantee;
- b. Project Name and Number of Grant Agreement;
- c. Dollar amount and purpose of disbursement;
- d. Name, address and telephone number of the title company or escrow holder, name of the escrow officer, and the escrow account number to which the Grant Funds will be disbursed; and
- e. A certification by Grantee that all funds (exclusive of the Grant Funds to be provided under this Agreement) needed to complete the Project have been secured and have been or will be deposited to escrow prior to or at the same time as the requested Grant Funds.

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

#### 5. GRANTEE'S AND SUCCESSOR GRANTEE'S COVENANTS

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

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

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

5.3. Grantee and Successor Grantee shall recognize the cooperative nature of the Project and shall provide credit to the Grantor, the California Department of Fish and Game ("CDFG") and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or

approved by Grantee and/or Successor Grantee referencing the Project. Subject to the mutual agreement of Grantor, Grantee and Successor Grantee regarding text, design and location, Grantee shall, or shall cause Successor Grantee to, post sign(s) on the Property to indicate the participation of Grantor and CDFG in Successor Grantee's purchase of the Property; *provided however*, that the sign(s) shall display Grantor's logo, as shown on **Exhibit C**.

5.4. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California, acting through the Executive Director of the Wildlife Conservation Board ("WCB"), or its successor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

5.5. The Property (including any portion of it or interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Director of WCB, or its successor.

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

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

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

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

5.10 [include section 5.10 only if the Property has communication tower, wind turbine or residential lease revenue] The Property will be acquired by Successor

Grantee subject to one or a combination of communication leases or permits that have been approved by WCB in accordance with the terms of this Agreement (collectively, the "Leases"). Following Successor Grantee's acquisition of the Property, Successor Grantee will be entitled to receive the lease revenues due under such Leases (collectively, the "Lease Revenues"). All Lease Revenues received by Successor Grantee shall be used by Successor Grantee as follows:

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

- (i) Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);
- (ii) Fence repair, replacement and construction;
- (iii) Maintaining roads and access facilities;
- (iv) Control of invasive or exotic species;
- (v) Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;
- (vi) Removal of debris & unnecessary structures, including buildings & unnecessary roads;
- (vii) Other habitat enhancement activities;
- (viii) Monitoring of habitat conditions and of ECC HCP/NCCP covered species; and
- (ix) Adaptive management activities guided by monitoring;

and/or

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

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

## 6. BREACH AND DEFAULT

6.1. In the event of a breach of any of the terms, covenants or conditions of this Agreement, Grantor shall give written notice to Grantee and Successor Grantee describing the breach. Notice shall be deemed given when personally delivered or deposited in the United States Mail, postage prepaid, or with a reliable over-night courier, addressed to Grantee and Successor Grantee at the addresses for notices set forth at the beginning of this Agreement.

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

90-day period and diligently pursue it to completion, then Grantee and Successor Grantee shall be in default ("Default") under this Agreement.

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

## 7. REMEDIES

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

7.1. Grantor may seek specific performance of this Agreement. Grantee and Successor Grantee agree that payment by Grantee and/or Successor Grantee to Grantor of an amount equal to the Grant Funds disbursed under this Agreement would be inadequate compensation to Grantor for any Default because the benefit to be derived by Grantor from full compliance by Grantee and Successor Grantee with the terms of this Agreement is the preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the SJMSHCP and the lands covered by the ECCC NCCP/HCP area and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by Grantor by way of Grant Funds under this Agreement.

7.2. Grantor may require Grantee and/or Successor Grantee to convey a conservation easement over the Property in favor of Grantor or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and to pay, or cause Successor Grantee to pay, a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum granted to Grantee pursuant to this Agreement, together with interest compounded semi-annually starting from the date of this Agreement to and including the date of payment, at a rate equivalent to that which is being earned at the time of Default on deposits in the State of California's Pooled Money Investment Account. The conservation easement shall be for the purposes of preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the SJMSHCP and the lands covered by the ECCC NCCP/HCP area. The value of the conservation easement shall be determined by a fair market value appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and acceptable to Grantor. The appraisal shall be prepared pursuant to USPAP and, if required by law, approved by the Department of General Services.

