



*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

Thursday, June 27, 2013

9:30 a.m.

City of Oakley
Oakley City Hall, Council Chambers
3231 Main Street, Oakley 94561

AGENDA

9:30 a.m. Convene meeting and adjourn to Closed Session

Closed Session

CS1) Conference with Legal Counsel – Anticipated Litigation

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

CS2) Conference with Real Property Negotiators

Property: 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; 8831
Deer Valley Road, Antioch, CA
Agency Negotiators: John Kopchik and Abigail Fateman
Negotiating Parties: Conservancy and East Bay Regional Park District
Under negotiation: Payment terms

10:30 a.m. Open Session

Item 1 will not begin before 10:30 a.m.

- 1) Introductions.**
- 2) Report on any actions taken in Closed Session.**
- 3) Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).

- 4) Consider **APPROVING** the Meeting Record from the East Contra Costa County Habitat Conservancy Governing Board Meeting on April 4, 2013.
- 5) Consider the following actions related to the periodic audit of fees:
 - a) **CONSIDER** the East Contra Costa County HCP/NCCP Mitigation Fee Audit and Nexus Study dated March 2013 (“2013 Fee Report”), 2012 Fee Burden Analysis, comments received on this matter at the April 4 Governing Board meeting from Farella, Braun and Martel and Brion & Associates, and responses prepared for the Conservancy by Abbott and Kindermann, LLP and Urban Economics dated June 21, 2013 (“Responses”).
 - b) **APPROVE** Resolution 2013-2 regarding five-year review findings under the Mitigation Fee Act, on the basis of the 2013 Fee Report and Responses.
 - c) **RECOMMEND** reductions to the development fee and to the wetland mitigation fee for streams and increases to other wetland mitigation fees (“fee reductions and increases”) to participating cities and the County, on the basis of the 2013 Fee Report and the Responses, consistent with requirements in the HCP/NCCP for periodic review of HCP/NCCP mitigation fees.
 - d) **PROVIDE** the 2013 Fee Report, April 4 comments and Responses, Model Findings and the Board’s recommended fee reductions and increases to participating cities and the County so that they that they may consider adjusting their fees and making necessary findings.
 - e) **DIRECT** staff to apply the fee reductions and increases in future agreements between the Conservancy and Participating Special Entities.
 - f) **AUTHORIZE** Conservancy’s legal counsel to execute a Joint Defense Agreement with participating cities and the County.
 - g) **ACCEPT** update from staff on issues raised at the October 2 public workshop.
- 6) Consider **ACCEPTING** the audited financial statements and related documents for the Year Ending December 31, 2012.
- 7) Consider the following items related to Conservancy finances:
 - a) **ACCEPT** mid-year status report on finances and the 2013 Conservancy Budget.
 - b) **ACCEPT** update on recent grant awards that will support the Conservancy’s habitat restoration and enhancement program.
 - c) **AUTHORIZE** staff to execute a contract amendment for on-going legal services with Abbott & Kindermann, LLP to increase the payment limit by \$25,000 from \$25,000 to \$50,000.
- 8) Consider **REVIEWING** options prepared by staff for standardizing Contribution to Recovery for Participating Special Entities, **REFERING** this matter to the Public Advisory Committee (PAC) for additional review and recommendation; and **DIRECTING** staff to report back to the Governing Board.
- 9) Consider **REVIEWING** and **APPROVING** the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2012 Annual Report and the East Contra Costa County Habitat Conservancy Year in Review summary document.

- 10) Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for take coverage for the Phillips 66 Pipeline Requirement Survey Project, Summer 2013. AUTHORIZE staff to file a Notice of Exemption with the County Clerk.**
- 11) Consider REVIEWING the Governing Board meeting time and locations for the remainder of 2013 and consider possible adjustments.**
- 12) Adjourn to next Governing Board meeting.**

If you have questions about this agenda or desire additional meeting materials you may contact the Contra Costa County Department of Conservation and Development Conservation Programs
General Line 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: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for April 4, 2013

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of April 4, 2013.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 27, 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, April 4, 2013
City of Pittsburg

The Board convened the meeting and announced adjournment to closed session.

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

Governing Board members in attendance were:

Erick Stonebarger	City Council, City of Brentwood
Hank Stratford	City Council, City of Clayton
Mary Piepho	Contra Costa County Board of Supervisors
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
Joe Ciolek	Agricultural-Natural Resources Trust of Contra Costa County
Stephanie Jentsch	United States Fish and Wildlife Service
Bob Nisbet	East Bay Regional Park District
Erik Nolthenius	City of Brentwood
Craig Weightman	California Department of Fish and Wildlife

Conservancy Staff and consultants in attendance were:

Catherine Kutsuris	Conservancy Staff
John Kopchik	Conservancy Staff
Krystal Hinojosa	Conservancy Staff
Abigail Fateman	Conservancy Staff
Chris Beale	Conservancy Legal Counsel
Robert Spencer	Urban Economics (Fee Auditor)

- 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 (“Conservancy”) Governing Board Meeting of January 23, 2013.** The meeting record was approved. (Approved 4-0 with one abstention: Evola, Piepho, Pope, Stratford; Stonebarger abstained)

- 5) Consider the following actions related to the Periodic Fee Audit:
- a) **DETERMINE** development fee and wetland mitigation fee amounts (“fee amounts”) to recommend to participating cities and the County, on the basis of the East Contra Costa County HCP/NCCP Mitigation Fee Audit And Nexus Study dated March 2013 (“2013 Fee Report”), consistent with requirements in the HCP/NCCP for periodic review of HCP/NCCP mitigation fees.
 - b) **PROVIDE** the 2013 Fee Report and the Board’s recommendation on fee amounts to participating cities and the County so that they that they may consider adjusting their fees and making necessary findings.
 - c) **DIRECT** staff to apply the revised fee amounts in future agreements between the Conservancy and Participating Special Entities.
 - d) **ACCEPT** update from staff on issues raised at the October 2 public workshop.

Correspondence was received from Farella, Braun and Martel and Brion & Associates on behalf of Discovery Builders Inc., immediately prior to the start of the board meeting. Staff recommended to the Board continuing the item to the next Board meeting in order to allow staff and the Board more time to review the letter. The Board continued the item to the next meeting. (5-0: Evola, Piepho, Pope, Stratford, Stonebarger)

- 6) Consider **REVIEWING** the Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2012 Annual Report. Mr. Kopchik provided an overview of the Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2012 Annual Report. The Board reviewed the report and directed staff to provide the final draft Annual Report to the Board at the next regular meeting. (5-0: Evola, Piepho, Pope, Stratford, Stonebarger)
- 7) Consider **AUTHORIZING** staff to execute an annual contract for on-going biological consulting services with Nomad Ecology for \$45,000. Ms. Fateman provided background on the contract. The item was approved. (4-0: Evola, Pope, Stratford, Stonebarger; Piepho absent)
- 8) Consider **ACCEPTING** update on activities of the East County Water Management Association and the Integrated Regional Water Management Plan. Ms. Fateman gave a presentation on the activities of the East County Water Management Association and the Integrated Regional Water Management Plan. The item was approved. (4-0: Evola, Pope, Stratford, Stonebarger; Piepho absent)

- 9) **Consider ACCEPTING update on legislative platform activity.** Mr. Kopchik provided an update on legislative matters. The item was approved. (4-0: Evola, Pope, Stratford, Stonebarger; Piepho absent)
- 10) **Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Contra Costa Transportation Authority (CCTA) for take coverage of the State Route 160/State Route 4 Bypass Phase 2 Connectors Project, as further described in Exhibit 1 (the Planning Survey Report), provided the Wildlife Agencies concur with the Agreement.** Ms. Hinojosa gave a presentation on the project including highlighting key parts of the staff report. Mr. Evola asked staff whether the Conservancy has ever waived the contribution to recovery (CTR) for Participating Special Entities (PSE). Mr. Kopchik stated that he recalled the CTR has been waived in one other instance which was for the Phase 2 of Segment 2 of the State Route 4 Bypass Project where the State Route 4 Bypass Authority was the PSE. There was a discussion among the Board about PSE projects covered to date and the CTR payment associated with each, including the percentage of CTR to the mitigation fees required on behalf of the project. Mr. Kopchik provided clarification on these questions. Mr. Evola indicated that he could not support a zero CTR for this project as a matter of fairness to other Participating Special Entities and suggested for discussion purposes that the CTR payment be 50%. Mr. Pope clarified with staff the basis for the CTR. Mr. Kopchik explained the rationale for the CTR in the HCP/NCCP and. He also stated that the Board may set the percentage they feel appropriate based on policy considerations. He requested that if the Board assesses a CTR for this project that they should chose a moderate percentage reflecting the timing. Mr. Stratford expressed concerned about unanticipated cost to an applicant but agreed with Mr. Evola in that there should be a CTR for this project and made a motion to set the CTR at 20%. Mr. Evola seconded the motion. The motion failed. (2-2: Ayes: Evola, Stratford; Noes: Pope, Stonebarger; Piepho absent).

