



*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, August 22, 2013

12:00 p.m.

City of Brentwood
Brentwood City Hall, Council Chambers
150 City Park Way, Brentwood, 94513

AGENDA

12:00 p.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 94531 and 94413
Agency Negotiators: John Kopchik and Abigail Fateman
Negotiating Parties: Conservancy and East Bay Regional Park District
Under negotiation: Payment terms

12:30 p.m. Open Session

Item 1 will not begin before 12:30 p.m.

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

- 4) Consider **APPROVING** the Meeting Record from the East Contra Costa County Habitat Conservancy Governing Board Meeting on June 27, 2013.
- 5) Consider **AUTHORIZING** Conservancy's legal counsel to execute a Defense and Indemnification Agreement with participating cities and the County.
- 6) Consider the following actions related to land acquisition:
AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District ("EBRPD"), grant agreements with the California Wildlife Conservation Board for state and federal funds and a grant agreement with the Gordon and Betty Moore Foundation for acquisition of the Roddy Ranch Property by EBRPD (APN 007-010-039; 007-010-040; 057-060-022; 057-070-003; 057-070-004; 057-070-005; 057-070-013; 057-070-014; 075-190-010; 075-190-012; 075-190-013; 078-050-009 and 078-050-010; Deer Valley Road and Chadbourne Road, Antioch, CA 94531 and 94413).
- 7) Consider **AUTHORIZING** staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project, Line 200, Spring 2013.
- 8) **Adjourn to next Governing Board meeting scheduled for October 17, 2013.**

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: August 22, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for June 27, 2013

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of June 27, 2013.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: August 22, 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, June 27, 2013
City of Oakley
9:30 a.m.

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:

Joel Bryant	City Council, City of Brentwood
Hank Stratford	City Council, City of Clayton
Federal Glover	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
Erik Nolthenius	City of Brentwood
Josh Roden	Brookfield Homes

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
William Abbott	Abbott and Kinderman
Timothy Krisch	Maze and Associates
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).** Mr. Joe Ciolek, Agricultural-Natural Resources Trust of Contra Costa County, spoke regarding the Trust's past and recent involvement with the East Bay Regional Park District and the Conservancy. He expressed the desire to work more closely with Conservancy staff and various stakeholders on significant conservation projects.

- 4) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy Governing Board Meeting on April 4, 2013.** The meeting record was approved. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
- 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.**

Mr. Kopchik provided background on the periodic audit of fees. Mr. Kopchik stated that 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. Chris Beale provided an explanation of the proposed confidentiality agreement (a Joint Defense Agreement limited in scope to confidentiality between the parties). Mr. Evola inquired about the recent U.S. Supreme Court decision (Koontz v. St. Johns River Water Management District) and whether the decision affects the periodic fee audit. Mr. Bill Abbott summarized the decision and stated that the periodic fee audit would not be affected.

The Chair invited public comment on the matter.

Mr. Bob Nisbet, Assistant General Manager, East Bay Regional Park District, stated he supports the fee reports and recommendations by the Conservancy on this matter and reiterated the ongoing partnership with the Conservancy. He referenced on the 2012 Year in Review document and stated that a huge benefit of an HCP/NCCP is that it gives local agencies (permittees) control over ESA and CESA permitting. Mr. Nisbet stated he

understands the reasoning behind the current proposal to lower the development fee but cautioned that fee rates should be set at a rate that does not compromise the overall success of the Plan.

Mr. Josh Roden, Brookfield Homes, thanked the Board for considering a reduction in the development fees and urged the Board to adopt the reduction. Mr. Roden discussed the Emerson Project in the City of Oakley that he is overseeing and hopes to break ground on this fall. He stated that the HCP/NCCP has been instrumental in providing a streamlined path for developers to received ESA/CESA incidental take coverage of development projects. He noted the fee reduction is in the best interest of Oakley developers and hopes to benefit from such a reduction for the Emerson Project. He stated that the Emerson Project will be the first subdivision to be built in the City of Oakley in eight years. Further, since the HCP/NCCP mitigation fee is paid when the grading permit is pulled, that is results in a big upfront cost to the developer; therefore a reduction in the development fees is appreciated.

Mr. Glover made a motion to approve 5a-5g as recommended, while Mr. Evola seconded the motion with the clarification that the Board select and recommend the development fee levels in Option 3 as recommended by staff. The amended motion was approved. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)

- 6) **Consider ACCEPTING the audited financial statements and related documents for the Year Ending December 31, 2012.** Timothy Krisch, Maze and Associates, provided an overview of the audit. Hank Stratford thanked Mr. Krisch and staff for including the two years of audit tables in the report (last year and current). The item was approved as recommended. (Approved 4-0: Bryant, Evola, Stratford, Pope; Glover absent)
- 7) **Consider the following items related to Conservancy finances:**
 - a) **ACCEPT mid-year status report on finances and the 2013 Conservancy Budget.** Mr. Kopchik provided an overview of the mid-year status report on finances and the 2013 Conservancy budget. The item was approved as recommended. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
 - b) **ACCEPT update on recent grant awards that will support the Conservancy's habitat restoration and enhancement program.** Ms. Fateman spoke regarding the new funding sources for restoration work. The update was approved as recommended. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
 - 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.** Mr. Kopchik provided an overview on the contract amendment. Mr. Bryant asked if a \$50,000 cap is sufficient to cover legal costs. Mr. Kopchik stated it is sufficient for now but may need to get revisited later. The item was approved as recommended. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)

- 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.** Mr. Kopchik provided an overview of the item while Ms. Hinojosa participated to clarify approaches for calculating the Contribution to Recovery as further outlined in the staff report. Mr. Evola thanked staff for developing a policy and a framework to discuss the application of the Contribution to Recovery. The Board expressed support for staff to work with the Public Advisory Committee on this matter. Mr. Evola stated that his only strong preference for this policy is that all Participating Special Entities pay a Contribution to Recovery and that no entity is exempt. The item was approved as recommended. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
- 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.** Mr. Kopchik provided background on the annual report. He said that we are ahead of conservation requirements by every metric. The major accomplishment of 2012 was the issuance of U.S. Army Corps of Engineers Regional General Permit 1. The item was approved as recommended. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
- 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.** Ms. Hinojosa gave a brief overview of the project highlighting the key parts of the project and the terms of the PSE Agreement. The item was approved as recommended. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
- 11) **Consider REVIEWING the Governing Board meeting time and locations for the remainder of 2013 and consider possible adjustments.** The Board adjusted the meeting schedule and set the following meeting dates for the remainder of 2013: August 22, 2013 at 12 p.m., October 17, 2013 at 10 a.m. and December 9, 2013 at 1:30 p.m. (Approved 5-0: Bryant, Evola, Glover, Pope, Stratford)
- 12) **Adjourn to next Governing Board meeting.**

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 22, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Defense and Indemnification Agreement

RECOMMENDATION

AUTHORIZE Conservancy’s legal counsel to execute a Defense and Indemnification Agreement with participating cities and the County.

BACKGROUND

Staff recommends that the Board authorize Chris Beale, the Conservancy’s legal counsel, to execute a Defense and Indemnification Agreement (“Proposed Agreement”) with participating cities and the County to establish cooperative procedures for addressing anticipated litigation on the matter of fees. A draft of the Proposed Agreement is attached. Attorneys for participating cities and the County are currently reviewing the Proposed Agreement. Staff is recommending that the Board authorize Conservancy legal counsel to execute the Proposed Agreement in a form substantially similar to that presented here, recognizing that attorneys for the cities and the County might request revisions. Any major revisions would be brought back to the Board for consideration.

The Proposed Agreement commits the Conservancy to defend, indemnify, and hold harmless the other parties from claims made against them related to the HCP/NCCP fees and the fee adjustments recommended by the Conservancy on June 27, 2013. Staff recommends execution of the Proposed Agreement because, as a joint exercise of powers authority created by the participating cities and the County to serve as the Implementing Entity for the HCP/NCCP and to coordinate the parties’ successful implementation of the Plan, the Conservancy is the most

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>August 22, 2013</u> APPROVED AS RECOMMENDED: _____	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
<input type="checkbox"/> 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. ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

appropriate agency to support its member agencies if there is litigation regarding the HCP/NCCP fees and to provide a coordinated legal defense. It will not be possible to estimate the cost of such a legal defense accurately unless and until litigation is initiated and the nature and scope of the litigation can be evaluated.

The Proposed Agreement would be in addition to the Joint Defense Agreement authorized by the Board in June (“Initial Agreement”). The Initial Agreement addressed the confidentiality of defense communications. The Initial Agreement is currently being circulated for signature. A copy of the final text of the Initial Agreement is attached.

Attachments:

- Defense and Indemnification Agreement, dated August 22, 2013 (“Proposed Agreement”)
- Joint Defense Agreement, dated July 22, 2013 (“Initial Agreement”)

DEFENSE AND INDEMNIFICATION AGREEMENT

This Defense and Indemnification Agreement (“Agreement”) is entered into by and among County of Contra Costa, a political subdivision of the State of California (“County”), and the cities of Brentwood (“Brentwood”), Clayton (“Clayton”), Oakley (“Oakley”), Pittsburg (“Pittsburg”), each a municipal corporation (individually a “Participating Agency” and together “Participating Agencies”), and the East Contra Costa County Habitat Conservancy (“Conservancy”), by and through their undersigned counsel, including all employees, agents, representatives, legal assistants, staff, and agents of such counsel (collectively, the “Parties,” and each a “Party”). This Agreement is dated August 22, 2013 for the convenience of the Parties. The Agreement takes effect upon execution as provided for in Paragraph 7.

RECITALS

- A. In 2007, the Cities and County formed a joint powers authority (the Conservancy) for purposes of implementing the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (“Plan”) as authorized under state and federal law.
- B. In 2007, the Cities and County adopted Plan implementation fees pursuant to the Plan (“2007 Fees”), and
- C. The Conservancy has completed an evaluation of existing Plan implementation fees and Conservancy expenditures and has recommended an updated implementation fee schedule for adoption by the Participating Agencies (the “2013 Fees”), and
- D. Interested parties have submitted written and oral comments to the Conservancy

and City of Pittsburg which assert legal error with respect to the existing Plan and fees, the proposed fee changes, and the required periodic review of habitat fees and Conservancy expenses, and

- E. The Parties have concluded that there is a substantial likelihood of (a) continued administrative challenges and (b) litigation to be filed against the Conservancy, Cities and County collectively and/or individually, challenging the proposed and existing fees, as well as a potential legal challenge to the Plan and the Conservancy's actions and recommendations (individually and together the "Covered Action," as defined in paragraph 2, below). The comments made by these third parties pertain to facts and legal issues common to the Parties, and the Parties, as anticipated potential defendants, and the Conservancy acknowledge that they share a common interest in defending against claims made by third parties, and they may wish to make joint efforts in preparation against any defense of anticipated actions or proceedings.
- F. The Parties have informally cooperated as to the overall actions of the Conservancy, the Plan, along with the proposed revisions to existing fees as well as the required periodic accounting. The Parties wish to continue pursuing their separate, but common, interests in connection with the defense of the Plan, existing fees and proposed fees and the periodic accounting while sharing otherwise privileged information relevant to collective interests, and to make clear that, in doing so, they do not waive nor intend to waive any applicable privilege or other protection, whether attorney-client privilege, the work product doctrine,

or any other protection available by law.

THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Cooperation in Defense in Any Future Action. The Parties shall cooperate in any Covered Action, as defined in paragraph 2, below, by and through their respective attorneys, and shall be subject to the terms of this Agreement.

2. Scope of Covered Actions. Actions covered by this Agreement (each a “Covered Action”) involve any claim, action, or proceeding brought against a Participating Agency which seeks to invalidate (including injunctive and declaratory relief), either *facially* or *as applied* to an individual property owner or applicant, any of the following:

- A. The Plan.
- B. The Participating Agency’s 2007 Fees.
- C. The Participating Agency’s 2013 Fees, provided that the 2013 Fees conform to the recommendation of the Conservancy Board as adopted on June 27, 2013.
- D. The five year accounting as required by Government Code section 66001 as performed in 2013.

A Covered Action does not include: (1) any claim, action, or proceeding brought solely on grounds that the Participating Agency failed to satisfy all procedural steps (e.g. public notice, hearing, availability of public documents) in advance of the adoption of the 2013 Fees; or (2) any claim arising from the intentional misconduct of the Participating Agency’s officers or employees.

3. Defense and Indemnity.

A. Conservancy agrees to defend, indemnify, and hold harmless each Participating Agency, its agents, officers and employees from any claim, action, or proceeding against the Participating Agency or its agents, officers or employees for any Covered Action, as defined in paragraph 2, or actions seeking to impose personal liability against such officers, agents, or employees resulting from their involvement in any and all proceedings or actions taken by a Participating Agency in connection with the any Covered Action, as defined in paragraph 2 of this Agreement. The Conservancy's duty to defend, indemnify, and hold harmless each Participating Agency shall include any claim for attorney's fees, costs of court, or expenses of litigation claimed by or awarded to any third-party in the Covered Action.

B. The Participating Agency will promptly notify Conservancy of any such claim, action, or proceeding which comes to the agency's attention.

C. Through legal counsel, Conservancy shall keep the defendant Participating Agency informed of the status of litigation, and at the option of the defendant Participating Agency, shall periodically consult with respect to the litigation. At the option of the defendant Participating Agency, the attorneys for the Conservancy and the Participating Agency's attorneys will jointly determine litigation strategy in any claim, action, or proceeding. At the option of the defendant Participating Agency and at no additional cost to the Conservancy, the defendant Participating Agency's attorneys will participate with the Conservancy's attorneys in any portion of the claim, action, or proceeding, including reviewing pleadings prior to filing, and participation in settlement discussions, mediation, and settlement conferences.

D. The Conservancy and each defendant Participating Agency will cooperate to negotiate mutually agreeable terms of settlement of any claim, action or proceeding involving a Covered Action. Conservancy shall not be required to pay or perform any settlement of such claim, action, or proceeding unless the settlement is approved in writing by Conservancy or its designees and the Participating Agency shall not be required to pay or perform any settlement of such claim, action, or proceeding unless the settlement is approved in writing by Participating Agency. Each Participating Agency shall retain complete discretion to approve or disapprove any proposed settlement of any claim, action, or proceeding involving a Covered Action. The Participating Agency shall not be required to consent to any settlement of such claim, action, or proceeding that imposes any financial liability upon the Participating Agency unless Conservancy agrees to fully assume, pay, and discharge such liability at no cost to the Participating Agency, and provides the Participating Agency with adequate security to ensure that such liability will be fully paid and discharged by the Conservancy. In the event that a Participating Agency and the Conservancy are unable to agree upon the terms and conditions of a settlement, a Participating Agency shall have the option to settle the Covered Action on terms within its sole discretion, however, the Conservancy shall not be required to pay any sums as part of the settlement.

E. The Parties shall cooperate with each other. A Participating Agency subject to a Covered Action and this Agreement shall, at no expense to the Conservancy, provide staff other than legal staff as reasonably necessary to respond to the litigation.

F. A Participating Agency may, at its sole discretion and its sole expense, elect to participate in the defense of any Covered Action.

G. The Conservancy may elect to provide defense of matters not defined as a Covered Action which are filed in conjunction with a Covered Action. The Conservancy shall promptly notify a Participating Agency, in writing, of any limitation of coverage under this Agreement.

H. These defense and indemnity provisions shall constitute the sole and exclusive remedy for any claim that each Participating Agency may have against Conservancy arising out of or related to any claim, action, or proceeding against a Participating Agency or its agents, officers or employees for any Covered Action as defined in paragraph 2.

4. Independent Representation. Nothing in this Agreement shall be construed to affect, constrain, or inhibit the separate and independent representation of each Party by its respective counsel according to what counsel believes to be in that Party's best interests. The Parties recognize each other's right to conduct separate research, investigations and witness interviews, and devise separate legal strategies, without necessarily sharing any such information with any other Party to this Agreement. Nothing contained herein shall be deemed to create an attorney-client relationship between any Party and any attorney that does not represent that Party.

5. No Disqualification of Counsel. The fact that any counsel has executed this Agreement on behalf of a Party shall not be used as a basis for seeking to disqualify such counsel from representing that Party in any proceeding, and no counsel who has executed this Agreement on behalf of a Party shall be disqualified from examining or cross-examining any other Party's witnesses who testify in any proceeding because of such counsel's execution of the Agreement. The Parties further agree that each Party's attorneys may examine or cross-examine any other Party's witnesses who testify in any judicial proceeding.

6. Termination.

A. A Party may withdraw from this Agreement at any time by notifying counsel for the other Parties of its withdrawal from the Agreement which will thereupon be terminated as to that Party.

B. This Agreement shall expire upon the formal action of the Conservancy Board to recommend updated implementation fees, which is currently scheduled for review in 2016.

7. Addition of Parties. This Agreement shall be binding upon and as between the Parties executing it. This Agreement shall take effect upon execution by at least two Parties, and shall take effect as to each other Party on the date that Party executes it. The inclusion of the signature blocks is for convenience only, and the execution by all named Parties is not a condition precedent to its legal effectiveness. Upon written consent each Party that has executed this Agreement, parties other than those listed may be permitted to join in this Agreement in the future.

8. Modification. No modification of this Agreement shall be effective unless it is in writing and signed by all Parties that, at the time the modification is made, are signatories to this Agreement,

9. No Waiver. No Party shall have the authority to waive any applicable privilege or doctrine on behalf of any other Party. No waiver of any privilege or doctrine by the conduct of any Party shall be applicable to any other Party.

10. **No Third-Party Beneficiaries.** Unless specifically set forth, nothing in this Agreement is intended to, nor shall it be construed to, create rights inuring to the benefit of third parties.

11. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

12. **Authority.** Each of the undersigned attorneys has been authorized by the Party that he or she represents to execute this Agreement on behalf of that Party .

13. **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts. A scanned or facsimile copy containing an authorized signature shall be deemed an original.

14. **Existing Agreements Remain in Effect.** As to each Party to this Agreement that signed the Joint Defense Agreement dated _____, this Agreement is supplemental to that prior agreement.

IN WITNESS WHEREOF the following counsel hereby execute and deliver this Agreement on behalf of themselves and their respective clients.

CHRIS BEALE
CONSERVANCY COUNSEL

By: Chris Beale
Attorneys for EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

Dated: _____, 2013

SHARON L. ANDERSON

COUNTY COUNSEL

By: Tom Geiger
Assistant County Counsel
Attorneys for CONTRA COSTA COUNTY

Dated: _____, 2013

DAMIEN BROWER

By: Damian Brower
City Attorney
Attorneys for CITY OF BRENTWOOD

Dated: _____, 2013

MALATHY SUBRAMANIAN

By: Malathy Subramanian
City Attorney
Attorneys for CITY OF CLAYTON

Dated: _____, 2013

DEREK COLE

By: Derek Cole
City Attorney
Attorneys for CITY OF OAKLEY

Dated: _____, 2013

RUTHANN ZIEGLER

By: Ruthann Ziegler
City Attorney
Attorneys for CITY OF PITTSBURG

Dated: _____, 2013

JOINT DEFENSE AGREEMENT

This Joint Defense Agreement (“Agreement”) is entered into by and among County of Contra Costa, a political subdivision of the State of California (“County”), and the cities of Brentwood (“Brentwood”), Clayton (“Clayton”), Oakley (“Oakley”), Pittsburg (“Pittsburg”), each a municipal corporation, and the East Contra Costa County Habitat Conservancy (“Conservancy”), by and through their undersigned counsel, including all employees, agents, representatives, legal assistants, staff, and agents of such counsel (collectively, the “Parties,” and each a “Party”). This Agreement is dated July 22, 2013 for the convenience of the Parties. The Agreement takes effect upon execution as provided for in Paragraph 10.

RECITALS

- A. In 2007, the Cities and County formed a joint powers authority (the Conservancy) for purposes of implementing the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (“Plan”) as authorized under state and federal law.
- B. In 2007, the Cities and County adopted Plan implementation fees pursuant to the Plan, and
- C. The Conservancy is undertaking an evaluation of existing Plan implementation fees and Conservancy expenditures, and
- D. Interested parties have submitted written and oral comments to the Conservancy and City of Pittsburg which assert legal error with respect to the existing Plan and fees, the proposed fee changes, and the required periodic review of habitat fees and Conservancy expenses, and
- E. The Parties have concluded that there is a substantial likelihood of (a) continued administrative challenges and (b) litigation to be filed against the Conservancy,

Cities and County collectively and/or individually, challenging the proposed and existing fees, as well as a potential legal challenge to the Plan and the Conservancy's actions and recommendations (individually and together the "Action"). The comments made by these third parties pertain to facts and legal issues common to the Parties, and the Parties, as anticipated potential defendants, acknowledge that they share a common interest in defending against claims made by third parties, and they may wish to make joint efforts in preparation against any defense of anticipated actions or proceedings.

- F. The Parties have informally cooperated as to the overall actions of the Conservancy, the Plan, along with the proposed revisions to existing fees and well as the required periodic accounting. The Parties wish to continue pursuing their separate, but common, interests in connection with the defense of the Plan, existing fees and proposed fees and the periodic accounting while sharing otherwise privileged information relevant to collective interests, and to make clear that, in doing so, they do not waive nor intend to waive any applicable privilege or other protection, whether attorney-client privilege, the work product doctrine, or any other protection available by law.

THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Cooperation in Defense in Any Future Action. The Parties shall cooperate in any Action by and through their respective attorneys, and shall be subject to the terms of this Agreement.

2. Payment of Legal Fees and Litigation Expenses. It is the Parties' intent to negotiate a supplemental agreement addressing legal fees, expenses and indemnity.

3. Defense Materials. The Parties shall not disclose confidential materials prepared in response to the Action (the “Defense Materials”), or the contents or existence thereof, to anyone not a party to this agreement (except for their employees, agents, investigators, and experts retained in connection with the Action) without first obtaining the written consent of counsel for each of the non-disclosing Party. All work performed by any of the Parties or their counsel, all Defense Materials, and all communications between or among any of the Parties, relating in any way to the defense of the Action, shall be confidential and protected by the attorney-client privilege, the work product doctrine, and any other applicable protection as recognized in cases such as *United States v. McParlin*, 595 F.2d 1321 (7th Cir.), *cert. denied*, 444 U.S. 833 (1979); *Hyundee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964), *Oxy Resources California LLC v. The Superior Court of Solano County* (2004) 115 Cal.App.4th 874, and *California Oak Foundation v. County of Tehama* (2009) 174 Cal.App. 4th 1217. Reference to specific cases is not meant to limit the protection provided by the attorney-client privilege, the work product doctrine, and any other applicable protection. The Parties intend to preserve, to the maximum extent permitted by law, the confidentiality and privileged nature of any information they share as part of the joint defense group which is the subject of this Agreement. At the conclusion of the Action, all documents and other materials disclosed pursuant to this Agreement shall be immediately returned to the counsel who originally disclosed them.

4. Defense Communications. The Parties understand that all prior communications between or among any of them relating to the Action have been and were intended to be confidential and privileged, that such communications were made in the course of the ongoing common enterprise of preparing for and defending the Action, were intended to further that

enterprise, and are subject to and governed by the terms and conditions set forth in this Agreement. All communications between or among the Parties relating to the Action hereafter made are intended to be confidential and privileged and are subject to this Agreement. Except as otherwise provided in this Agreement, all information obtained pursuant to this Agreement, and all information derived therefrom, may be used for no purpose other than preparation in connection with and in furtherance of effective representation of the Parties in any Action and any related proceedings.

5. Privilege. Disclosure of otherwise privileged or protected information by any of the Parties' counsel to a client or to another Parties' counsel shall not operate as, nor is intended to operate as, a waiver of any applicable privilege or protection, including but not limited to the attorney-client privilege, the work product privilege, or the joint defense or prosecution privilege. All persons permitted access to or who receive copies of Defense Materials shall be advised that the Defense Materials are privileged and subject to this Agreement.

6. Non-Disclosure.

A. Confidentiality of Defense Materials. If any person or entity requests or demands, by discovery request, subpoena, or otherwise, any Defense Materials from any Party, counsel for the party served with the request or subpoena will immediately notify other counsel to this Agreement and each counsel so notified shall be permitted to take all steps he or she deems necessary and appropriate to assert all applicable rights, privileges and immunities with respect to such Defense Materials, including the right to intervene and be heard in any judicial proceeding relating to the disclosure.

B. Exception to Confidentiality. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge that each is a public agency that is subject to

the California Public Records Act, and the County is further subject to the provisions of its Better Government Ordinance, Division 25 of the County Ordinance Code. The Parties agree that, if the County is required by State or Federal law, the Better Government Ordinance, or court order to disclose this Agreement or any other public records, it may make that disclosure without violating any provision of this Agreement. Similarly, each City and the Conservancy shall have the right to disclose this Agreement or any other public records pursuant to the California Public Records Act, other State or Federal law and local ordinance, if applicable and such disclosure shall not be deemed a violation of this Agreement.. Each Party shall endeavor to provide each Party prior notice before making any such disclosure.

7. Independent Representation. Nothing in this Agreement shall be construed to affect, constrain, or inhibit the separate and independent representation of each client by his, her or its respective counsel according to what counsel believes to be in his or her client's best interests. The Parties recognize each other's right to conduct separate research, investigations and witness interviews, and devise separate legal strategies, without necessarily sharing any such information with any other Party to this Agreement. Nothing in this Agreement shall obligate any signatory to share or communicate any Defense Materials with any other Party. Nothing contained herein shall be deemed to create an attorney-client relationship between any counsel and anyone other than the clients of that counsel.

8. No Disqualification of Counsel. The fact that any counsel has entered into this Agreement shall not be used as a basis for seeking to disqualify such counsel from representing any Party in this proceeding, and no counsel who has entered into this Agreement shall be disqualified from examining or cross-examining any Party who testifies in any proceeding because of such counsel's participation in this Agreement. The Parties further agree that counsel to this

Agreement may examine or cross-examine any Party who testifies in any judicial proceeding and may use any Defense Materials contributed by his or her client hereunder.

9. Termination. A Party may withdraw from this Agreement at any time by notifying counsel for the other Parties of his or her withdrawal from the Agreement which will thereupon be terminated as to that Party; provided, however, that such termination shall not affect or impair the obligations of confidentiality with respect to Defense Materials previously furnished pursuant to this Agreement, or the other promises of confidentiality set forth herein. All Defense Materials produced by any Party to the withdrawing Party shall be promptly returned to the Party that produced such Defense Materials.

10. Addition of Parties. This Agreement shall be binding upon and as between the parties executing it. This agreement shall take effect upon execution by at least two Parties. The inclusion of the signature blocks is for convenience only, and the execution by all named parties is not a condition precedent to its legal effectiveness. Upon written consent of counsel for each Party that has executed this Agreement, other counsel and their respective clients other than those listed may be permitted to join this Agreement in the future.

11. Modification. No modification of this Agreement shall be effective unless it is in writing and signed by all Parties.

12. No Waiver. No counsel shall have the authority to waive any applicable privilege or doctrine on behalf of any Party, other than his or her own client. No waiver of any privilege or doctrine by the conduct of any attorney or client shall be applicable to any Party, other than his or her own client.

13. Substitution of Counsel. If any Party retains new counsel, that Party's new counsel shall be required to execute a copy of this Agreement in order for the Agreement to remain

effective for that Party.

14. Governing Law. This Agreement shall be governed by the laws of the State of California.

15. Authority. The undersigned have been authorized by their clients to execute this Agreement on behalf of those clients.

16. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts. A scanned or facsimile copy containing an authorized signature shall be deemed an original.

IN WITNESS WHEREOF the following counsel hereby execute and deliver this Agreement on behalf of themselves and their respective clients.

J. CHRISTOPHER BEALE
CONSERVANCY COUNSEL

By: J. Christopher Beale
Attorneys for EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

Dated: _____, 2013

SHARON L. ANDERSON
COUNTY COUNSEL

By: Tom Geiger
Supervising Deputy County Counsel
Attorneys for CONTRA COSTA COUNTY

Dated: _____, 2013

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DAMIEN BROWER

By: Damien Brower
City Attorney
Attorneys for CITY OF BRENTWOOD

Dated: _____, 2013

MALATHY SUBRAMANIAN

By: Malathy Subramanian
City Attorney
Attorneys for CITY OF CLAYTON

Dated: _____, 2013

DEREK COLE

By: Derek Cole
City Attorney
Attorneys for CITY OF OAKLEY

Dated: _____, 2013

RUTHANN ZIEGLER

By: Ruthann Ziegler
City Attorney
Attorneys for CITY OF PITTSBURG

Dated: _____, 2013

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 22, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Roddy Ranch Property Acquisition

RECOMMENDATION

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

DISCUSSION

Item a) Overview of Property and Potential Acquisition:

The Roddy Ranch property (“Property”) totals 1,885.16 acres and is located near Deer Valley Road and Chadbourne Road in Antioch. Various photos and maps showing the Property and location are provided in the attached Pre-Acquisition Assessment.

EBRPD and the Seller (Roddy Group LLC) have reached agreement on the purchase of the Property. EBRPD commissioned an appraisal of the Property which was completed September 12, 2012. The fair market value of the Property is \$14,245,000, and this amount is also the purchase price.

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

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: August 22, 2013 APPROVED AS RECOMMENDED: ____
OTHER _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Proposed Funding Plan: The proposed funding plan for the acquisition of the Property is provided in Table 1 below.

Table 1. Proposed Funding Plan for Purchase of Property

Source	Amount	% of Total
Federal Section 6 HCP Land Acquisition Grants	\$4,841,875	34%
State WCB Prop. 84 Grant	\$4,841,875	34%
EBRPD Bond Funds	\$3,561,250	25%
Gordon and Betty Moore Foundation Grant	\$1,000,000	7%
Total	\$14,245,000	100%

The Federal Section 6 funds necessary to implement the Proposed Funding Plan are available through previously approved grant awards to the state for implementation of the ECCC HCP/NCCP and the Property is an eligible property under these approved awards. A subgrant agreement with WCB is necessary to expend the federal funds (see additional information on necessary agreements below). The Proposition 84 funds necessary to implement the Proposed Funding Plan have already been appropriated by the Legislature to be available to Delta County NCCPs, but a grant agreement with WCB is necessary to expend the funds. EBRPD would provide its contribution through Measure WW Bond Funds (Measure WW was approved by the voters in 2008). The Gordon and Betty Moore Foundation (GBMF), a contributor to prior HCP/NCCP acquisitions, is in conversation with the Conservancy about a possible grant but there is no formal approval at this time. If this grant cannot be secured, staff is seeking advanced authorization to amend this Proposed Funding Plan to cover the \$1 million deficit from one of the other three funding sources identified above. No Conservancy funds would be contributed to the purchase, even if the \$1 million grant from the GBMF is not obtained,

Staff recommends the proposed funding plan because:

- The Funding Plan should rely most on those funding sources that are nearest to expiring or otherwise being lost. \$11.9 million in currently unspent Section 6 grant funds are scheduled to expire in 2014. Proposition 84 grant funds are distributed on a first-come-first-serve basis. The Funding Plan relies most heavily on these two sources.
- Opportunities to attract additional outside funding, such as foundation funding, should be pursued. This enables the Conservancy to leverage its grant funds. The Funding Plan proposes to request \$1 million from GBMF.
- The Conservancy’s direct contribution is \$0.

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

The Roddy Ranch Property (Property) is one of the most critical acquisitions for conservation in the entire inventory area and for the success of the HCP/NCCP. The Property

supports a mosaic of habitat types including alkali grassland, alkali wetland, chaparral, grassland, oak savanna, oak woodland, orchard, pond, seasonal wetland, and wetland. The acquisition would protect a critical piece of the wildlife corridor connecting Black Diamond Mines Regional Preserve to Marsh Creek State Park, Round Valley Regional Preserve and Los Vaqueros Reservoir watershed lands.