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

## 8. NONPROFIT ORGANIZATION GRANTEE

If the existence of Successor Grantee is terminated for any reason, title to all interest in the Property acquired with Grant Funds shall immediately vest in the State. However, prior to that termination, upon approval of the State, acting through the Executive Director of WCB or its successor, another public agency or nonprofit organization may receive title to all or a portion of that interest in the Property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby the Property or any interest in it is being acquired by a nonprofit organization pursuant to this Section 8 shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

## 9. TERM

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

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

9.3. Prior to Successor Grantee's close of escrow for acquisition of the Property, any party may terminate this Agreement for any reason or for no reason, by providing the other parties with not less than 15 days written notice of such termination. If this Agreement is terminated after Grantor's deposit of the Grant Funds into escrow but before close of escrow for Successor Grantee's acquisition of the Property, Grantee shall cause the escrow holder to immediately return all Grant Funds to Grantor and Grantee shall bear all costs and expenses of such termination.

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

## 10. LIABILITY; MODIFICATIONS; INTERPRETATION

10.1. Grantee and Successor Grantee shall indemnify, protect and hold harmless Grantor, CDFG, the State of California, and their respective members, directors, officers, agents, and employees (each an "Indemnified Party"), from and against any and all claims, demands, damages, liabilities, losses, costs (including attorneys' fees) and expenses (collectively, "Claims") arising out of, connected with, or incident to this Agreement or the acquisition, ownership, use, management, operation or

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

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

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

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

10.5. Grantee, Successor Grantee, and their officers, directors, employees, agents and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member, director, officer, agent, employee or representative of Grantor.

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

10.7. Any costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Agreement against Grantee, including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Grantee and Successor Grantee.

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

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

## 11. CONDEMNATION

If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantor, Grantee, and Successor Grantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. Grantor shall be entitled to the share of the Award (as defined below) which equals the ratio of the Grant Funds provided by Grantor to the purchase price Successor

Grantee paid to acquire the Property (e.g., if Grantor provided \$50,000.00 of Grant Funds and the purchase price was \$75,000.00, then Grantor would be entitled to two-thirds of the Award). For purposes of this Agreement, the "Award" shall mean all compensation awarded, paid or received on account of the Property so taken or purchased, and all direct or incidental damages resulting from the taking or purchase, less all out-of-pocket expenses reasonably incurred by Successor Grantee in connection with the taking or purchase.

## 12. AUDIT

Grantee and Successor Grantee shall maintain complete and accurate records of its actual Project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least three years after final disbursement by Grantor. During such time, Grantee and Successor Grantee shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by Grantor shall be borne by Grantee and Successor Grantee. The audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

## 13. UNION ORGANIZING

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

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

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

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

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

## 14. NON-DISCRIMINATION

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

#### 15. EXHIBITS

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

- Exhibit A** – Property Description
- Exhibit B** – Certified Resolution or Other Action of Governing Body of Grantee and Successor Grantee
- Exhibit C** – Grantor’s Logo
- Exhibit D** – Form of Notice of Unrecorded Grant Agreement
- Exhibit E** – Certification
- Exhibit F** – Management Commitment

#### 16. AUTHORIZATION

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

#### 17. NON-AVAILABILITY OF FUNDS.

Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State

Treasurer’s Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

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

STATE OF CALIFORNIA  
WILDLIFE CONSERVATION BOARD

GRANTEE:  
EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY

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

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

Title: Executive Director

Title: Executive Director

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

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

SUCCESSOR GRANTEE  
EAST BAY REGIONAL PARK DISTRICT

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

TITLE: General Manager

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

**Project Name:**

**County:**

**Project ID:**

**FUNDING CERTIFICATION:**

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

\_\_\_\_\_   
Fiscal Officer

\_\_\_\_\_   
Date

Grantee:

Organization name

Mailing Address

City, State Zip

Contact Name

Contact Telephone No.