Mr. Pope expressed concern about assessing a CTR to the project without earlier notice and asked staff for further clarification into the reasons why the State Route 4 Bypass Authority did not pay a CTR for the Segment 2 of the State Route 4 Bypass Project and how staff imposed the same rationale onto this project whereby not assessing a CTR. Staff stated that the CTR was not recommended in this case because member agencies of the Conservancy are also member agencies of CCTA. Staff stated that a similar rationale was applied ion the earlier case involving the State Route 4 Bypass Authority. Staff and the Board discussed the similarities and differences in member agencies for CCTA, the SR4 Bypass Authority and CCTA.

Mr. Stonebarger stated he agreed with Mr. Evola and Mr. Stratford that a CTR should be assessed but did not approve the motion because of the short notice to the applicant. In order to avoid situations like this in the future, Mr. Stonebarger recommended that the Conservancy develop a formal policy outlining guidelines for calculating the CTR.

The Board asked whether the applicant would like to speak on this matter. Mr. Jack Hall, the project proponent representing the Contra Costa Transportation Authority, spoke on behalf of the project. He stated that although the cost of project is estimated at 38 million

dollars the budget was very tight with limited room for significant increases in fees. Further he stated that getting take coverage through the HCP/NCCP is the only permitting option for them at this time and as a result they would likely pay whatever CTR the Board approves.

Further discussion was held on the matter. Mr. Stonebarger made a motion to include a 5% CTR to the mitigation fee total for the project and asked that staff to prepare a proposed policy related to contribution to recovery charges on future projects. The motion was approved. (4-0: Evola, Pope, Stratford, Stonebarger; Piepho absent)

- 11) **Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Chevron Pipe Line Company for take coverage of the Chevron Pipeline KLM Site 1357 Repair Project.** Ms. Hinojosa gave a presentation on the project including highlighting key parts of the staff report. The item was approved as recommended by staff. (4-0: Evola, Pope, Stratford, Stonebarger; Piepho absent)
- 12) **Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for take coverage of the Phillips 66 Pipeline Repair Project 196,920.27.22.** Mr. Kopchik gave a presentation on the project. The item was approved as recommended by staff. (4-0: Evola, Pope, Stratford, Stonebarger; Piepho absent)
- 13) **Consider APPROVING Implementation Policy Regarding Installation of Renewable Energy Facilities on Contaminated Land.** Mr. Kopchik presented the staff report and distributed an updated version of the policy that included proposed changes from Cay Goude of United States Fish and Wildlife Service. Mr. Evola stated he was supportive of the proposed policy and wanted to be sure it was satisfactory to the wildlife agencies. The Board discussed the proposal including how and whether the policy would be useful for siting future renewable energy projects. The Board expressed concern about guideline (g) which provides no alternative to the project being completed and restored prior to two years before the end of the permit term. The item was approved as recommended with the following three changes to the text of the Policy: i) delete the second sentence of the last full paragraph on page 2; ii) delete the word “such” in the sentence following the deleted sentence, and iii) addition of the following language to the end of item (g) on page 3, that states “and at least 2 years prior to the end of the HCP/NCCP permit end date, unless an alternative schedule is agreed to by the wildlife agencies and the local agency extending take coverage to the project.” (3-0: Pope, Stratford, Stonebarger; Evola and Piepho absent)
- 14) **Adjourn to Governing Board meeting until the next Special Meeting on May 13, 2013.**

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Audited Financial Statements for 2012

RECOMMENDATION

ACCEPT the audited financial statements and related documents for the Year Ending December 31, 2012.

BACKGROUND

The joint exercise of powers agreement (JEPA) forming the Conservancy requires periodic audits of Conservancy finances and financial safeguards. State and federal law also require the Conservancy to perform certain types of audits. Maze and Associates, Certified Public Accountants, has completed the required independent audits and examinations for 2012.

The three reports prepared by Maze and Associates are listed below and are attached. The reports do not include any new findings. The single audit report does describe the current status of the finding from the prior single audit (2011) regarding posting signs with the State of California Wildlife Conservancy Board logo at properties purchased with funds administered by that agency. The signs have been posted.

Tim Krisch from Maze and Associates will be in attendance at the Governing Board meeting and will be available to answer questions.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 27, 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

Attachments:

- Basic Financial Statements (for the year ending December 31, 2012)
- Memorandum on Internal Controls and Required Communications (Year ending December 31, 2012)
- Single Audit Report (Year ending December 31, 2012)

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

BASIC FINANCIAL STATEMENTS

**FOR THE YEARS ENDED
DECEMBER 31, 2012 AND 2011**

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**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 BASIC FINANCIAL STATEMENTS
 FOR THE YEARS ENDED DECEMBER 31, 2012 AND 2011**

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INDEPENDENT AUDITOR'S REPORT

The Governing Board
 East Contra Costa County Habitat Conservancy
 Martinez, California

Report on Financial Statements

We have audited the accompanying financial statements of the governmental activities and the major fund of the East Contra Costa County Habitat Conservancy (Conservancy) as of and for the years ended December 31, 2012 and 2011 and the related notes to the financial statements, which collectively comprise the Conservancy’s basic financial statements as listed in the Table of Contents.

Management’s Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor’s Responsibility

Our responsibility is to express opinions on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Conservancy’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Conservancy’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the Conservancy as of December 31, 2012 and 2011, and the respective changes in the financial position, thereof, and the budgetary comparison listed as part of the basic financial statements for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Emphasis of Matters

Management adopted the provisions of the Governmental Accounting Standards Board Statement 63 – *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*, which became effective during the year ended December 31, 2012 and required certain title changes to the Statement of Net Position and Statement of Activities, and established deferred inflows and outflows of resources. See Note 2 to the financial statements for relevant disclosures.

As discussed in Note 4C, net position was restated as of July 1, 2011 in the amount of \$220,334.

The emphasis of these matters does not constitute a modification to our opinions.

Other Matters

The Conservancy has not presented the Management's Discussion and Analysis that the Governmental Accounting Standards Board has determined is necessary to supplement, although not required to be part of, the basic financial statements. Our opinion on the basic financial statements is not affected by this missing information.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated May 17, 2013, on our consideration of the Conservancy's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Conservancy's internal control over financial reporting and compliance.



Pleasant Hill, California
May 17, 2013

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**STATEMENT OF NET POSITION
AND STATEMENT OF ACTIVITIES**

The purpose of the Statement of Net Position and the Statement of Activities is to summarize the entire Conservancy's financial activities and financial position. They are prepared on the same basis as is used by most businesses, which means they include all the Conservancy's assets and deferred outflows of resources and all its liabilities and deferred inflows of resources, as well as all its revenues and expenses.

This is known as the full accrual basis—the effect of all the Conservancy's transactions is taken into account, regardless of whether or when cash changes hands. This differs from the “modified accrual” basis used in the Fund financial statements, which reflect only current assets, current deferred outflows of resources, current liabilities, current deferred inflows of resources, available revenues and measurable expenditures.

The Statement of Net Position summarizes the financial position of all the Conservancy's financial position in a single column.

The Statement of Activities reports increases and decreases in the Conservancy's net position. The Statement of Activities presents the Conservancy's expenses first, listed by program. Program revenues—that is, revenues which are generated directly by these programs—are then deducted from program expenses to arrive at the net expense of the program. The Conservancy's general revenues are then listed, and the Change in Net Position is computed and reconciled with the Statement of Net Position.

These financial statements along with the fund financial statements and footnotes are called *Basic Financial Statements*.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
STATEMENT OF NET POSITION
DECEMBER 31, 2012 AND 2011

	<u>2012</u>	<u>2011</u>
ASSETS		
Cash and investments (Note 3)	\$1,875,591	\$257,008
Accounts receivable	<u>333,980</u>	<u>1,660,540</u>
Total Assets	<u>2,209,571</u>	<u>1,917,548</u>
LIABILITIES		
Accounts payable	<u>143,359</u>	<u>612,945</u>
Total Liabilities	<u>143,359</u>	<u>612,945</u>
NET POSITION (Note 4)		
Unrestricted	<u>2,066,212</u>	<u>1,304,603</u>
Total Net Position	<u><u>\$2,066,212</u></u>	<u><u>\$1,304,603</u></u>

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
STATEMENT OF ACTIVITIES
FOR THE YEARS ENDED DECEMBER 31, 2012 AND 2011

	2012	2011
Program Expenses:		
Habitat Conservation Plan Development Fee Account:		
Program administration	\$587,760	\$579,609
Land acquisition	60,858	680,296
Management, restoration, recreation planning and design	124,366	41,033
Environmental compliance	75,989	47,246
Monitoring, research and adaptive management	53,918	30,695
Habitat conservation plan/natural community conservation plan preserve management and maintenance	17,918	59,912
Habitat Conservation Wetland Fee Account:		
Program administration		619
Management, restoration, recreation planning and design	160,145	231,029
Habitat restoration and creation	98,599	762,251
Environmental compliance	1,406	64,437
Monitoring, research and adaptive management	95,796	114,141
Habitat Conservation Plan Contributions to Recovery Account:		
Land acquisition	5,849,010	7,629,700
Total Program Expenses	7,125,765	10,240,968
Program Revenues:		
Charges for services (including mitigation fees and other revenues)	1,710,806	2,283,961
Capital grants for land acquisition	5,960,068	7,850,034
Operating grants	216,500	
Total Program Revenues	7,887,374	10,133,995
Net Program Income (Loss)	761,609	(106,973)
Change in Net Position	761,609	(106,973)
Net Position - Beginning, as Restated (Note 4C)	1,304,603	1,411,576
Net Position - Ending	\$2,066,212	\$1,304,603

See accompanying notes to financial statements.