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

Within Zone 2, specific conservation targets exist for land cover and species habitat. Acquisition of the Property would contribute to annual grassland requirements in subzone 2f (432.30 acres, 43% of requirement), subzone 2h (272.71 acres, 45% of requirement), subzone 2e (376 acre, 47% of requirement), subzone 2e, 2f, and 2h combined (1,081 acres, 45% of requirement), and Preserve-wide (1,183.14 acres, 7% of requirement) (please see the next paragraph for an explanation of the subzone 2e credit). The Property also contributes to several Zone 2 requirements— 16% of the estimated minimum requirement, 12% of the estimated maximum requirement, and 24% of the Stay-Ahead Measurement Method #2. The presence of alkali grassland (69.28 acres), oak woodland (507.49 acres), chaparral (68.02 acres), oak savanna (20.97 acres), alkali wetland (8.35 acres), seasonal wetland (1.32 acres), wetland (0.28 acres), pond (0.65 acres), and stream (38,443.55 feet) would also contribute to Preserve-wide acquisition requirements. The Property provides suitable habitat for a variety of covered wildlife species including San Joaquin kit fox, California red-legged frog, California tiger salamander, golden eagle, western burrowing owl, Swainson's hawk, Alameda whipsnake, silvery legless lizard, western pond turtle and covered fairy shrimp species. If the Property is acquired plant surveys will be implemented to detect the presence of covered plant species for which suitable habitat is present—e.g., big tarplant, round-leaved filaree, Diablo manzanita, and Brewer's dwarf flax. The Property is known to support several special-status, non-covered species, such as San Joaquin pocket mouse, American badger, California fairy shrimp, numerous bat and migratory species, and plant species associated with grassland and other habitats.

Because of the importance of this site to achieve the HCP/NCCP biological goals and objectives, the Wildlife Agencies have authorized credit of 376 acres towards subzone 2e from subzone 2g and lands not associated with a subzone, as further explained below. The approximately 158 acres of Roddy Ranch in subzone 2g were not designated high-priority in the HCP/NCCP due to the anticipated challenges with acquiring the land for conservation. However, as indicated in the Plan, lands in 2g have a very high biological value. In addition, approximately 889 acres of Roddy Ranch are not in a subzone at all because these portions

are already partially protected through a dedication of development rights related to approval of the golf course. Based on land cover types present and strategic importance as a wildlife corridor, all of these lands not in a high priority area are comparable to conservation land in subzone 2e, a high priority subzone located southeast of Roddy Ranch. A portion of subzone 2e was recently acquired by the Contra Costa Water District for mitigation. The HCP/NCCP¹ provides guidance for redirecting HCP/NCCP resources to other objectives in the event that conservation required under the HCP/NCCP is performed by others not associated with the HCP/NCCP. Pursuant to this protocol, resources that would have been spent to acquire an area conserved by others are shifted to other areas that meet the conservation objectives of the HCP/NCCP. Based on relative per acre-costs, the funding proposed to be spent on non-high priority lands in Roddy Ranch is equivalent to the cost of 376 acres already conserved in Subzone 2e. As such, the Wildlife Agencies have approved crediting non-high priority portions of the Roddy Ranch acquisition towards 376 acres of subzone 2e and Stay Ahead Measurement Method #2, specific to Zone 2 (see joint letter dated August 9, 2013 from the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, attached).

Table 2. Land Cover Types on Property

Land Cover Type (acres)	Roddy Ranch	HCP Land Acquisition Requirements (acres)	Percent of Land Acquisition Requirements
Alkali grassland	69.28	1,250	5.5%
Annual grassland	1,183.14	16,500	7.2%
Chaparral	68.02	550	12.4%
Oak woodland	507.49	400	126.9%
Oak savanna	20.97	500	4.2%
Alkali wetland	8.35	93	9.0%
Pond	3.12	16	19.5%
Seasonal wetland	1.32	168	0.8%
Wetland	0.28	75	0.4%
Orchard	0.1	N/A	
Turf	0.03	N/A	
Urban	0.36	N/A	
Unclassified Stream (feet)	38,443.55	varies by stream type	TBD

The Property offers substantial recreational benefits. Acquisition of the Property will support a key goal of EBRPD’s Master Plan: creating a park in Deer Valley. Acquisition of the Property would enable a significant expansion of the regional trail network and support a regional trail connection between Black Diamonds Mines Regional Preserve and Round Valley Regional Preserve. The Property includes two ridges—one between Horse Valley and Deer Valley and the other separating Deer Valley and Briones Valley-- with elevations ranging from 250 feet to 1,020 feet. The Property supports outstanding scenery with spectacular views of Mount Diablo, the surrounding foothills, and the Delta.

¹ Conservation Measure 1.1 in Chapter 5 and Section 8.6.2 in Chapter 8 of the HCP/NCCP

Because this acquisition would help achieve the HCP/NCCP land acquisition requirements for alkali grassland, annual grassland, chaparral, oak woodland, oak savanna, alkali wetland, pond, seasonal wetland and streams; help achieve the specific HCP/NCCP requirements for Subzones 2e, 2f and 2h, Stay-Ahead Measurement Method #2 and Subzone 2; provide suitable habitat for several covered species; is adjacent to a site known to support several covered plant species; and protects an essential component of the most critical habitat linkage in the inventory area, staff finds that acquisition of the Property will substantially help the Conservancy to achieve the conservation goals of the HCP/NCCP.

Deadline: The transaction is required to close in July 2014.

Conservancy costs and funding sources: The Conservancy's total out-of-pocket contribution to the acquisition would be \$0. The Conservancy would arrange for its grant funds to cover \$10,683,750.

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

Agreements: The Funding Agreement with EBRPD, the Subgrant Agreement(s)² with WCB for conveyance of federal funds and the Grant Agreement with WCB for conveyance of state funds would follow the general form shown in the attached templates, with funding amounts matching the Funding Plan described above. To receive GBMF funds (if awarded) a grant agreement with GBMF would need to be executed. While no template is available at this time, the GBMF agreement would be in the general form of the previously executed GBMF grant agreement for Souza 3 (attached).

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

- The Property has a demonstrated willing seller. Land acquisition under the HCP/NCCP is on a willing seller basis and must seize opportunities when presented.
- Acquisition of the Property protects an essential component of the most critical habitat linkage in the inventory area.
- The Property is located in two high priority acquisition sub-zones and its preservation would help the Conservancy meet a number of the more challenging land acquisition requirements of the HCP/NCCP including requirements for preservation of grasslands, oak woodland, chaparral/scrub, streams, and land acquisition and stay ahead requirements for Zone 2, the highest priority zone in the HCP/NCCP.
- The Property is located in an area eligible for funding from the Conservancy's approved federal Section 6 grants and is also eligible for WCB funding. The Property can be acquired to meet the goals of the HCP/NCCP without expenditure of the Conservancy's own funds.
- The HCP/NCCP conservation requirements have a time element and all grant funds either have a deadline for expenditure or are available on a first-come-first-serve basis. The Conservancy shouldn't rush into acquisitions or choose speed over quality, but when

² WCB may require a separate subgrant agreement for each federal grant award used. Conservancy staff anticipates relying on funding from the 2009 and 2010 federal grant awards.

presented with opportunities to acquire lands that contribute HCP/NCCP conservation requirements, staff believes it is prudent for the Conservancy to act affirmatively.

Attachments:

- Pre-Acquisition Assessment for Roddy Ranch
- Letter of support dated 8-9-13 for the proposed Roddy Ranch purchase and approval of reallocation of subzone credits from the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife
- Templates of EBRPD Funding Agreement, WCB Subgrant Agreement (federal), WCB Grant Agreement (state) and GBMF Agreement (the agreement for Souza 3 is included).



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Template prepared by the
ECCC Habitat Conservancy

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

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

SITE IDENTIFICATION

Site Name: Roddy Ranch

Site Address/location: Deer Valley Road Chadbourne Road, Antioch, CA 94531 and 94413

Property APN(s) #: 007-010-039, -040, 057-060-022, 057-070-003, -004, -005, -013, -014, 075-190-010, -012, -013, 078-050-009 & -010

Size of Parcel(s): 1,885.16 acres

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

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

Figures: The following figures are attached as Appendix B.

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

LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

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

The Roddy Ranch Property (Property) is one of the most critical acquisitions for conservation in the entire inventory area and for the success of the HCP/NCCP. The Property supports a mosaic of habitat types including alkali grassland, alkali wetland, chaparral, grassland, oak savanna, oak woodland, orchard, pond, seasonal wetland, and wetland. The acquisition would protect a critical piece of the wildlife corridor connecting Black Diamond Mines Regional Preserve to Marsh Creek State Park, Round Valley Regional Preserve and Los Vaqueros Reservoir watershed lands.

Located in the center of the inventory area, the Property is neighbored by private grazing lands to the south, by private grazing lands and Black Diamond Mines Regional Preserve to the west, by undeveloped lands within the City of Antioch to the north, by undeveloped lands, CCWD mitigation lands and the City of Brentwood to the east.

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

Within Zone 2, specific conservation targets exist for land cover and species habitat. Acquisition of the Property would contribute to annual grassland requirements in subzone 2f (432.30 acres, 43% of requirement), subzone 2h (272.71 acres, 45% of requirement), subzone 2e (376 acre, 47% of requirement), subzone 2e, 2f, and 2h combined (1,081 acres, 45% of requirement), and Preserve-wide (1,183.14 acres, 7% of requirement) (please see the next paragraph for an explanation of the subzone 2e credit). The Property also contributes to several Zone 2 requirements— 16% of the estimated minimum requirement, 12% of the estimated maximum requirement, and 24% of the Stay-Ahead Measurement Method #2. The presence of alkali grassland (69.28 acres), oak woodland (507.49 acres), chaparral (68.02 acres), oak savanna (20.97 acres), alkali wetland (8.35 acres), seasonal wetland (1.32 acres), wetland (0.28 acres), pond (0.65 acres), and stream (38,443.55 feet) would also contribute to Preserve-wide acquisition requirements. The Property provides suitable habitat for a variety of covered wildlife species including San Joaquin kit fox, California red-legged frog, California tiger salamander, golden eagle, western burrowing owl, Swainson's hawk, Alameda whipsnake, silvery legless lizard, western pond turtle and covered fairy shrimp species. If the Property is acquired plant surveys will be implemented to detect the presence of covered plant species for which suitable habitat is present—e.g., big tarplant, round-leaved filaree, Diablo manzanita, and Brewer's dwarf flax. The Property is known to support several special-status, non-covered species, such as San Joaquin pocket mouse, American badger, California fairy shrimp, numerous bat and migratory species, and plant species associated with grassland and other habitats.