Contact Facsimile No.

WCB Grant Agreement #: WC-\_\_\_\_\_

Agreement Term: \_\_\_\_\_ to \_\_\_\_\_

WCB Grant Amount: \_\_\_\_\_

Fund Source: \_\_\_\_\_

Appropriation Item: Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_  
Item \_\_\_\_\_

Expenditure Code: \_\_\_\_\_

**EXHIBIT A**

(Legal Description)

**EXHIBIT B**

(Resolution)

**EXHIBIT C**

(WCB Logo)



**EXHIBIT D**  
(Notice of Unrecorded Grant Agreement)

**RECORDING REQUESTED BY:**

[Insert Grantee Name and Address] )  
 )  
 )  
 )  
 )

**WHEN RECORDED, RETURN TO:**

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

---

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

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

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

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

A.            1.        WCB, Grantee and Successor Grantee have entered into the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest, Grant Agreement No. [Insert Grant Number] ("Grant" or "Agreement"), pursuant to which WCB grants to Grantee certain funds for Successor Grantee's acquisition of fee title to approximately [Insert Number of Acres] acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from [Name of Receiver], Receiver, on behalf of sellers ("Sellers") which include the following: [Insert Names of Sellers]. The Property is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Grant.

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

3. Grantee and Successor Grantee covenant and agree in Section 5 of the Agreement as follows:

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

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

3.2. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California, acting through the Executive Director of the Wildlife Conservation Board ("WCB"), or its successor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

3.3. The Property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Director of WCB or its successor.

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

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

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

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

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

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

8. Pursuant to Section 11 of the Agreement, if all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantor, Grantee and Successor Grantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. Grantor shall be entitled to the share of the Award, which equals the ratio of the Grant Funds provided by Grantor to the purchase price Successor Grantee paid to acquire the Property.

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

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

GRANTEE: EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

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

Title: Executive Director

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

SUCCESSOR GRANTEE: EAST BAY REGIONAL PARK DISTRICT

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

TITLE: General Manager

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

**EXHIBIT E****Certificate of No Regulatory Requirement**

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

Successor Grantee's acquisition of the Property (as defined in the Agreement) located in Contra Costa County, California, is not intended, and shall not serve, to satisfy any local, state or federal regulatory requirement (e.g., mitigation for any local, state or federal authorization or permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA, provided that Property acquired with any Grant Funds will be preserved and managed in accordance with, and will fulfill certain commitments of, the ECC NCCP/HCP, to the extent consistent with the Agreement.

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

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

**GRANTEE**

East Contra Costa County Habitat Conservancy

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

Print Name: John Kopchik

Title: Executive Director

**SUCCESSOR GRANTEE**

East Bay Regional Park District

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

Print Name: Robert E. Doyle

Title: General Manager

## **EXHIBIT F**

### **Commitment for Management and Funding**

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

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

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

Grantee and Successor Grantee hereby commit to manage the Property (as defined in the Agreement) located in Contra Costa County, California, in perpetuity and according to the provisions of the ECC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, consistent with the following Purposes of Grant:

*“preserving and protecting annual grassland, vernal pool, alkali grasslands and wetland habitat as well as protecting critical habitat connectivity between the lands covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and the lands covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan”*

Specific management actions for the Property are not known at this time. ECCCHC, with assistance from EBRPD, are in the process of developing a Preserve Management Plan for the Property. Management actions could include removal, repair and replacement of fences, inclusion of improved management conditions in the grazing lease and supervision of the grazing tenant, and control of exotic species. Anticipated costs of land management activities under the ECC NCCP/HCP are set forth in Tables 9-1 and 9-2 and supporting detail is provided in Appendix G.