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FUND FINANCIAL STATEMENTS

Major funds are defined generally as having significant activities or balances in the current year.

The Conservancy's **General Fund** is its only fund and is therefore a major fund. It is used to account for all financial resources. General operating expenditures, fixed charges and capital costs are paid from this fund.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
GOVERNMENTAL FUND
BALANCE SHEET
GENERAL FUND
DECEMBER 31, 2012 AND 2011

	<u>2012</u>	<u>2011</u>
ASSETS		
Cash (Note 3)	\$1,762,443	\$144,383
Investments (Note 3)	113,148	112,625
Accounts receivable	333,980	1,660,540
Total Assets	<u>\$2,209,571</u>	<u>\$1,917,548</u>
LIABILITIES		
Accounts payable	<u>\$143,359</u>	<u>\$612,945</u>
DEFERRED INFLOWS OF RESOURCES		
Unavailable revenue - grants (Note 2D)	<u>331,392</u>	<u>220,334</u>
Total Liabilities and Deferred Inflows of Resources	<u>474,751</u>	<u>833,279</u>
FUND BALANCE		
Fund balances (Note 4):		
Unassigned	<u>1,734,820</u>	<u>1,084,269</u>
Total Fund Balance	<u>1,734,820</u>	<u>1,084,269</u>
Total Liabilities, Deferred Inflows of Resources and Fund Balance	<u>\$2,209,571</u>	<u>\$1,917,548</u>

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 Reconciliation of the
 GOVERNMENTAL FUND - BALANCE SHEET
 with the
 STATEMENT OF NET POSITION
 DECEMBER 31, 2012

Total fund balances reported on the governmental funds balance sheet	\$1,734,820
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Amounts reported for Governmental Activities in the Statement of Net Position are different from those reported in the Governmental Fund above because of the following:

ACCRUAL OF NON-CURRENT REVENUES AND EXPENSES

Revenues which are deferred on the Fund Balance Sheets because they are not available currently are taken into revenue in the Statement of Activities.

	<u>331,392</u>
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NET POSITION OF GOVERNMENTAL ACTIVITIES

	<u><u>\$2,066,212</u></u>
--	---------------------------

See accompanying notes to financial statements

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
GOVERNMENTAL FUND
STATEMENT OF REVENUES, EXPENDITURES
GENERAL FUND
AND CHANGES IN FUND BALANCE
FOR THE YEARS ENDED DECEMBER 31, 2012 AND 2011

	<u>2012</u>	<u>2011</u>
REVENUES		
Habitat Conservation Development Fee Account	\$1,079,596	\$964,552
Habitat Conservation Wetland Fee Account	398,880	898,060
Habitat Conservation Contributions to Recovery Account	6,267,840	8,051,049
Habitat Conservation Giant Garter Snake/Swainson's Hawk Compensation Account	<u>30,000</u>	
Total Revenues	<u>7,776,316</u>	<u>9,913,661</u>
EXPENDITURES		
Habitat Conservation Plan Development Fee Account:		
Program administration	587,760	579,609
Environmental compliance	75,989	47,246
Land acquisition	60,858	680,296
Management, restoration, recreation planning and design	124,366	41,033
Monitoring, research and adaptive management	53,918	30,695
Habitat conservation plan/natural community conservation plan preserve management and maintenance	17,918	59,912
Habitat Conservation Wetland Fee Account:		
Program administration		619
Environmental compliance	1,406	64,437
Management, restoration, recreation planning and design	160,145	231,029
Habitat restoration and creation	98,599	762,251
Monitoring, research and adaptive management	95,796	114,141
Habitat Conservation Plan Contributions to Recovery Account	5,849,010	7,629,700
Total Expenditures	<u>7,125,765</u>	<u>10,240,968</u>
NET CHANGE IN FUND BALANCE	650,551	(327,307)
FUND BALANCE, BEGINNING OF YEAR	<u>1,084,269</u>	<u>1,411,576</u>
FUND BALANCE, END OF YEAR	<u>\$1,734,820</u>	<u>\$1,084,269</u>

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 Reconciliation of the
 NET CHANGE IN FUND BALANCE - TOTAL GOVERNMENTAL FUND
 with the
 STATEMENT OF ACTIVITIES
 FOR THE YEAR ENDED DECEMBER 31, 2012

The schedule below reconciles the Net Changes in Fund Balances reported on the Governmental Funds Statement of Revenues, Expenditures and Changes in Fund Balance, which measures only changes in current assets and current liabilities on the modified accrual basis, with the Change in Net Assets of Governmental Activities reported in the Statement of Activities, which is prepared on the full accrual basis.

NET CHANGE IN FUND BALANCE - TOTAL GOVERNMENTAL FUND	\$650,551
--	-----------

Amounts reported for governmental activities in the Statement of Activities are different because of the following:

ACCRUAL OF NON-CURRENT ITEMS

The amount below included in the Statement of Activities do not provide or (require) the use of current financial resources and therefore are not reported as revenue or expenditures in governmental funds (net change):

Deferred revenue	<u>111,058</u>
------------------	----------------

CHANGE IN NET ASSETS OF GOVERNMENTAL ACTIVITIES	<u><u>\$761,609</u></u>
---	-------------------------

See accompanying notes to financial statements

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE
GENERAL FUND
BUDGET AND ACTUAL
FOR THE YEAR ENDED DECEMBER 31, 2012

	<u>Budgeted Amounts</u>		Actual Amounts	Variance with Final Budget Positive (Negative)
	<u>Original</u>	<u>Final</u>		
REVENUES				
Habitat Conservation Development Fee Account			\$1,079,596	\$1,079,596
Habitat Conservation Wetland Fee Account			398,880	398,880
Habitat Conservation Contributions to Recovery Account			6,267,840	6,267,840
Habitat Conservation Giant Garter Snake/Swainson's Hawk Compensation Account			30,000	30,000
			<u>7,776,316</u>	<u>7,776,316</u>
Total Revenues			<u>7,776,316</u>	<u>7,776,316</u>
EXPENDITURES				
Program administration	\$609,596	\$609,596	587,760	21,836
Land acquisition	11,268,217	11,268,217	5,909,868	5,358,349
Management, restoration, recreation planning and design	271,029	271,029	284,511	(13,482)
Habitat restoration and creation	331,069	331,069	98,599	232,470
Environmental compliance	155,921	155,921	77,395	78,526
Habitat conservation plan/natural community conservation plan preserve management and maintenance	209,202	209,202	17,918	191,284
Monitoring, research and adaptive management	275,202	275,202	149,714	125,488
Remedial measures	6,000	6,000	6,000	6,000
Contingency fund	92,601	92,601	92,601	92,601
			<u>7,125,765</u>	<u>6,093,072</u>
Total Expenditures	<u>13,218,837</u>	<u>13,218,837</u>	<u>7,125,765</u>	<u>6,093,072</u>
NET CHANGE IN FUND BALANCE	<u>(\$13,218,837)</u>	<u>(\$13,218,837)</u>	650,551	<u>\$13,869,388</u>
FUND BALANCE, BEGINNING OF YEAR			<u>1,084,269</u>	
FUND BALANCE, END OF YEAR			<u>\$1,734,820</u>	

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
Notes to Basic Financial Statements
For the Years Ended December 31, 2012 and 2011

NOTE 1 - GENERAL

A. *Joint Exercise of Powers Agreement*

On April 16, 2007, the County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley and City of Brentwood, collectively referred to as the “Parties,” entered into a Joint Exercise of Powers Agreement (“Agreement”).

The Parties intend to implement the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (“Conservation Plan”). The Parties expect the Conservation Plan to provide an effective framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for impacts on rare and sensitive species and their habitat. The Parties expect that the Conservation Plan will also enable them to achieve certain land use planning goals and to provide comprehensive species, wetlands, and ecosystem conservation and to contribute to the recovery of endangered species in Northern California. The Parties have a common interest in creating an entity capable of implementing the Conservation Plan in accordance with the Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“Implementing Agreement”). The Conservation Plan and Implementing Agreement identify certain duties and obligations that must be fulfilled by an implementing Entity in order to support the issuance of permits to the Parties under the Federal Endangered Species Act and the California Natural Community Conservation Planning Act that cover urban development and other development projects in eastern Contra Costa County.