Because of the importance of this site to achieve the HCP/NCCP biological goals and objectives, the Wildlife Agencies have authorized credit of 376 acres towards subzone 2e from subzone 2g and lands not associated with a subzone, as further explained below. The approximately 158 acres of Roddy Ranch in subzone 2g were not designated high-priority in the HCP/NCCP due to the anticipated challenges with acquiring the land for conservation. However, as indicated in the Plan, lands in 2g have a very high biological value. In addition, approximately 889 acres of Roddy Ranch are not in a subzone at all because these portions are already partially protected through a dedication of development rights related to approval of the golf course. Based on land cover types present and strategic importance as a wildlife corridor, all of these lands not in a high priority area are comparable to conservation land in subzone 2e,

a high priority subzone located southeast of Roddy Ranch. A portion of subzone 2e was recently acquired by the Contra Costa Water District for mitigation. The HCP/NCCP¹ provides guidance for redirecting HCP/NCCP resources to other objectives in the event that conservation required under the HCP/NCCP is performed by others not associated with the HCP/NCCP. Pursuant to this protocol, resources that would have been spent to acquire an area conserved by others are shifted to other areas that meet the conservation objectives of the HCP/NCCP. Based on relative per acre-costs, the funding proposed to be spent on non-high priority lands in Roddy Ranch is equivalent to the cost of 376 acres already conserved in Subzone 2e. As such, the Wildlife Agencies have approved crediting non-high priority portions of the Roddy Ranch acquisition towards 376 acres of subzone 2e and Stay Ahead Measurement Method #2, specific to Zone 2 (see joint letter dated August 9, 2013 from the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, attached).

The Property would achieve critical landscape and connectivity goals. Its acquisition would contribute to San Joaquin kit fox movement corridor requirements in subzone 2f (499.05 acres, 50% of requirement) and subzone 2h (314.74 acres, 52% of requirement). The Property also has significant value for conservation of watersheds. Flanked by ridgelines on both sides, the Property contains large portions of two sub-watersheds of the Marsh Creek watershed, Horse Valley and Deer Valley, and therefore contributes to the hydrologic function of the watershed. Deer Creek runs east to west through the Property with multiple tributaries feeding the main stream from the south. Tributaries of Sand Creek run through the northern portion of the Property.

The Property offers substantial recreational benefits. Acquisition of the Property will support a key goal of EBRPD's Master Plan: creating a park in Deer Valley. Acquisition of the Property would enable a significant expansion of the regional trail network and support a regional trail connection between Black Diamonds Mines Regional Preserve and Round Valley Regional Preserve. The Property includes two ridges—one between Horse Valley and Deer Valley and the other separating Deer Valley and Briones Valley-- with elevations ranging from 250 feet to 1,020 feet. The Property supports outstanding scenery with spectacular views of Mount Diablo, the surrounding foothills, and the Delta.

¹ Conservation Measure 1.1 in Chapter 5 and Section 8.6.2 in Chapter 8 of the HCP/NCCP

II. Land Cover Types (Figure 4)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	Area (acres)
Terrestrial Land Cover Types	
alkali grassland	69.28
annual grassland	1,183.14
Chaparral	68.02
oak woodland	507.49
oak savanna	20.97
orchard	0.1
turf	0.03
urban	0.36
Total area of terrestrial land cover	1,848.93
Aquatic Land Cover Types	
alkali wetland	8.35
pond	3.12
seasonal wetland	1.32
wetland	0.28
Total area of aquatic land cover	13.07

III. Streams (Figure 4)

Stream	Length (linear feet)
Total streams in linear feet (stream type classification is pending)	38,444

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc.)	Distance from Site (miles)	General description of development and influence on site.
Urban development	1.5 miles to the north and 1 mile to the east.	Urban development is located approximately 1.5 miles to the north in the City of Antioch and 1 mile to the east in the City of Brentwood. Future development closer to the Property is planned. Close proximity to urban development would favor recreational access to the site. Management considerations such as controlling unwanted and illegal use and access (e.g., off-trail access, homeless encampments, pets), fire risk, invasive species management would need to be considered.
Golf course	Property in-holding	The Roddy Ranch Golf Course is an in-holding within the Property. The in-holding needs to be considered in fire risk management and invasive plant management.
Rural residential development	Property in-holding	Several homes, ranches and an orchard are inholdings within the Property. These inholdings need to be considered in fire risk management and invasive plant management.

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

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

- 1 2 3 4 5 6

Contribution to Acquisition Analysis Zone Requirements

Sub-Zone Requirement	Total Requirement (MUDA acres)	Contribution by this Acquisition (acres)	Percentage of Requirement Met by Acquisition
Acquire annual grassland in subzone 2f	1,000	432.3	43.23%
San Joaquin kit fox movement corridor in subzone 2f	1,000	499.05	49.91%
Land for SJKF movement must include 2 occurrences for big tarplant in subzone 2f	1,000	TBD	TBD
Land for SJKF Movement must include 1 occurrence of round-leaved filaree in subzone 2f	1,000	TBD	TBD
Where possible, land for SJKF and plants, should include alkali soils in subzone 2f	1,000	1.05	0.12%
Acquire annual grassland in subzone 2h	600	272.71	45.45%
Two big occurrences of big tarplant in subzone 2h	--	TBD	TBD
Known occurrence of Mt. Diablo manzanita and Brewer's dwarf flax in subzone 2h	--	No	N/A
San Joaquin kit fox (75%) in subzone 2h	600	314.74	52.46%
Acquire silvery legless habitat, if present in subzone 2h	600	35.2	5.87%
Acquire annual grassland. Combined in subzones 2e ² , 2f, and 2h	2,400	1,081	45.04%
Acquire vernal pool invertebrate suitable habitat, wherever possible in Zone 2	--	Vernal pool invertebrate habitat is present	N/A
Acquire annual grassland in subzone 2e	800	376	47%
Zone 2 estimated minimum requirement	7,500	1,190.76	15.88%
Zone 2 estimated maximum requirement	9,550	1,190.76	12.47%
Zone 2 Alt. Stay-Ahead Measure	4,900	1,190.76	24.30%

² Subzone 2e includes acreages that are within subzone 2g and lands not associated with a subzone in the Roddy Ranch Property, as approved by the wildlife agencies in a letter dated August 9, 2013.

Contribution to Overall Terrestrial Land Cover Acquisition Requirements

Land-Cover Requirement	Total Requirement (acres)	Contribution by this Acquisition (acres)	Percentage of Requirement Met by Acquisition
Preserve-wide Annual Grassland	16,500	1,183.14	7.17%
Preserve-wide Alkali Grassland	1,200	69.28	5.77%
Preserve-wide Chaparral	550	68.02	12.4%
Preserve-wide Oak Savanna	500	20.97	4%
Preserve-wide Oak Woodland	400	507.49	126.9%

Contribution to Overall Estimated Aquatic Acquisition Requirements

Jurisdictional Wetland and Waters Requirement	Total Requirement (acres)	Contribution by this Acquisition (acres)	Percentage of Requirement Met by Acquisition
Preserve-wide alkali wetland	93	11.86	12.75%
Preserve-wide Seasonal wetland (includes unclassified wetland type)	168	1.6	0.95%
Preserve-wide Pond	16	5.43	33.94%
Preserve-wide Perennial stream (feet)	4,224	TBD ³	TBD ¹
Preserve-wide Intermittent stream (feet)	2,112	TBD ¹	TBD ¹
Preserve-wide Ephemeral stream (feet)	26,400	TBD ¹	TBD ¹
Stream type is not determined at this time			

I. Site Conformance with Preserve Design Principles

The following is a subset⁴ of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes (one paragraph) how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

⁴ The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

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

The Property's large size (1,885.16 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use.

The Property links to the Black Diamond Mines Regional Preserve at its northwest corner and Contra Costa Water Districted-owned mitigation properties along the southeast boundary. There are additional protected lands that are contiguous with these areas. The Property serves as an essential acquisition for the protection of the Deer Valley and Horse and Lone Tree Valley San Joaquin kit fox movement routes. The acquisition would establish a protected movement route from Black Diamond Mines Regional Preserve through the Property to the Contra Costa Water Districted-owned mitigation properties (along the southeast boundary), the Preserve System acquisitions of Fan and Fox Ridge, and onto the Cowell Ranch/John Marsh State Historic Park, Round Valley and Morgan Territory Regional Preserves and Los Vaqueros Reservoir watershed lands.

The Property, because of its large size includes buffer land within its boundaries that could minimize indirect effects from urban development.

The Property is a large building block for a planned, protected wildlife corridor in Zone 2. In the short-term, the edge effect of the Property is complicated by its two in-holdings, a golf course and rural residential property; however, if additional property is acquired in this area, the effects of these edges will decrease.

The Property fully represents environmental gradients. It connects to other open space/parks and its terrain is characterized by generally moderate to steeply sloping, interspersed with a series of broad valleys in between well-defined ridges. Elevations along the valley floors range from 250 to 500 feet; the northerly ridge elevations range from about 460 to 860 feet, while the southerly ridge elevations range from approximately 660 to about 1,020 feet.

The Property contributes to the protection of watersheds. Deer Creek runs along the northeast edge of Deer Valley, at the base of the northernmost ridgeline formation. An unnamed tributary to Sand Creek flows seasonally across the northern part of Horse Valley within the subject Property, with its headwaters emanating from the hills in the northwestern area of the Property. There are a number of man-made stock ponds on the Property, some of which are fed by seasonal runoff from Deer Creek.

Needed management is feasible. The site is currently used for cattle grazing and is typical of the large ranches found in Eastern Contra Costa County.

BUILT FEATURES AND SITE CONSTRAINTS

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

The site has been used primarily and historically for agriculture, mainly cattle grazing.

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

Numerous residential and agricultural structures are located in the southwest corner of APN 007-010-039. These include 1,775 sf one-story wood frame residence, 750 sf one-story wood frame residence, 1,440 sf manufactured home, 580 sf residential studio unit, 1,985 sf metal frame equipment storage barn, 1,100 sf wood frame general purpose barn, 1,500 sf wood frame livestock barn, 240 wood frame one-car garage, 320 sf wood frame garage, and horse sheds. Each of the living units described are rented to tenants. Lands on the Property are leased for grazing.

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

Ruderal areas have not been observed on the Property.

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

Perimeter and cross fencing are located on the site, which are typical for large acre ranches. There are four parcel in-holdings that are not part of the Roddy Ranch property acquisition. These in-holdings include a golf course and rural residential development. The in-holdings will present minor management constraints including fire risk management, plant management, and disturbance and noise management. Since the Property is very large, the in-holdings do not present a burden on the management of the Property as a whole.