In furtherance of the commitment set forth above, and in order to manage the property consistent with the Purposes of this Agreement, Grantee and Successor Grantee will fund management in perpetuity consistent with the funding plan established in Section 9.3 of the ECC NCCP/HCP. ECCCHC and EBRPD anticipate allocating the costs of such management among the two agencies consistent with the general principle that ECCCHC will pay for those management costs relating to management and monitoring of the species and EBRPD will pay for those management costs relating to public access and public use of the Property. ECCCHC and EBRPD anticipate entering into one or more future agreements confirming their respective obligations to pay management costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment.

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

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

GRANTEE

East Contra Costa County Habitat Conservancy

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

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR GRANTEE

East Bay Regional Park District

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

Print Name: Robert E. Doyle

Title: General Manager

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 9, 2013  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Determinations Required of the Conservancy by the HCP/NCCP

**RECOMMENDATION**

**ACCEPT joint recommendation of Conservancy staff and the Public Advisory Committee (PAC) regarding process for making future determinations related to take authorizations that are assigned to the Conservancy by the HCP/NCCP.**

**DISCUSSION**

As discussed at the May 10, 2012 Governing Board meeting, the HCP/NCCP calls for the Conservancy to make certain determinations related to take authorizations, but does not specify how the Conservancy should make its decisions. Conservancy staff recommended further analysis and discussion of such circumstances and identification of opportunities to make Conservancy action as effective and efficient as possible. The Governing Board directed staff to examine needs and opportunities for simplifying and expediting the process for Conservancy review of small projects and making various determinations required of the Conservancy. The Board also referred this matter to the Public Advisory Committee (PAC) for additional review and recommendations. Conservancy staff is now reporting to the Board on the PAC review and recommendations.

At various meetings throughout the past year, Conservancy staff discussed this referral with the PAC. Conservancy staff prepared a table summarizing all the determinations required of the Conservancy by the HCP/NCCP. Staff and the PAC discussed recommended procedures for handling each determination and added these to the table. At its meeting on September 12, 2013, the PAC approved the table detailing the determinations assigned to the Conservancy by the HCP/NCCP and documenting the recommended procedures for making those determinations.

CONTINUED ON ATTACHMENT: <u>YES</u>	
ACTION OF BOARD ON: <u>December 9, 2013</u> APPROVED AS RECOMMENDED: _____	
OTHER: _____	
<b><u>VOTE OF BOARD MEMBERS</u></b>	
__ UNANIMOUS	
AYES: _____	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.  ATTESTED _____ <i>CATHERINE KUTSUIRS, SECRETARY OF THE EAST CONTRA COSTA COUNTY                  HABITAT CONSERVANCY</i>
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
BY: _____, DEPUTY	

The PAC recommends that all Conservancy staff decisions be eligible for appeal to the Board. No detailed procedures or limitations were recommended. Staff concurs with the PAC recommendations.

As recommended by the PAC, Conservancy staff will provide an annual general verbal report on these projects that comply with the items listed in the table to the PAC, if and when this policy is adopted by the Board.

**Attachments:**

- May 10, 2012 Governing Board Action referring question on determinations to the PAC
- List of Specific Determinations Related to Take Authorization that are Assigned to the Conservancy in the HCP/NCCP and Process Recommended for Making Determinations

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** May 10, 2012  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Consider actions related to Park and Recreation Facilities under the HCP/NCCP

**RECOMMENDATION**

**Consider the following actions related to Park and Recreation Facilities under the HCP/NCCP:**

- a) **DETERMINE** that the East Bay Regional Park District may use take coverage authorized to it through the HCP/NCCP and the associated state and federal permits to cover the Round Valley Pedestrian Bridge Project. **AUTHORIZE** staff to file a Notice of Determination for this Board action with the County Clerk.
- b) **DIRECT** staff to examine needs and opportunities for simplifying and expediting the process for Conservancy review of small projects and making various determinations required of the HCP/NCCP Implementing Entity, **REFER** this matter to the Public Advisory Committee (PAC) for additional review and recommendation; and **DIRECT** staff to report back to the Governing Board.