B. *Reporting Entity*

The Conservancy's operations are financed by federal, state and private grants, development fees, wetland fees and fees for service. The Conservancy is the only entity included in these financial statements.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of the Conservancy conform with generally accepted accounting principles as applicable to governments. The following is a summary of the significant policies:

A. *Basis of Presentation*

The Conservancy's Basic Financial Statements are prepared in conformity with accounting principles generally accepted in the United States of America. The Governmental Accounting Standards Board is the acknowledged standard setting body for establishing accounting and financial reporting standards followed by governmental entities in the United States of America.

These Standards require that the financial statements described below be presented.

Government-wide Statements: The Statement of Net Position and the Statement of Activities include the financial activities of the overall Conservancy. Governmental activities generally are financed through taxes, intergovernmental revenues, and other nonexchange transactions.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
Notes to Basic Financial Statements
For the Years Ended December 31, 2012 and 2011

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The Statement of Activities presents a comparison between direct expenses and program revenues for each function of the Conservancy's governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. Program revenues include (a) charges paid by the recipients of goods or services offered by the programs, (b) grants and *contributions* that are restricted to meeting the operational needs of a particular program and (c) fees, grants and contributions that are restricted to financing the acquisition or construction of capital assets.

Fund Financial Statements: The fund financial statements provide information about the Conservancy's General Fund. The emphasis of fund financial statements is on the major individual governmental fund displayed in a column.

B. Major Fund

The Conservancy's **General Fund** is its only fund. It is used to account for all financial resources. General operating expenditures, fixed charges and capital costs are paid from this fund. Pursuant to Government Code Section 6600, the Conservancy segregates development fee revenue from wetland fee revenue.

C. Basis of Accounting

The government-wide financial statements are reported using the *economic resources measurement focus* and the *full accrual basis* of accounting. Revenues are recorded when *earned* and expenses are recorded at the time liabilities are *incurred*, regardless of when the related cash flows take place. Basis of accounting refers to *when* revenues and expenditures or expenses are recognized in the accounts and reported in the financial statements, regardless of the measurement focus applied. All governmental funds are accounted for using the modified accrual basis of accounting. Thus, fund revenues are recognized when they become measurable *and* available as net current assets. Measurable means the amount of the transaction can be determined and available means the amount is collectible within the current period or soon enough thereafter (generally sixty days) to be used to pay liabilities of the current period. Amounts which could not be measured or were not available were not accrued as revenue in the current fiscal year.

Those revenues susceptible to accrual are interest revenue, grants and charges for services.

Non-exchange transactions, in which the Conservancy gives or receives value without directly receiving or giving equal value in exchange, include grants, entitlements, and donations. Revenue from grants, entitlements, and donations is recognized in the fiscal year in which all eligibility requirements have been satisfied.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
Notes to Basic Financial Statements
For the Years Ended December 31, 2012 and 2011

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

D. Deferred Outflows/Inflows of Resources

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time. The Conservancy has only one type of item, which arises only under a modified accrual basis of accounting that qualifies for reporting in this category. Accordingly, the item, unavailable revenues from grantors. These amounts are deferred and recognized as an inflow of resources in the period that the amounts become available.

E. Budgets and Budgetary Accounting

The Conservancy follows these procedures in establishing the budgetary data reflected in the financial statements:

1. Prior to the end of the fiscal year, a proposed operating budget is submitted to the Board of Directors for the fiscal year commencing the following January 1. The operating budget includes proposed expenditures and the means of financing them. The budget is legally enacted through passage of a vote of the Governing Board.
2. Formal budgetary integration is employed as a management control device during the year. Budgets are adopted on a basis consistent with generally accepted accounting principles.

F. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

NOTE 3 - CASH AND INVESTMENTS

A. Policies

California Law requires banks and savings and loan institutions to pledge government securities with a market value of 110% of the Conservancy's cash on deposit or first trust deed mortgage notes with a value of 150% of the Conservancy's cash on deposit as collateral for these deposits. Under California Law this collateral is held in a separate investment pool by another institution in the Conservancy's name and places the Conservancy ahead of general creditors of the institution. The Conservancy has waived collateral requirements for the portion of deposits covered by federal deposit insurance.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
Notes to Basic Financial Statements
For the Years Ended December 31, 2012 and 2011

NOTE 3 - CASH AND INVESTMENTS (Continued)

B. Classification

The Conservancy’s cash and investments is controlled and invested by Contra Costa County’s Treasury office. Investments are stated at fair value as required by generally accepted accounting principles. Pooled investment earnings are allocated by the Treasurer to each fund based on the cash and investment balances in these funds at the end of each quarter.

The Conservancy is a participant in the Local Agency Investment Fund (LAIF) that is regulated by California Government Code Section 16429 under the oversight of the Treasurer of the State of California. The Conservancy reports its investment in LAIF at the fair value amount provided by LAIF, which is the same as the value of the pool share. The balance is available for withdrawal on demand, and is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis. Included in LAIF’s investment portfolio are collateralized mortgage obligations, mortgage-backed securities, other asset-backed securities, loans to certain state funds, and floating rate securities issued by federal agencies, government-sponsored enterprises, United States Treasury Notes and Bills, and corporations. At December 31, 2012, these investments matured in an average of 208 days.

Cash and investments as December 31 were classified in the accompanying financial statements as follows:

	2012	2011
Cash deposits with the County	\$1,762,443	\$144,383
Local Agency Investment Fund	113,148	112,625
Total cash and investments	\$1,875,591	\$257,008

NOTE 4 – NET POSITION AND FUND BALANCE

A. Net Position

Net Position is the excess of all the Conservancy’s assets over all its liabilities.

The *Unrestricted* is the portion of Net Position which is not restricted to use.

B. Fund Balance

Governmental fund balances represent the net current assets of each fund. Net current assets generally represent a fund’s cash, receivables and deferred outflows of resources, less its liabilities and deferred inflows of resources.

The Conservancy’s fund balances are classified based on spending constraints imposed on the use of resources. For programs with multiple funding sources, the Conservancy prioritizes and expends funds in the following order: Restricted, Committed, Assigned, and Unassigned. Each category in the following hierarchy is ranked according to the spending constraint:

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
Notes to Basic Financial Statements
For the Years Ended December 31, 2012 and 2011

NOTE 4 – NET POSITION AND FUND BALANCE (Continued)

Nonspendable represents balances set aside to indicate items do not represent available, spendable resources even though they are a component of assets. Assets not expected to be converted to cash, such as prepaids or loans receivable, are included. However, if proceeds realized from the sale or collection of nonspendable assets are restricted, committed or assigned, then nonspendable amounts are required to be presented as a component of the applicable category.

Restricted fund balances have external restrictions imposed by creditors, grantors, contributors, laws, regulations, or enabling legislation which requires the resources to be used only for a specific purpose.

Committed fund balances have constraints imposed by formal action of the Board of Directors which may be altered only by formal action of the Board of Directors.

Assigned fund balances are amounts constrained by the Conservancy's intent to be used for specific purpose, but are neither restricted nor committed. Intent is expressed by the Board of Directors or its designee and may be changed at the discretion of the Board of Directors or its designee. This category includes: nonspendables, when it is the conservancy's intent to use proceeds or collections for a specific purpose.

Unassigned fund balance represents residual amounts that have not been restricted, committed, or assigned.

C. Restatement of Net Position

During fiscal year 2012, the Conservancy determined that deferred revenue reported in the prior year Statement of Net Position in the amount of \$220,334 should have been reported as a component of capital grants for land acquisition. Therefore, net position has been restated in that amount.

NOTE 5 – COST SHARING AGREEMENTS

The Conservancy periodically participates in cost sharing agreements with the East Bay Regional Park District (the District). Under these agreements, the Conservancy and the District each share out-of-pocket pre-acquisition and due diligence costs and expenses incurred in connection with joint land acquisition projects. Furthermore, the Conservancy and the District share out-of-pocket planning costs and expenses incurred in connection with joint restoration planning projects.

All land acquisitions through the financial statements date were completed in partnership with the District. The District holds title to all parcels acquired and is responsible for managing all lands.

NOTE 6 – CONTINGENT GRANT LIABILITY

The Conservancy's federal and State grant programs have been audited by its auditors in accordance with the provisions of the Federal Single Audit Act amendments of 1996 and applicable State requirements. No cost disallowances were proposed as a result of these audits; however, the programs are still subject to further audit by the grantors. If further audits are performed, the Conservancy expects any disallowances that might result to be immaterial.