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

There has been almost no major subdivision activity in the unincorporated area of the County in which the Property is located. Development has been typically limited to minor subdivisions ranging from two to five lots in the general vicinity of the Property. Other adjacent lands consist of rural open space and EBPRD preserves. Within the Property borders, in-holdings including rural residential property and a golf course are separate from the acquisition. Due to the large size of the acquisition Property, the in-holdings do not inhibit the Property as a preserve.

The Black Diamond Mines Regional Preserve, an EBRPD preserve, is connected to the Property at the northwest corner. This preserve offers recreation opportunities including hiking and picnicking. Sixty-five miles of trails traverse areas of grassland, woodland, and forest, and riparian corridors. The preserve supports a substantial wildlife population and several rare animal species. This connection greatly enhances the HCP Preserve system. Included in the protected lands surrounding the Property is land purchased by the Contra Costa Water District as mitigation for the expansion of the Los Vaqueros Reservoir. The mitigation land complements the goals of preservation on the Roddy Ranch Property.

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

Significant populations of invasive plants have not been observed on the Property.

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

No other constraints have been identified.

Appendix A



Photo 1: Aerial view of Roddy Ranch property and regional landmarks.



Photo 2: View west from within Horse Valley. Mount Diablo is visible in the distance on the right side of photo.



Photo 3: View down Deer Valley to the East (a key wildlife movement corridor). Roddy Ranch home inholding shown.

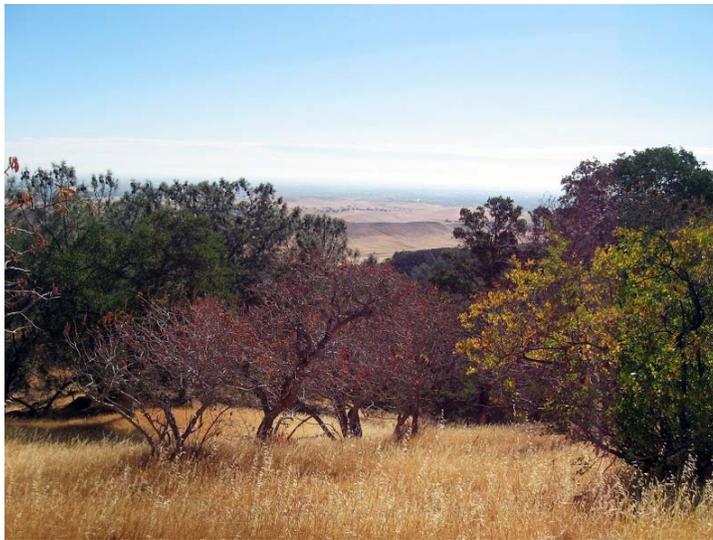


Photo 4: Deer Valley from Ridge.



Photo 5: View East down Briones Valley



Photo 6: View of Mount Diablo from Ridgeline. Briones Valley visible to the left and Deer Valley to the right



Photo 7: Intersection of Chadbourne Rd and Deer Valley Rd



Photo 8: Ridgeline and Deer Valley



Photo 9: Old exploratory mine (habitat element for Townsend's big-eared bat)



Photo 10: Rock outcrop



Photo 11: Mount Diablo from Deer Valley



Photo 12: Pond by Deer Valley Road (looking East)



Photo 13: Wetlands below Pond



Photo 14: Where wetlands enter the Creek



Photo 15: Alkali creek feature



Photo 16: Large pond in Deer Valley (holding water in July 2013)

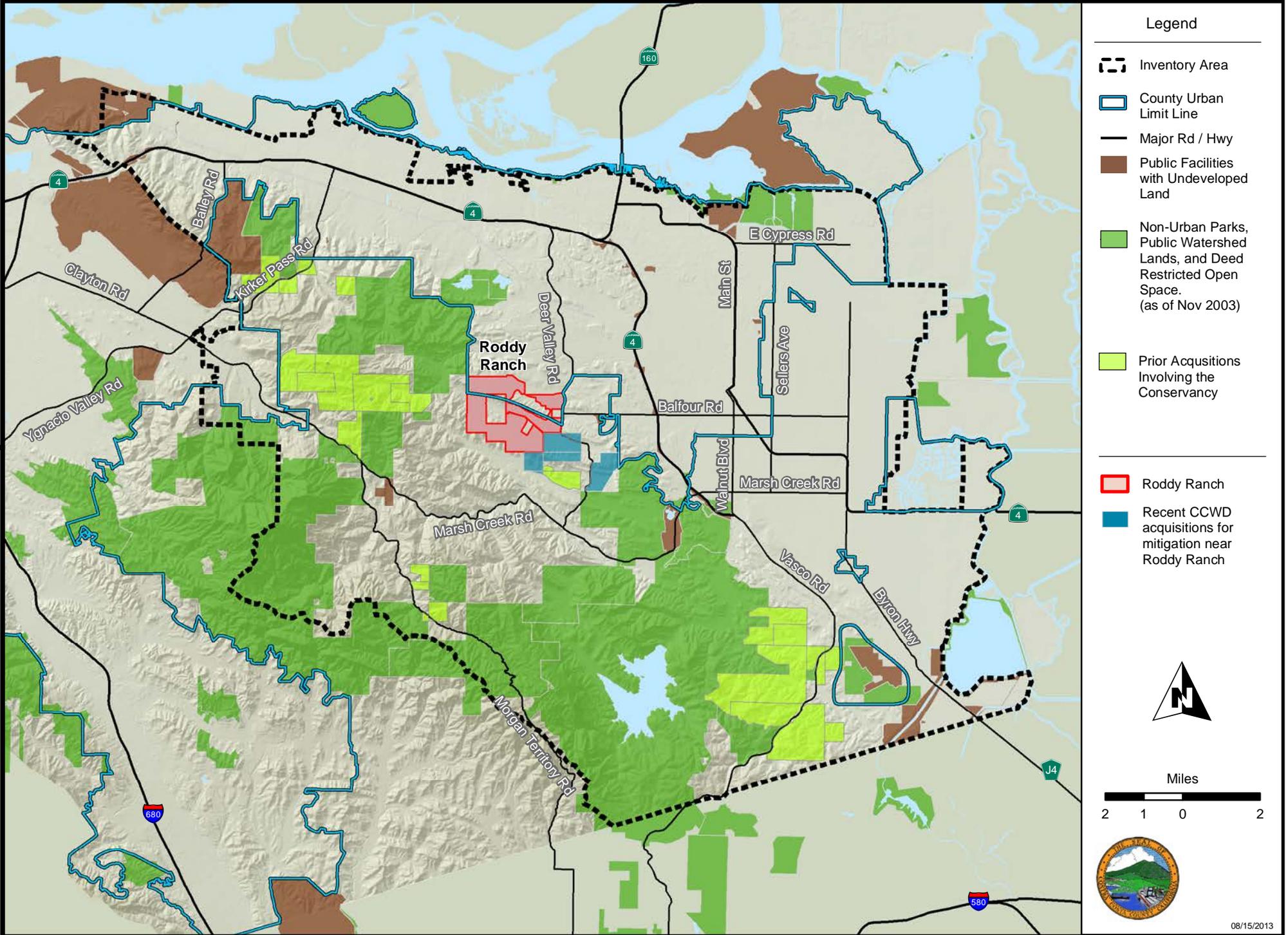


Photo 17: Wetlands above Pond (pictured above)