**DISCUSSION**

**Item (a).** The East Bay Regional Park District ("EBRPD") is proposing to construct a new pedestrian bridge at the Round Valley Regional Preserve, known as the Round Valley Pedestrian Bridge Project ("Project"), located approximately six miles west of Brentwood in Contra Costa County. The Project includes installation of abutments and a 60-foot clear span, prefabricated steel bridge over Round Valley Creek and a minor realignment of the existing permeable natural surface trails to conform to the bridge approaches. The project will eliminate the need for persons and vehicles to pass through the creek channel by providing a clear span bridge. EBRPD intends to award a construction contract in May and construct the project this summer. The Project will result in 0.15 acres of permanent impact for the installation of the new trail alignment and 0.83 acres of temporary impact related to all other construction and staging activities.

CONTINUED ON ATTACHMENT: Yes  
ACTION OF BOARD ON: May 10, 2012  
OTHER: \_\_\_\_\_

APPROVED AS RECOMMENDED: Yes

**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 AUTOURIS SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
BY \_\_\_\_\_ DEPUTY

The Project is an eligible covered activity under Section 2.3.2 of the HCP/NCCP for “Park or Recreation Facilities” located outside of the Urban Development Area (UDA) and the HCP/NCCP Preserve System. Section 2.3.2 states the following:

“Park and recreation facilities may be covered activities outside the UDA and outside the HCP/NCCP preserves. Because of the uncertainty in their location and project footprint, coverage for these projects will be decided on a case-by-case basis by the Implementing Entity, USFWS, and CDFG. This will allow alternative siting or redesign, if possible, to avoid or minimize impacts on covered species and natural communities.”

As outlined in Section 2.3.2, the Project is an eligible covered activity with the approval of the Conservancy (which is the Implementing Entity), U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG). Conservancy staff have reviewed the project and the Planning Survey Report (“PSR”) submitted by EBRPD and find that the project will have mostly beneficial impacts on covered species and that the project is appropriate for coverage pursuant to Section 2.3.2. USFWS and CDFG have already provided their written determination that the Project may be covered under Section 2.3.2.

For the Project, EBRPD is the CEQA lead agency. EBRPD prepared an Initial Study/Mitigated Negative Declaration (“IS/MND”) for the Project in conformance with CEQA. The IS/MND evaluated and addressed potential impacts as a result of the Project and determined that no significant environmental impacts are anticipated to be associated with the Project. The Conservancy has considered the IS/MND and finds that anticipated impacts were fully disclosed and analyzed and no significant environmental impacts are anticipated.

**Item (b).** The Round Valley Pedestrian Bridge Project (“Project”) is the first example of a project proposed for coverage under the HCP/NCCP that requires a determination by the Conservancy for an action by a named Permittee under the HCP/NCCP (in this case, EBRPD). The HCP/NCCP contains various other provisions that require a Conservancy determination on an action that would be carried out or approved by another Permittee (e.g. the participating cities, the County, Flood Control and EBRPD). For example, the HCP/NCCP requires Conservancy determination or approvals on proposals to reduce temporary impact fees associated with wetlands in a flood control detention basin when wetlands will be restored following the project, on requests to fill more than 3 acres of wetlands and in a variety of other circumstances. The Conservancy also has substantial experience with issuing take coverage to Participating Special Entities (PSEs). A process has been developed for PSEs that has been working but can be challenging for the smaller projects with tight timelines (e.g. urgent pipeline repair projects). Conservancy staff recommends further analysis and discussion of such circumstances and identification of opportunities to make Conservancy action as effective and efficient as possible.