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**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

**MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS**

**FOR THE YEAR ENDED
DECEMBER 31, 2012**

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**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS**

For the Year Ended December 31, 2012

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MEMORANDUM ON INTERNAL CONTROL

Governing Board
East Contra Costa County Habitat Conservancy
Martinez, California

We have audited the basic financial statements of the East Contra Costa County Habitat Conservancy (Conservancy) for the year ended December 31, 2012, and have issued our report thereon dated May 17, 2013. In planning and performing our audit of the basic financial statements of the Conservancy, in accordance with auditing standards generally accepted in the United States of America, we considered the Conservancy's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Conservancy's internal control. Accordingly, we do not express an opinion on the effectiveness of the Conservancy's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Conservancy's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and, therefore, there can be no assurance that all such deficiencies have been identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. We did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

This communication is intended solely for the information and use of management, the Governing Board, others within the organization, and agencies and pass-through entities requiring compliance with generally accepted government auditing standards, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink that reads 'Maze & Associates' in a cursive, flowing script.

Pleasant Hill, California
May 17, 2013

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REQUIRED COMMUNICATIONS

May 17, 2013

To the Governing Board of the
East Contra Costa County Habitat Conservancy

We have audited the basic financial statements of the East Contra Costa County Habitat Conservancy (Conservancy) for the year ended December 31, 2012. Professional standards require that we communicate to you the following information related to our audit under generally accepted auditing standards and, *Government Auditing Standards* and OMB Circular A-133.

Significant Audit Findings

Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Conservancy are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year:

The following pronouncements became effective, but did not have a material effect on the financial statements:

GASB 62 - Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements

This Statement supersedes Statement No. 20, Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities That Use Proprietary Fund Accounting, thereby eliminating the election provided in paragraph 7 of that Statement for enterprise funds and business-type activities to apply post-November 30, 1989 FASB Statements and Interpretations that do not conflict with or contradict GASB pronouncements. However, those entities can continue to apply, as other accounting literature, post-November 30, 1989 FASB pronouncements that do not conflict with or contradict GASB pronouncements, including this Statement.

GASB 64 - *Derivative Instruments: Application of Hedge Accounting Termination Provisions, an amendment of GASB Statement No. 53*

Some governments have entered into interest rate swap agreements and commodity swap agreements in which a swap counterparty, or the swap counterparty's credit support provider, commits or experiences either an act of default or a termination event as both are described in the swap agreement. Many of those governments have replaced their swap counterparty, or swap counterparty's credit support providers, either by amending existing swap agreements or by entering into new swap agreements. When these swap agreements have been reported as hedging instruments, questions have arisen regarding the application of the termination of hedge accounting provisions in Statement No. 53, Accounting and Financial Reporting for Derivative Instruments. Those provisions require a government to cease hedge accounting upon the termination of the hedging derivative instrument, resulting in the immediate recognition of the deferred outflows of resources or deferred inflows of resources as a component of investment income.

The objective of this Statement is to clarify whether an effective hedging relationship continues after the replacement of a swap counterparty or a swap counterparty's credit support provider. This Statement sets forth criteria that establish when the effective hedging relationship continues and hedge accounting should continue to be applied.

The following pronouncement became effective, and required a format change to the Statement of Net Assets and certain nomenclature revisions in the footnotes accompanying the financial statements.

GASB 63 - *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*

This Statement provides financial reporting guidance for deferred outflows of resources and deferred inflows of resources. *Concepts Statement No. 4, Elements of Financial Statements*, introduced and defined those elements as a consumption of net assets by the government that is applicable to a future reporting period, and an acquisition of net assets by the government that is applicable to a future reporting period, respectively. Previous financial reporting standards do not include guidance for reporting those financial statement elements, which are distinct from assets and liabilities.

Concepts Statement 4 also identifies net position as the residual of all other elements presented in a statement of financial position. This Statement amends the net asset reporting requirements in *Statement No. 34, Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, and other pronouncements by incorporating deferred outflows of resources and deferred inflows of resources into the definitions of the required components of the residual measure and by renaming that measure as net position, rather than net assets.

Unusual Transactions, Controversial or Emerging Areas

We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

The most sensitive accounting estimate affecting the financial statements are market to market values of investments.

- *Estimated Fair Value of Investments* (Note 3 to the financial statements) – As of December 31, 2012, the Conservancy held approximately \$1.8 million of cash and investments as measured by fair value. Fair value is essentially market pricing in effect as of December 31, 2012. These fair values are not required to be adjusted for changes in general market conditions occurring subsequent to December 31, 2012.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. We have no such misstatements to report to the Board.

We have reported an unreconciled overage in the fund balance of \$24,896 found during our audit. This overage has accumulated from prior years due to the past reporting requirements. Management has concluded that it does not have a material effect individually or in total to the financial statements as a whole. We concur with management's conclusion but are required by professional standards to report this item to you.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in a management representation letter dated May 17, 2013.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Governing Board and management and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

A handwritten signature in cursive script that reads "Maze & Associates". The signature is written in dark ink and is positioned below the typed name "Maze & Associates".

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
SINGLE AUDIT REPORT
FOR THE YEAR ENDED DECEMBER 31, 2012

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EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

**SINGLE AUDIT REPORT
For The Year Ended December 31, 2012**

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EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS
For The Year Ended December 31, 2012

SECTION I—SUMMARY OF AUDITOR’S RESULTS

Financial Statements

Type of auditor’s report issued: Unqualified

Internal control over financial reporting:

- Material weakness(es) identified? Yes X No
- Significant deficiency(ies) identified? Yes X None Reported

Noncompliance material to financial statements noted? Yes X No

Federal Awards

Type of auditor’s report issued on compliance for major programs: Unqualified

Internal control over major programs:

- Material weakness(es) identified? Yes X No
- Significant deficiency(ies) identified? Yes X None Reported

Any audit findings disclosed that are required to be reported in accordance with section 510(a) of OMB Circular A-133? Yes X No

Identification of major programs:

<u>CFDA#(s)</u>	<u>Name of Federal Program or Cluster</u>
<u>15.615</u>	<u>Cooperative Endangered Species Conservation Fund</u>

Dollar threshold used to distinguish between type A and type B programs: \$300,000

Auditee qualified as low-risk auditee? X Yes No

SECTION II – FINANCIAL STATEMENT FINDINGS

Our audit did not disclose any significant deficiencies, or material weaknesses or instances of noncompliance material to the basic financial statements. We have also issued a separate Memorandum on Internal Control dated May 17, 2013 which is an integral part of our audits and should be read in conjunction with this report.

SECTION III – FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

Our audit did not disclose any findings or questioned costs required to be reported in accordance with section 510(a) of OMB Circular A-133.

SECTION IV - STATUS OF PRIOR YEAR FINDINGS AND QUESTIONED COSTS –

Prepared by Management

Financial Statement Prior Year Findings

There were no prior year financial statement findings reported.

Federal Award Prior Year Findings and Questioned Costs

Finding reference number: 2011-01

- **CFDA number & Name of Federal Program:** 15.615 Cooperative Endangered Species Conservation Fund
- **Pass-through entity:** California Department of Fish and Game
- **Criteria:** Per the grant agreement between East Contra Costa County Habitat Conservancy and the State of California Wildlife Conservation Board for the Thomas properties and the Land Waste Management Property, Section 6 – Subgrantee’s and Successor Subgrantee’s Covenants (e) states the following:

“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.”
- **Condition:** The Conservancy (Subgrantee) and the East Bay Regional Park District (Successor Subgrantee) did not post signs on the properties with the State of California Conservancy Board logo.
- **Effect:** The Conservancy is out of compliance with the grant agreements.

SECTION IV - STATUS OF PRIOR YEAR FINDINGS AND QUESTIONED COSTS –
Prepared by Management (**Continued**)

- **Cause:** East Bay Regional Park District has found from substantial past experience that signage in park lands not yet open to the public can lead to trespass and vandalism on the property and the signs are sometimes defaced. East Bay Regional Park District and the Conservancy are working to determine sign text, design and placement locations on acquired properties to minimize these risks while complying with the grant agreements.
- **Recommendation:** We recommend that the Conservancy post signs on the properties as required by the grant agreement or discuss with the State of California Wildlife Conservation Board to amend this requirement.
- **Current status prepared by management:** Signs acknowledging funding contributed by the Wildlife Conservation Board and other sources have been posted on acquired properties.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

For the Fiscal Year Ended December 31, 2012

<u>Federal Grantor/ Pass-Through Grantor/Program or Cluster Title</u>	<u>Federal CFDA Number</u>	<u>Pass-Through Identifying Number</u>	<u>Federal Expenditures</u>
Department of Interior Pass-Through Programs From:			
Department of Fish and Game, State of California			
Cooperate and Endangered Species Conservation Fund			
Subgrant -Affinito Property	15.615	SG-1102JW	\$1,005,750
Subgrant - Vaquero Farms Central	15.615	SG-1103JW	1,080,000
Subgrant - Galvin Ranch	15.615	SG-1106JW	166,500
Subgrant - Moss Rock	15.615	SG-1105JW	184,500
Subgrant - Fan	15.615	SG-1107JW	99,000
Subgrant - Thomas North	15.615	SG-1208BG	<u>388,755</u>
 Total Expenditures of Federal Awards			 <u><u>\$2,924,505</u></u>

See Accompanying Notes to Schedule of Expenditures of Federal Awards

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

**NOTES TO THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For The Year Ended December 31, 2012**

NOTE 1-REPORTING ENTITY

The Schedule of Expenditure of Federal Awards (the Schedule) includes expenditures of federal awards for the East Contra Costa County Habitat Conservancy, California as disclosed in the notes to the Basic Financial Statements.