Photo 18: Deer Valley Creek Tributary

Figure 1: Roddy Ranch Parcels - Regional Context



Legend

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



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

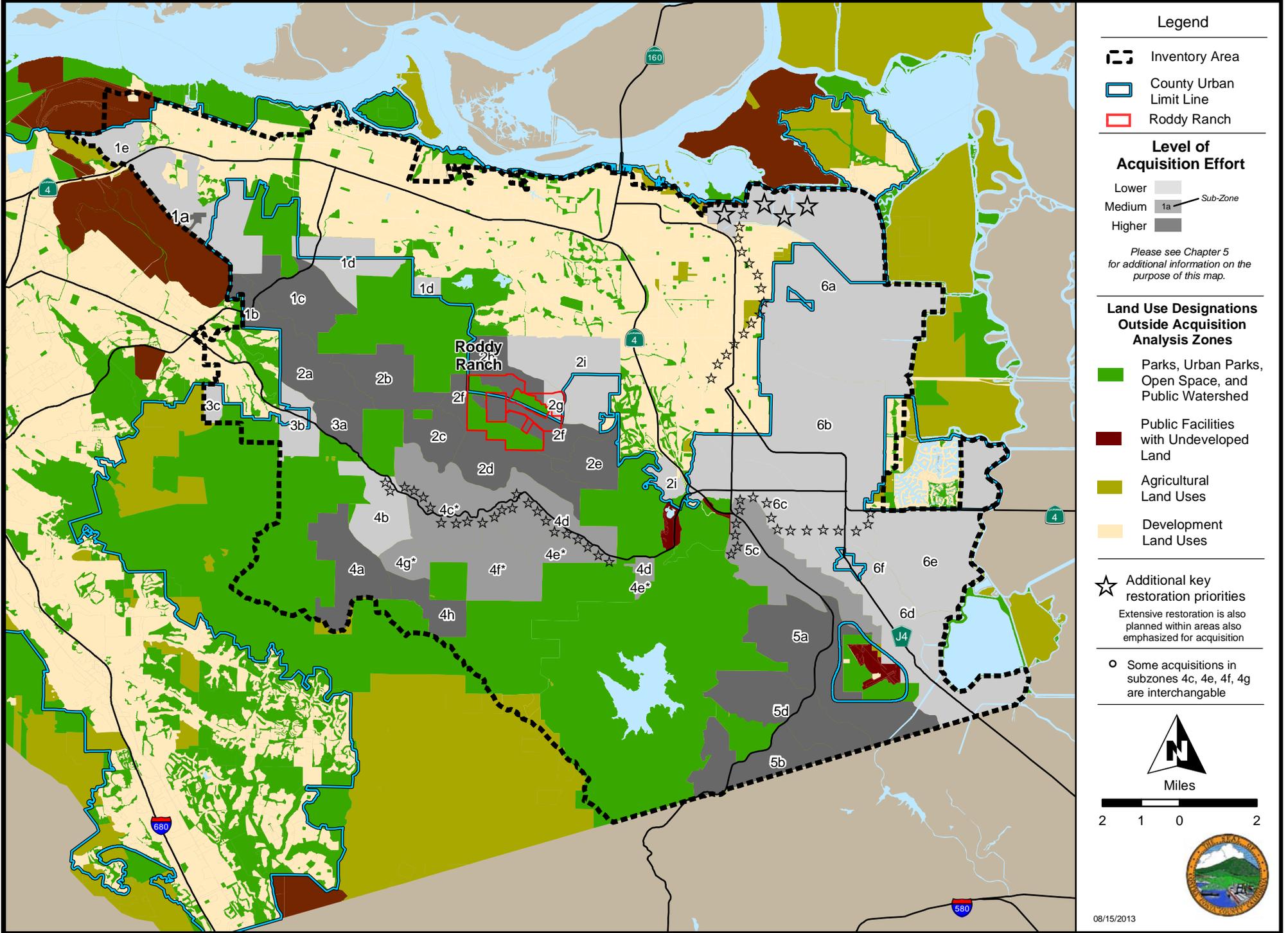
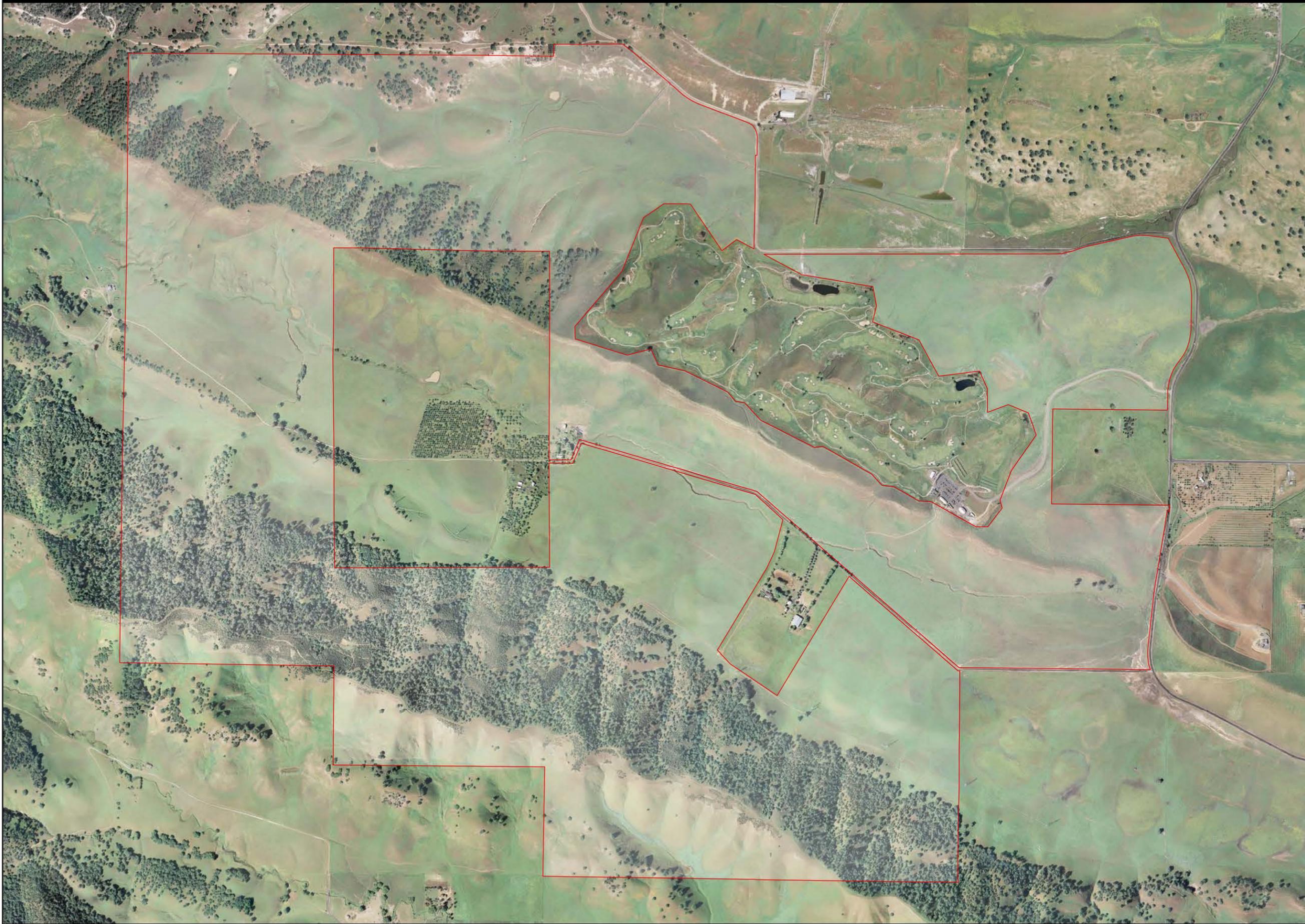


Figure 3: Roddy Ranch parcels - April 2008 Orthophotography



Legend

 Roddy Ranch



Feet



Figure 4: Roddy Ranch parcels - Terrestrial and Aquatic Land Covers Types

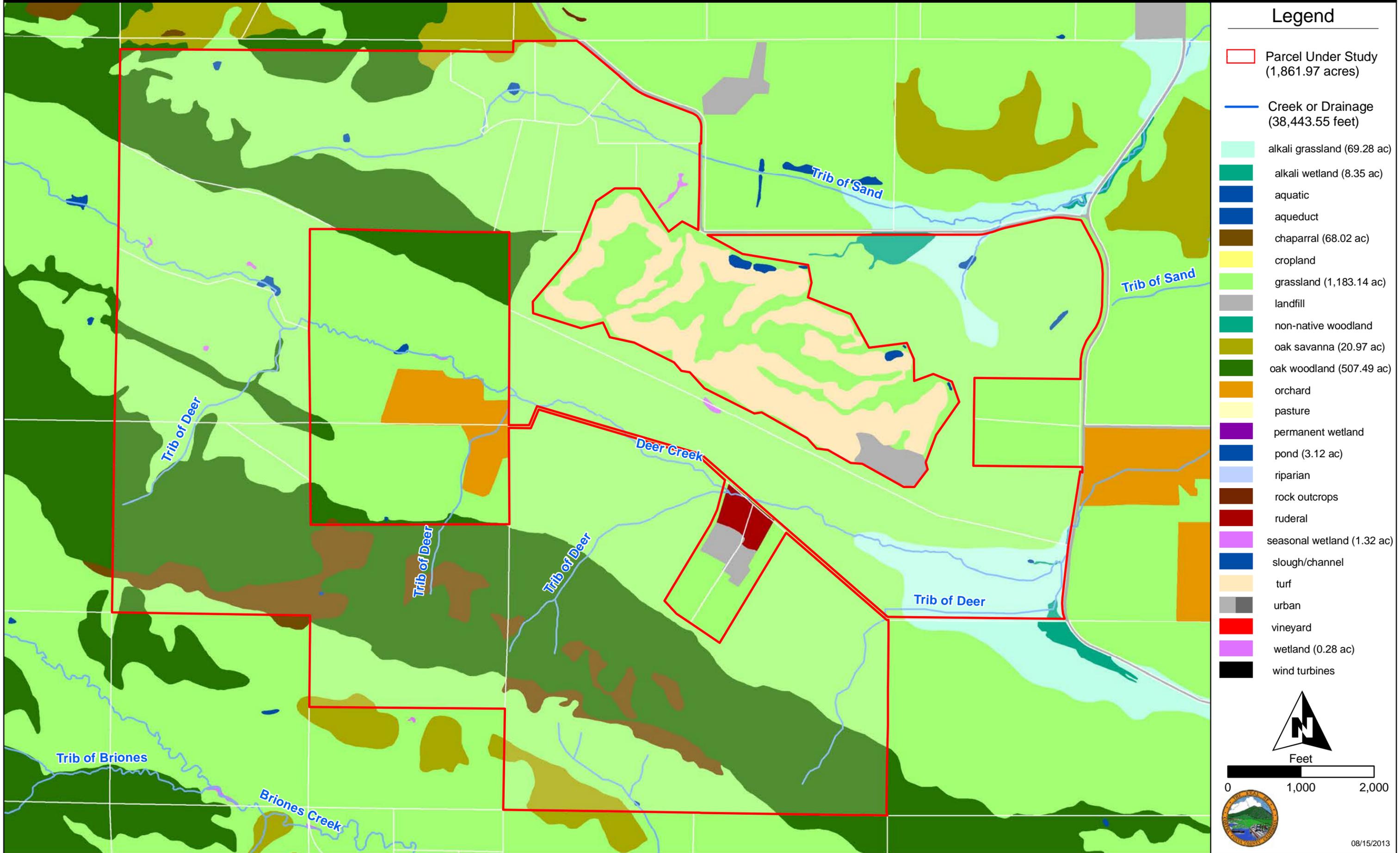
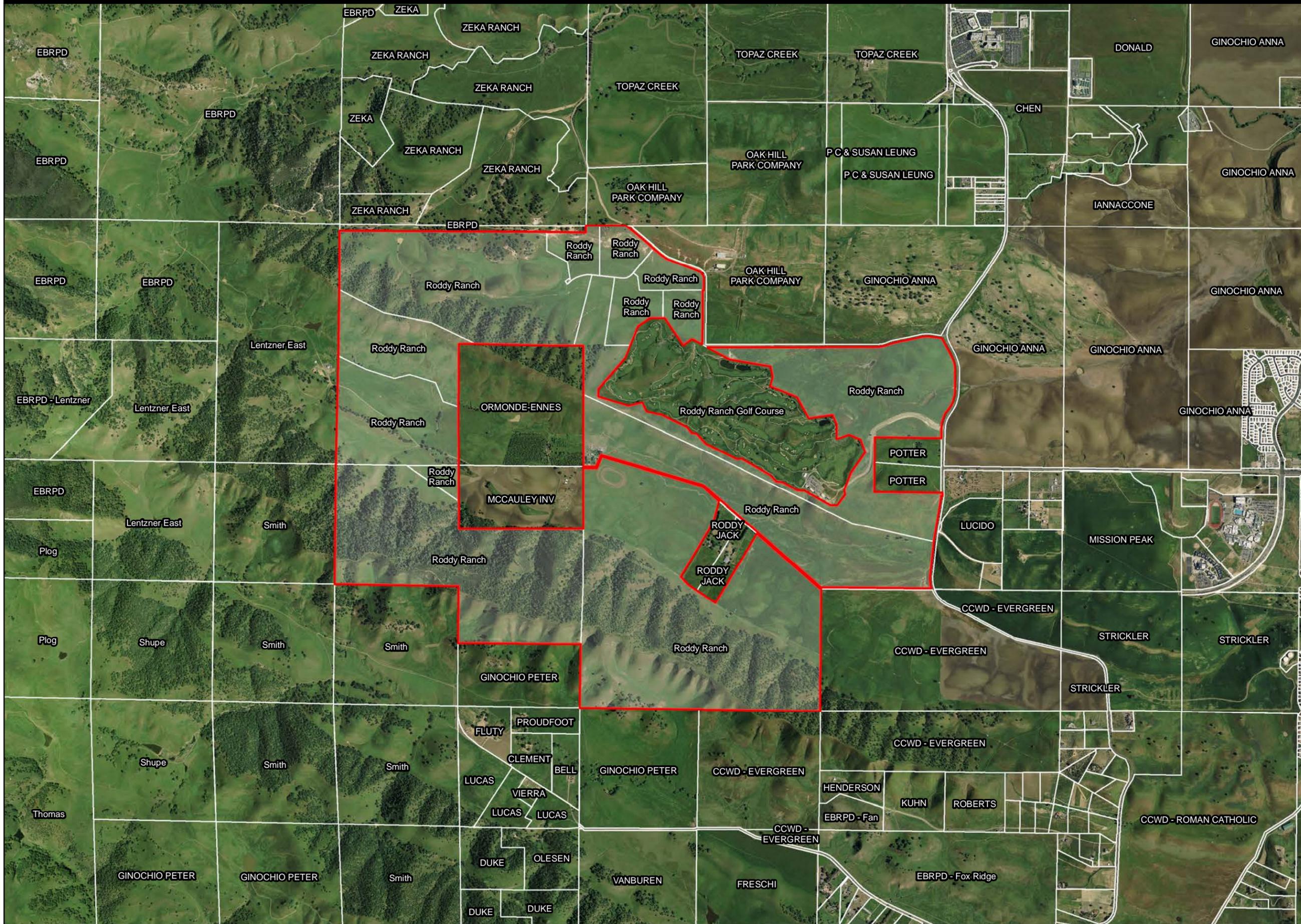
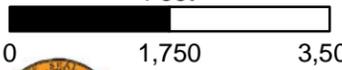