Subject to Board approval, staff would propose to identify and analyze HCP/NCCP requirements, consider opportunities for a streamlined Conservancy process (including some potential delegated authority or other techniques for reducing delay), discuss and receive recommendations from the Public Advisory Committee, and report back to the Board.

**Attachments:**

- Planning Survey Report for Round Valley Pedestrian Bridge Project:
  - Main body of planning survey report
  - Project Vicinity Maps, Impact and Land Cover Maps, Species Habitat Maps
  - Fee Calculator (Exhibit 1 and Exhibit 2)
- The Initial Study/Mitigation Negative Declaration prepared by the East Bay Regional Park District

**List of Specific Determinations Related to Take Authorization that are Assigned to the Conservancy in the HCP/NCCP and Process Recommended for Making Determinations**

#	Task	Additional Information	Recommended Process*
1	Potential restoration actions by Flood Control to offset impacts at the Marsh Creek Detention Basin. Here is an excerpt from the HCP/NCCP: “The County Flood Control District is interested in exploring restoration opportunities on this site and partnering with the HCP/NCCP Implementing Entity to accomplish them. Because of the uncertainty in the project design, these restoration elements would be developed with the Implementing Entity, CDFG, and USFWS when project funding becomes available.”	Chapter 2, Section 2.3.2, subsection on Flood Protection Projects	Remove from list. Doesn’t call for a Conservancy determination.
2	Determine if individual utility construction projects outside the Urban Development Area (UDA) and Preserve System may be covered under HCP/NCCP (shared responsibility with Wildlife Agencies) (most such projects are also subject to 17)	Chapter 2, Section 2.3.2, subsection on Utility Construction	Permanent impacts > 1 acre: Board makes determination on a case-by-case basis No permanent impacts or permanent impacts ≤ 1 acre: Board delegates authority to staff to make determination
3	Determine if individual park and recreation facilities outside the Urban Development Area and Preserve System may be covered under HCP/NCCP (shared responsibility with Wildlife Agencies)	Chapter 2, Section 2.3.2, subsection on Park and Recreation Facilities	Permanent impacts > 1 acre: Board makes determination on a case-by-case basis No permanent impacts or permanent impacts ≤ 1 acre: Board delegates authority to staff to make determination
4	Determine if individual new utility construction projects within the Preserve System may be covered under HCP/NCCP (shared responsibility with Wildlife Agencies)	Chapter 2, Section 2.3.4, subsection on Utility Construction and Maintenance	Board makes determination on a case-by-case basis
5	Approve construction monitoring plans for all covered activities.	Chapter 6, Section 6.3.3	Board delegates authority to staff to make determination (this determination is based on fixed standards or objective measurements and must be performed with a short turn around to avoid project delays)
6	Approve additional exceptions to stream setback requirements within the UDA beyond those provided in Table 6-2, according to the specific circumstances and the general criteria for reviewing exceptions described at the end of Section 8.7.2.	Chapter 6, Section 6.4.1, Conservation Measure 1.7	Board makes determination on a case-by-case basis
7	Approve development fee waivers for larger-than-required deed-protected stream setbacks by finding that the expanded setback provides a stream buffer benefit.	Chapter 6, Section 6.4.1, Conservation Measure 1.7	Amount of the fee waiver > \$25,000: Board makes determination on a case-by-case basis Amount of the fee waiver ≤ \$25,000: Board delegates authority to staff to make determination

\* The recommendation is that all staff determinations may be appealed to the Board.