NOTE 2-BASIS OF ACCOUNTING

Basis of accounting refers to *when* revenues and expenditures or expenses are recognized in the accounts and reported in the financial statements, regardless of the measurement focus applied. All governmental funds and agency funds are accounted for using the modified accrual basis of accounting. Expenditures of Federal Awards reported on the Schedule are recognized when incurred.

NOTE 3-DIRECT AND INDIRECT (PASS-THROUGH) FEDERAL AWARDS

Federal awards may be granted directly to the Conservancy by a federal granting agency or may be granted to other government agencies which pass-through federal awards to the Conservancy. The Schedule includes both of these types of Federal award programs when they occur.

NOTE 4 - SUBRECEIPIENTS

Of the federal expenditures presented in the Schedule, the Conservancy provided federal awards to subrecipients as follows:

<u>CFDA Number</u>	<u>Program Name</u>	<u>Amount Provided to Subrecipients</u>
15.615	Cooperative Endangered Species Conservation Fund	\$2,924,505

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**INDEPENDENT AUDITOR'S REPORT ON
 INTERNAL CONTROL OVER FINANCIAL REPORTING
 AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN
 AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
 WITH *GOVERNMENT AUDITING STANDARDS***

Members of the Governing Board
 East Contra Costa County Habitat Conservancy
 Martinez, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the East Contra Costa County Habitat Conservancy (Conservancy), as of and for the year ended December 31, 2012, and the related notes to the financial statements, and have issued our report thereon dated May 17, 2013. Our report included an emphasis of a matter paragraph disclosing the implementation of new accounting principles, and a paragraph concerning the restatement of net position.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Conservancy's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Conservancy's internal control. Accordingly, we do not express an opinion on the effectiveness of Conservancy's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Conservancy's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

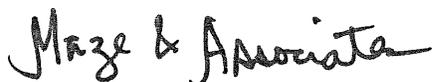
Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Conservancy's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Conservancy's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Conservancy's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Pleasant Hill, California
May 17, 2013



INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY OMB CIRCULAR A-133

Members of the Governing Board
 East Contra Costa County Habitat Conservancy
 Martinez, California

Report on Compliance for Each Major Federal Program

We have audited East Contra Costa County Habitat Conservancy's (Conservancy) compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on each of the Conservancy's major federal programs for the year ended December 31, 2012. The Conservancy's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of the Conservancy's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Conservancy's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the Conservancy's compliance.

Opinion on Each Major Federal Program

In our opinion, the Conservancy complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2012.

Report on Internal Control Over Compliance

Management is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Conservancy's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Conservancy's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this report is not suitable for any other purpose.

Report on Schedule of Expenditures of Federal Awards Required by OMB Circular A-133

We have audited the basic financial statements of the Conservancy as of and for the year ended December 31, 2012, and have issued our report thereon dated May 17, 2013, which contained an unqualified opinion on those financial statements. Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the financial statements as a whole.



Pleasant Hill, California
May 17, 2013

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Mid-year 2013 Budget Update and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) **ACCEPT** mid-year status report on finances and the 2013 Conservancy Budget.
- b) **ACCEPT** update on recent grant awards that will support the Conservancy’s habitat restoration and enhancement program.
- c) **AUTHORIZE** staff to execute a contract amendment for on-going legal services with Abbott & Kindermann, LLP to increase the payment limit by \$25,000 from \$25,000 to \$50,000.

DISCUSSION

Item (a): Attached please find a table entitled, “Mid Year Budget Status: Conservancy's 2013 Budget” which provides a status report on Conservancy expenditures so far in 2013. Information on revenue to date is also provided. As of June 13, the Conservancy is estimated to have spent \$1,743,378 and to have received \$1,392,428. Invoices for work performed in May and June are generally not reflected in these figures. Therefore, the figures presented in the table represent activity for about one-third of the fiscal year. As further discussed below, expenditures in many budget categories as well revenues do not occur at a steady pace. Based on staff’s knowledge of fees and grants approved but not yet paid and of upcoming expenditures for the remainder of the year, staff anticipates that both expenditures and revenues will occur at a faster pace in the remainder of the year.

As shown in the table, expenditures to date are within the approved budget levels and are generally occurring at a pace to remain under budget limits through the end of the year. The budget for Management, Restoration & Recreation Planning & Design is being spent at the

CONTINUED ON ATTACHMENT: No
ACTION OF BOARD ON: June 27, 2013 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

fastest pace relative to the other categories (on a percentage basis). This primarily reflects intense work on designing a second restoration project for Hess Creek and on preparing the Byron Hills Preserve Management Plan. The pace of work is expected to slow in the remainder of year. Staff will monitor spending for this task, but no budget adjustment is recommended at this time.

The budget increment for Program Administration and Permitting Program is being spent at the second-fastest pace. These costs are typically predictable and steady, though often more administrative work is needed in the first six months of a year than in the second six months (e.g., the Annual Report and the Maze financial audit are tasks included in the program administration category and costs of these tasks will be mostly limited to the first six months of 2013). For this reason, we typically we spend more than half of the Program Administration budget in the first half of the year and still come in under budget at the end of the year. However, we are performing more work on the fee audit issue than was anticipated and this could affect necessary spending in this category for the remainder of the year. If the necessary level effort on this task continues to be high or increases, we may need to rely on the budgeted contingency or staff may subsequently recommend an increase to this budget increment.

Expenditures in other categories are on a pace to come in under budget. However, the pace of expenditures for many of these categories, such as land acquisition and habitat restoration/creation, can vary greatly throughout the year as most expenses occur in discrete increments or phases. Given that land acquisition expenditures this year will likely be entirely covered by grants (grants, it should be noted, with strict time limits) and given the Conservancy's aggressive work plan with respect to land acquisition, larger expenditures from this category would be preferable.

Item (b): The Conservancy has been working on a plan to restore habitat and enhance resource management at the Ang property located just east of Clayton. The property has a number of pond and creek restoration opportunities as well as rangeland infrastructure needs to improve the health of grasslands. Conservancy staff worked with staff from the East Bay Regional Park District, the current grazing tenant and the Natural Resources Conservation Service (NRCS, a division of the U.S. Department of Agriculture) to secure a cost share award in the amount of \$75,585 through the Environmental Quality Incentives Program (EQIP) to support a number of activities on the Ang property. In addition, the Conservancy was recently awarded \$90,000 in grant funding from the California Department of Fish and Wildlife Local Assistance Grant Program to rehabilitate a failing pond on the Ang property. These two funding awards as well as technical assistance from the NRCS are complementary and together will fully fund the planned restoration and management activities on the property. These awards enable the Conservancy to work with the grazing tenant and EBRPD to: restore a failing pond, plant riparian vegetation, and install riparian protection and cross fencing and additional water troughs on the property. This is the first time that the Conservancy has worked with EQIP and the NRCS staff. We are excited about this new partnership and hope to expand it to other properties in the Preserve System.

Item (c): Staff recommends an amendment to the contract with Abbott & Kindermann, LLP, a firm providing on-going legal services to the Conservancy. The recommendation is to authorize staff to amend the existing contract for legal services with Abbott & Kindermann, LLP to

increase the payment limit by \$25,000, from \$25,000 to \$50,000. Abbott & Kindermann have expertise in local government fees and exactions and have been advising and assisting the Conservancy on issues related to the periodic fee audit. Staff anticipates additional need for these services. The recommended contract amendment is consistent with the approved 2013 Conservancy Budget. However, as noted above, work on the fee audit issue has been more extensive than anticipated. Staff will monitor the Program Administration budget for the remainder of the year. If significant work on this task continues, we may need to rely on the budgeted contingency or staff may subsequently recommend an increase to the Program Administration budget increment.

Mid Year Budget Status: Conservancy's 2013 Budget

(expenditures and revenues include Conservancy's own funds as well as grant funds passed through the Conservancy)

	<i>Expenditures</i>			
	<i>A</i>	<i>B</i>	<i>C= A minus B</i>	<i>D= C/A*100</i>
	<i>Approved 2013 Conservancy Budget¹</i>	<i>Expenditures as of 6/13/13²</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration and Permitting Program	\$609,840	\$189,311	\$420,529	69%
Land Acquisition	\$14,029,084	\$1,317,576	\$12,711,508	91%
Management, Restoration & Recreation Planning & Design	\$310,136	\$150,014	\$160,122	52%
Habitat Restoration/Creation	\$256,609	\$1,194	\$255,415	100%
Environmental Compliance	\$171,086	\$12,111	\$158,975	93%
HCP/NCCP Preserve Management and Maintenance	\$219,318	\$4,970	\$214,348	98%
Monitoring, Research, and Adaptive Management	\$259,756	\$68,201	\$191,554	74%
Remedial Measures	\$6,000	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	<u>\$91,337</u>	<u>\$0</u>	<u>\$91,337</u>	<u>100%</u>
TOTAL EXPENDITURES	\$15,953,166	\$1,743,378	\$14,209,787	89%
FEE REVENUES YEAR TO DATE (YTD) (through 6/13/13)		\$82,528		
GRANT REVENUE YTD (through 6/13/13)		\$1,309,900		
TOTAL REVENUES YTD (through 6/13/13)¹		<u>\$1,392,428</u>		
DIFFERENCE BETWEEN YTD REVENUES & EXPENDITURES		-\$350,950		
ESTIMATED FUNDS IN CONSERVANCY ACCOUNTS, JUNE 13, 2013³		\$1,500,000		

Notes:

(1) Matching funds/expenditures contributed by partner agencies are not included.

(2) Cost for work performed but not yet billed is not included. In general, expenses incurred after April are not reflected.

(3) Does not include more than \$13M in grant revenue that has been approved but not received before 6-13-2013 (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 intended to support the HCP/NCCP but is controlled by the wildlife agencies. That account has a current balance of about than \$3.5M.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Implementation Policy Regarding Contribution to Recovery for Participating Special Entity Projects

RECOMMENDATION

REVIEW options prepared by staff for standardizing Contribution to Recovery for Participating Special Entities, **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

At the April 4, 2013 Governing Board meeting the Board asked Staff to prepare an implementation policy related to standardizing the method for calculating contribution to recovery (CTR) charges on future Participating Special Entity (PSE) projects. Conservancy staff has conducted a thorough review of the contribution to recovery charges for previously covered PSE projects and seeks the Board’s recommendations on the proposed methods. Staff’s recommendations along with the Board’s comments will be provided to the Public Advisory Committee for further consideration and input before Staff recommends a specific method to the Board.

BACKGROUND

As set forth in the HCP/NCCP, the Conservancy may charge a Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs incurred by the Conservancy in the course of

CONTINUED ON ATTACHMENT: <u>Yes</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>June 27, 2013</u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
__ 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 _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
	BY: _____, DEPUTY

exceeding mitigation requirements and contributing to the recovery of covered species (as is required by the Plan).

Under the Natural Community Conservation Planning Act¹ a Natural Community Conservation Plan (NCCP) provides a method for conserving species on a large geographic scale and must contribute to recovery of covered species. As explained in the following excerpt from Chapter 8.4 of the HCP/NCCP, charging Participating Special Entities (PSEs) a Contribution to Recovery was an approach to funding the NCCPs requirement to contribute to the recovery of covered species and other costs not covered by the fees:

The Implementing Entity may require Participating Special Entities to pay fees over and above those specified in Chapter 9 to cover indirect costs of extending permit coverage under the HCP/NCCP, including the costs of Implementing Entity staff time to assist with permit coverage, a portion of the costs of the initial preparation of the Plan, and a portion of the costs of conservation actions designed to contribute to species recovery.

In the past, staff has calculated the Contribution to Recovery based on a number of factors including the type and scale of ground disturbing impacts, the overall cost of the project, whether the PSE's governing body shares representation from all the same jurisdictions participating in the HCP/NCCP, to name a few. The Conservancy has also required PSEs to pay for staff time to process their application.

Per the recommendation of the Board and with any additional Board guidance, staff will refine the options described below, seek comments and recommendations on the options from the Public Advisory Committee, return to the Board with staff and Public Advisory Committee recommendations on an implementation policy that sets forth guidelines for determining the Contribution to Recovery to require from Participating Special Entity projects.

APPROACH

Outlined below are several options for assessing the Contribution to Recovery.

Option 1, the Fixed Percentage Approach:

Several factors could be considered in setting the CTR at a fixed percentage of fees:

- a. As discussed above, the Plan requires the participating local agencies to assemble a Preserve System that not only mitigates impacts to covered activities but also contributes to the recovery of covered species (the HCP/NCCP calls this second component the "conservation" component of the Plan). The HCP/NCCP describes the share of land conservation associated with these two components. As further described in Chapter 5 and Appendix H, 52% of the Preserve System is required for

¹ Cal. Fish and Game Code § 2800 and following.

mitigation and 48% is required for conservation. The development fee is used to pay for the mitigation component and other sources such as public funds and Contributions to Recovery from PSEs are used to pay for the conservation component. PSEs could be asked to pay a CTR that reflects this apportionment (e.g. the CTR could equal $48/52 * \text{fees}$).

- b. PSEs could be asked to pay a CTR that reflects only the estimated local share of the conservation component. The HCP/NCCP estimates that the local share of the conservation component is 37%². The state and federal share is estimated at 63%. Under this approach the CTR could equal 37% of option a.
- c. PSEs could be asked to pay a CTR that reflects post-permit management and monitoring costs not covered by the fees. The cost of post-permit funding is roughly estimated at 25% to 35% of the total cost of acquiring and maintaining the preserve system for the permit term (this assumes no cost savings are achieved). Under this approach the CTR could equal 25% to 35% of the fees.
- d. These approaches could be employed in combination or additional variations could be conceived and explored.

The advantages of this approach are that the contribution amount would be clear, easy to calculate and uniform. The disadvantages of this approach are that it does not consider differences in project impacts, the variable burden posed by these impacts on the Conservancy's Plan implementation duties and differences in PSEs ability or willingness to pay.

Option 2, Scaled Approach:

In the past, staff has calculated the Contribution to Recovery on a case-by-case basis based a number of factors including the type and scale of ground disturbing impacts, the overall cost of the project, the liability for extending take coverage to a PSE, the mitigation required relative to the breadth of take coverage provided to the PSE (including additional mitigation funding required for species specific impacts to Giant Garter Snake and Swainson's hawk, as specifically required in the Plan), and others.

The past approach could be continued but under pre-defined guidelines. Of the 16 Participating Special Entity projects covered by the HCP/NCCP to date the average contribution to recovery was 52% of the mitigation fee total. Staff envisions a sliding scale which could be similar to the current method or revised in minor or major ways. Outlined below is a general summary of the current sliding scale method:

- 1. For projects with mitigation fees less than or equal to \$10,000, the Conservancy has typically charged a contribution to recovery equal to the mitigation fee total (100%).

² Table 9-8 "HCP/NCCP Cost and Funding Overview estimates the percentage of local funding as 73%.

2. For projects with mitigation fees greater than \$10,000 and less than or equal to \$50,000 the Conservancy has typically charged a contribution to recovery that is half of the mitigation fee total (50%).
3. For projects with mitigation fees greater than \$50,000 the Conservancy has typically charged a contribution to recovery according to a scale between 5-49% of the mitigation fees, depending upon whether the impacts are temporary or permanent and whether the applicant consists of the Conservancy member agencies.
4. The Conservancy is currently considering the first PSE project with mitigation fees less than \$1,000. The recommendation in this circumstance is to assess a minimum contribution to recovery of \$1,000. Extending take coverage to such small projects requires a commitment of limited Conservancy resources (e.g. available staff time) that is not proportional to the mitigation fee or impacts, therefore a minimum contribution to recovery of no less than \$1,000 is recommended.

RECOMMENDATION

With any additional direction from the Board, staff will continue to analyze alternatives and develop a draft protocol based on the considerations outlined above. Staff will seek comment and recommendations from the Public Advisory Committee and return to the Board with a Draft Implementation Policy for consideration.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **2012 Annual Report**

RECOMMENDATION

- a) **REVIEW and APPROVE the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2012 Annual Report.**
- b) **REVIEW and APPROVE the East Contra Costa County Habitat Conservancy Year in Review summary document.**

DISCUSSION

- a) Attached please find the 2012 Annual Report for the East Contra Costa County Habitat Conservancy (Conservancy). The Annual Report is a required component of the HCP/NCCP that allows the Governing Board, wildlife agencies, local agency participants in the HCP/NCCP, stakeholders, and partners to review the status of Plan implementation.
- b) To augment public outreach on the work of the Conservancy, staff has also prepared a four-page Year in Review document similar to the document prepared last year (see attached). Staff would appreciate feedback on the document. If approved, staff recommends distributing the document to interested parties through the Conservancy's distribution lists.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 27, 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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with Phillips 66 Pipeline LLC to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Requirement Survey Project, Summer 2013:

- a. **AUTHORIZE** staff to file a Notice of Exemption with the County Clerk for the project.
- b. **AUTHORIZE** staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for take coverage for the Phillips 66 Pipeline Requirement Survey Project, Summer 2013.