#	Task	Additional Information	Recommended Process*
8	Approve exceptions to fuel management buffer requirements for projects adjacent to existing or planned components of the Preserve System, according to the specific circumstances and the general criteria for reviewing exceptions described at the end of Section 8.7.2.	Chapter 6, Section 6.4.1, Conservation Measure 1.8	Board makes determination on a case-by-case basis
9	In the event that complying with Conservation Measure 1.11 (Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds) would severely impact a property owner's use or economic interest in private property, consult with the property owner to consider whether any modifications to this conservation measure are appropriate that will reduce the impact on the property owner, or whether the property may instead be purchased be as part of the Preserve System. (shared responsibility with Wildlife Agencies)	Chapter 6, Section 6.4.1, Conservation Measure 1.11	Board makes determination on a case-by-case basis
10	Determine the amount of the discount on the Rural Road Fee that a project may receive for implementing design elements listed as Optional in Table 6-6 Conservation Measure 1.14.	Chapter 6, Section 6.4.1, Conservation Measure 1.14 & Table 6-6	Board makes determination on a case-by-case basis
11	Approve the design requirements for rural road projects categorized as <i>Small Projects</i> in Table 6-6, consistent with the conditions described in Table 6-6 and in Chapter 6, Conservation Measure 1.14. (see also Section 8.7.1)	Chapter 6, Section 6.4.1, Conservation Measure 1.14 & Table 6-6	Board delegates authority to staff to make determination (this determination is based on fixed standards or objective measurements)
12	Approve avoidance and minimization analysis for projects proposing to fill more than 3 acres of jurisdictional wetlands and waters within the UDA, according to the specific circumstances and the general criteria for reviewing exceptions described at the end of Section 8.7.2.	Chapter 6, Section 6.4.2, Conservation Measure 2.12	Board makes determination on a case-by-case basis
13	Consider reductions in the size of required construction buffer from golden eagle nests based on site- or project-specific circumstances. (shared responsibility with Wildlife Agencies)	Chapter 6, Section 6.4.3, subsection on Golden Eagle	Board delegates authority to staff to make determination
14	Consider reductions in the size of required construction buffer from Swainson's hawk nests based on site- or project-specific circumstances. (shared responsibility with Wildlife Agencies)	Chapter 6, Section 6.4.3, subsection on Swainson's Hawk	Board delegates authority to staff to make determination
15	Approving sites for planting trees to mitigate loss of Swainson's hawk nest trees.	Chapter 6, Section 6.4.3, subsection on Swainson's Hawk	Board delegates authority to staff to make determination

#	Task	Additional Information	Recommended Process*
16	Approving buffer reductions for populations of covered shrimp retained on a project site. (shared responsibility with USFWS)	Chapter 6, Section 6.4.3, subsection on Covered Shrimp	Board delegates authority to staff to make determination
17	Review and consider approving applications for take authorization submitted by Participating Special Entities	Chapter 8, Section 8.4	Board makes determination on a case-by-case basis
18	Approve offers of land in lieu of the development fee that may be made by project proponents if the offers meet the criteria specified in Chapter 8.	Chapter 8, Section 8.6.7	Board makes determination on a case-by-case basis
19	Approve offers of restoration or creation of jurisdictional wetlands in lieu of wetland mitigation fees if the offers meet the criteria specified in Chapter 9.	Chapter 9, Section 9.3.1	Board makes determination on a case-by-case basis
20	Verify that proposals to defer fee payment through ongoing assessments or other mechanisms conform to Plan requirements.	Chapter 9, Section 9.3.1	Board delegates authority to staff to make determination
21	Suspend the option for early payment of fees and authorization of take under certain circumstances.	Chapter 9, Section 9.3.1	Board makes determination on a case-by-case basis
22	Approving project impact area subject to the temporary impact for temporary activities outside the Urban Development Area that have soil disturbance. (shared responsibility with Wildlife Agencies) (this provision is intended to address how to determine the area of indirect effect; project proponents may opt to pay the permanent impact fees for the footprint in lieu of seeking agreement on impact area)	Chapter 9, Section 9.3.1	Board makes determination on a case-by-case basis
23	Determining temporary impact fee discounts for detention basin projects when habitat restoration and management is incorporated into the project.	Chapter 9, Section 9.3.1	Amount of the fee discount > \$25,000: Board makes determination on a case-by-case basis Amount of the fee discount ≤ \$25,000: Board delegates authority to staff to make determination