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a Participating Special Entity Agreement (PSE Agreement) and to extend take authorization under the PSE Agreement to Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Requirement Survey Project, Summer 2013 is a discretionary action requiring analysis with respect to compliance with CEQA. The project consists of temporary impacts to a small grassland area above an existing pipeline as a result of installing a temporary anode bed which will result in no expansion of the existing use. The Conservancy has determined the project is categorically exempt from the requirements of CEQA under Class 1, "Existing Facilities," of the State CEQA Guidelines Section 15301. (Pub. Resources Code section 21084; Cal. Code Regs., tit. 14, §15301).

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

CONTINUED ON ATTACHMENT: <u>Yes</u> ACTION OF BOARD ON: <u>June 27, 2013</u> OTHER: _____	APPROVED AS RECOMMENDED: _____
<p><u>VOTE OF BOARD MEMBERS</u></p> <p>___ UNANIMOUS</p> <p>AYES: _____</p> <p>NOES: _____</p> <p>ABSENT: _____</p> <p>ABSTAIN: _____</p>	
<p style="font-size: small;">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.</p> <p>ATTESTED _____ <i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i></p> <p>BY: _____, DEPUTY</p>	

Phillips 66 is proposing to test the integrity of the pipeline by doing a survey of the electrical current capacity at a single location along the existing Line 200 Mainline trunk pipeline within East Contra Costa County. The current requirement survey will allow Phillips 66 to determine the extent of cathodic protection that is needed for the pipeline in this region. The U.S. Department of Transportation pipeline regulations and California State Fire Marshal pipeline regulations require Phillips 66 to maintain cathodic protection on its pipeline. This current requirement survey is slated to occur in July or August, 2013. If as a result of the project it is determined that additional cathodic protection is necessary for the pipeline, Phillips 66 would consider potential locations for installing an anode bed or similar device in the region. We anticipate Phillips 66 will work with the Conservancy to determine the location for the device and receive take coverage for installation.

All proposed work and all impacts are temporary. The current requirement survey will require temporary impacts to approximately 100 square feet (0.002 acre). Within the project footprint, the applicant will create a 25-square foot excavation area to install the temporary anode bed, as well as 75-square feet of equipment access and side casting. Access to the current requirement survey location would be via an existing dirt road. The temporary anode bed will be utilized for the current requirement survey over the course of two days, after which time, the temporary anode bed will be removed without re-excavating the area. The 2-3inch hole left behind will be completely backfilled with native soil once the temporary anode bed is removed.

(See Figures and Project Description in the Planning Survey Report Application for more information on the Project and its location).

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

A Participating Special Entity’s project must also be an eligible covered activity under the HCP/NCCP in order to be covered as a PSE. As set forth in Section 2.3.3 and 2.3.4 of the HCP/NCCP, Utility Line or Facility Operation and Maintenance is an eligible covered activity within the HCP/NCCP inventory area, including within HCP/NCCP Preserves. The Project is therefore an eligible covered activity. However, it should be noted that the pipeline is within an easement owned by Phillips 66 on land owned by East Bay Regional Park District. Phillips 66 is

responsible for securing all landowner permissions that may be necessary to conduct the repair work and future rare plant surveys as required by the HCP/NCCP.

Conservancy staff has prepared a Participating Special Entity Agreement (“PSE Agreement”) for this Project (attached). Attached as Exhibit 1 to the PSE Agreement is the completed Planning Survey Report Application (“PSR”) for the Project, which was prepared by Monk and Associates Inc., the biological firm hired by Phillips 66 to complete the PSR. The PSR documents the results of the planning-level surveys conducted at the survey site and associated access areas where impacts will occur and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the Project to be covered through the HCP/NCCP. The PSR contains project vicinity maps, detailed maps showing the impacts associated with the Project site, land cover and species habitat maps, and the Fee Calculator Worksheet.

Key provisions of the Agreement:

- The Project impacts are reflected in the table below:

Land Cover Type	Impact Type (acres)	
	Permanent	Temporary
Annual Grassland	-	0.002

- The Agreement provides that Phillips 66 will reimburse the Conservancy for staff costs associated with processing the request for take coverage, up to a maximum reimbursement of \$2,500.
- In addition, as set forth in the Agreement (page 6), Phillips 66 will pay the Conservancy \$1043.70, which amount includes all HCP/NCCP mitigation fees necessary for the Project as well as a Contribution to Recovery for Endangered Species.
- The table below summarizes the required fees and administrative costs:

PHILLIPS 66 FEE SUMMARY	
Development fees:	\$43.70
Contribution to Recovery for Endangered Species:	\$1000.00
TOTAL FEES AND CONTRIBUTIONS	\$1043.70
Maximum Administrative Costs	\$2,500.00
MAXIMUM AMOUNT TO BE PAID	\$3,543.70

- The Fees and Administrative Costs must be paid before work commences. Phillips 66 anticipates starting work in July or August 2013.
- As set forth in the HCP/NCCP, the Conservancy may charge a Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example,

the costs of preserve management beyond the permit term, the costs born by the Conservancy of exceeding mitigation requirements and contributing to the recovery of covered species (as is required because the plan is an NCCP and by state law NCCP's must contribute to recovery, etc.)). Staff proposes a Contribution to Recovery in the amount of \$1,000. For smaller projects (fees less than \$10,000), the Conservancy has typically charged a contribution to recovery in an amount equal to the fees. The Conservancy has never considered a PSE Agreement with fees less than \$1,000 (the fees for this project are \$43.70). Conservancy staff is recommending a contribution to recovery of \$1,000, far more than the fee, because the project requires a commitment of limited Conservancy resources (available staff time) that is not proportional to the fee or impacts.

- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys for San Joaquin kit fox and western burrowing owl.
- The Agreement provides a number of detailed measures to avoid impacts to special status plant species covered by the HCP/NCCP. The required rare plant surveys during the appropriate blooming season was infeasible prior to submission of the application. Given the urgent nature of the project as well as the short duration of the proposed impacts, Conservancy staff has worked with the applicant to develop a number of detailed measures beyond those required by the HCP/NCCP which seek to limit and avoid potential impacts to special status plant species. These additional measures include:

- Rare plant surveys were conducted in April and May of 2013 during the appropriate blooming season for each of the covered rare plants that require a rare plant survey to be conduct. To properly survey for the ten rare plant species with the potential to occur in the project area (that is, to survey during the known blooming period of the ten species), one more survey in August of 2013 shall be conducted. The rare plant surveys will assess the repair site plus a 200 foot buffer around the repair site. The results of the surveys will be documented in a rare plant survey report to be submitted to the Conservancy by September 30, 2013. If special-status plant species are identified on or within 200 feet of the project area, the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 "Plant Salvage when Impacts are Unavoidable," Section 6.31. "Covered and No-Take Plants," and Table 5-20 "Protection Requirements for Covered Plants" in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that the encountered species are protected.

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

- Phillips 66 signs the agreement.
- Staff will ask the wildlife agencies to review the Agreement and to concur that the Agreement includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on Phillips 66 to implement them. If, and only if, the

Wildlife Agencies concur, the Executive Director of the Conservancy will sign the Agreement. Note: Participating Special Entity Agreements, unlike the granting of take authorization by a participating City or County, require wildlife agency concurrence.

- Phillips 66 pays all required mitigation fees, the contribution to recovery and applicable administrative costs, as outlined in the PSE Agreement.
- The Conservancy issues Phillips 66 a Certificate of Inclusion. Take coverage would then be in effect, subject to the terms of the PSE Agreement.
- Phillips 66 conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Phillips 66 develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Phillips 66 implements the Project subject to the terms of the Agreement.
- A rare plant survey report will be submitted to the Conservancy by September 30, 2013 in accordance with the PSE Agreement and Exhibit 1.

Attachments:

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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 27, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Meeting Schedule

RECOMMENDATION

REVIEW Governing Board meeting time and locations for the remainder of 2013 and consider possible adjustments.

DISCUSSION

At the January, 2013, Conservancy Governing Board meeting, the Board determined a meeting schedule for the year. The meetings were scheduled approximately quarterly, typically on the 3rd Monday of the month. The previously approved meeting schedule for the remainder of the year is as follows:

September 23, 2013 from 3 to 5 pm at the City of Clayton
December 23, 2013 from 3 to 5 pm at the City of Brentwood

The Board may wish to consider holding the December meeting earlier that month. The Board may also wish to schedule a supplemental meeting and/or adjust the frequency of meetings moving forward to reflect the pace of Conservancy business. Staff recommends that the Board discuss this matter and consider possible adjustments.

CONTINUED ON ATTACHMENT: <u>No</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>June 27, 2013</u>	
OTHER _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
___ AYES: _____	ATTESTED _____
___ NOES: _____	<i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
___ ABSENT: _____	BY: _____, DEPUTY
___ ABSTAIN: _____	