Figure 5: Roddy Ranch parcels - Neighborhood



Legend

 Parcel Under Study


Feet

0 1,750 3,500



08/15/2013

**U.S. Fish and Wildlife Service**

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825
(916) 414-6600

California Department of Fish and Wildlife

Bay Delta Region
7329 Silverado Trail
Napa, California 94558
(707) 944-5500



August 9, 2013

Mr. John Kopchik, Executive Director
East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553

Dear Mr. Kopchik:

Subject: Roddy Ranch Acquisition, Contra Costa County

You have asked for confirmation from the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) (collectively the Wildlife Agencies) that incorporation into the Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) Preserve System of portions of the proposed Roddy Ranch acquisition that are not within a high priority acquisition subzone as described in the East Contra Costa County HCP/NCCP may be credited toward various acreage requirements of the HCP/NCCP. Specifically, you have asked for confirmation that such land acquisition may be credited toward the high priority acquisition subzone 2e.

A portion of subzone 2e was recently acquired by the Contra Costa Water District (CCWD) for mitigation purposes separate from the HCP/NCCP and is therefore no longer available to be conserved by the Conservancy. Conservation Measure 1.1 in Chapter 5 and Section 8.6.2 in Chapter 8 of the HCP/NCCP provide guidance for redirecting HCP/NCCP resources to other objectives in the event that conservation required under the HCP/NCCP is performed by others not associated with the HCP/NCCP. Pursuant to this protocol, resources that would have been spent to acquire an area conserved by others are shifted to other areas that meet the conservation objectives of the HCP/NCCP.

The Wildlife Agencies agree that acquisition of the Roddy Ranch lands would be an appropriate reallocation of funds. The Roddy Ranch lands contain a mixture of grasslands, alkali grasslands and significant seasonal wetlands that provide habitat for numerous species covered by the HCP/NCCP. Importantly, Roddy Ranch is also located in a critical wildlife corridor. The Roddy Ranch property contains portions of two valleys (Deer Valley and Horse Valley) and two prominent ridgelines that provide a critical linkage identified by the HCP/NCCP. These valleys provide essential habitat and movement corridors for the endangered San Joaquin kit fox and connect grasslands at the 6,096-acre Black Diamond Mines Regional Preserve to the extensive grasslands around Byron and south of the County line.

The HCP/NCCP recognizes that land in the Roddy Ranch area has a very high conservation value (see Chapter 5 pages 5-45 to 5-46). However, portions of the Roddy Ranch property are not in a high priority subzone under the HCP/NCCP. Approximately

Mr. John Kopchik
August 9, 2013
Page 2

158 acres of the Roddy Ranch property are in subzone 2g, which was not designated a high priority subzone in the Plan because of challenges anticipated with acquiring land in this area for conservation based on urban limit line boundaries. Approximately 889 acres of Roddy Ranch are not in a subzone at all because the lands are partially protected already, encumbered by a dedication of development rights. However, incorporation of these lands into the HCP/NCCP Preserve System will provide greater preservation assurances and will ensure lands are managed for habitat purposes.

Based on habitat value and strategic importance as a wildlife corridor, both portions of Roddy Ranch not located within a high priority acquisition subzone are comparable to conservation land in subzone 2e, a high priority subzone. Based on per-acre costs, the funding proposed to be spent on non-high priority lands in Roddy Ranch are equivalent to the cost of 376 acres of land already conserved in subzone 2e. Given the many conservation benefits that will result from the acquisition of the non-priority Roddy ranch lands, the Wildlife Agencies agree that the Conservancy may credit purchase of non-high priority portions of the proposed Roddy Ranch acquisition toward 376 acres of subzone 2e. This acreage may also be credited toward Stay Ahead Measurement Method 2 which relates to the portion of high priority lands in Zone 2 that are acquired.

If you have any questions, please contact either Mr. Robert Stanley, Environmental Scientist, at (707) 944-5573; or Mr. Craig Weightman, Environmental Program Manager, at (707) 944-5577, with CDFW. Or you may also contact Ms. Stephanie Jentsch, Fish and Wildlife Biologist, at (916) 414-6496; or Mr. Ryan Olah, Coast Bay/Forest Foothill Division Chief, at (916) 414.6623, with USFWS.

Sincerely,



Cay Goude
Assistant Field Supervisor
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office



Scott Wilson
Acting Regional Manager
California Department of Fish and Wildlife
Bay Delta Region

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

This **FUNDING AGREEMENT** (the “**Agreement**”), dated _____, 2011, is by and between **EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**, a joint exercise of powers authority (“**Conservancy**”), and **EAST BAY REGIONAL PARK DISTRICT**, a California special district (“**District**”). Hereafter, Conservancy and District are collectively referred to herein as the “**Parties.**”

Recitals

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

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

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

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

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

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

Option Payment”); and

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

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

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

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

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

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

3. Conditions Precedent.

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

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

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

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

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

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

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

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

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

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

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

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

(A) Initial Option Payment;

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

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

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

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

(B) Escrow Instructions of Sellers; and

(C) Escrow Instructions of District.

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

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

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

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

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

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

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

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

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

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

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

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

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

Management Plan (“**Management Costs**”). Conservancy and District intend to allocate Management Costs between the Parties consistent with the general principle such that Conservancy will pay for those Management Costs relating to management and monitoring of the Property’s Covered Species and District will pay for those Management Costs relating to public access and public use of the Property. On or before final approval of the Management Plan, Conservancy and District will enter into a written agreement confirming the Parties’ respective obligations to pay Management Costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment. Conservancy shall pay all costs associated with preparation of the Management Plan. Following completion of the Management Plan, District shall use and manage the Property in accordance with the Management Plan.

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

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

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

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

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

8. Monitoring of habitat conditions and of HCP/NCCP covered species; and
9. Adaptive management activities guided by monitoring.

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

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

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

(iv) **Annual Budget and Annual Reporting.** On or before the beginning of each calendar year, District and Conservancy shall jointly prepare an annual written budget setting forth the total amount of Lease Revenues projected for collection by the District during the upcoming year, together with District's proposed expenditures consistent with **Section 4(f)(ii)** above (the "**Annual Budget**"). Within thirty (30) days following the end of each calendar year, District shall deliver to Conservancy an accounting for the immediately preceding calendar year (the "**Annual Accounting**") which shall set forth (A) the total amount of Lease Revenues collected during such calendar year; (B) how such Lease Revenues were actually expended by District during such year, and (C) the total amount of the Endowment, together with the projected amount of the Endowment Goal. The requirements set forth in this section may be modified and expressly superseded in the funding agreement contemplated under **Section 4(e)** above.

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

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

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

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

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

5. Funding Procedure.

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

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

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

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

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

8. Default and Remedies.

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

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

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

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

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

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

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

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

If to District:

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

If to Conservancy:

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

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

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

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

14. Miscellaneous Provisions.

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

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

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

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

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

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

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

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

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

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

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

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special district

Date: _____, 2011

By: _____

Name: Robert E. Doyle

Title: General Manager

CONSERVANCY:

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

Date: _____, 2011

By: _____

Name: John Kopchik

Title: Executive Director

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Form of Deed Restrictions

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

Space Above Line for Recorder's Use Only

GRANT OF DEED RESTRICTIONS

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

RECITALS

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

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

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

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

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

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

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

AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

5. **Conveyances of Property.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To USFWS: United States Fish and Wildlife Service

Attn: _____

To DFG: California Department of Fish and Game

Attn: _____

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

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

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

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

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

DISTRICT:

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

By: _____

Name: Robert E. Doyle

Title: General Manager

EXHIBITS:

Exhibit A -- Legal Description of the Property

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss

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

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

WITNESS my hand and official seal.

Signature: _____

EXHIBIT C

Form of Notice of Unrecorded Agreement

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

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

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

Space above for Recorder's Use

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSERVANCY:

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

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

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special
district

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

ATTACHMENT 1 TO NOTICE OF UNRECORDED AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

CALIFORNIA WILDLIFE CONSERVATION BOARD
SUBGRANT AGREEMENT FOR ACQUISITION OF FEE INTEREST

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

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

Attn: John Kopchik, Executive Director

Phone: (925) 335-1227

Fax: (925) 335-1299

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

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

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

Attn: Nancy Wenninger, Assistant General Manager

Phone: (510) 544-2601

Fax: (510) 612-5441

E-Mail: nwenninger@ebparks.org

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

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

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

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

Notices to be delivered to:

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

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

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

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

1. **BACKGROUND**

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

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

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

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

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

2. **SCOPE OF AGREEMENT**

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

3. **PURPOSES OF SUBGRANT**

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

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

4. **CONDITIONS PRECEDENT TO SUBGRANT**

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

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

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

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

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

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

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

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

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

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

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

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

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

5. DISBURSEMENT PROCEDURE

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

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

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

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

6. SUBGRANTEE'S AND SUCCESSOR SUBGRANTEE'S COVENANTS

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

- a. The Subgrant Funds shall be used as purchase money only, which excludes escrow and title fees and any other fees and costs incurred to accomplish the transaction and the conveyance and acquisition of the Property.
- b. The Property shall be held and used only in a manner that is consistent with this Agreement, including the "Purposes of Subgrant" set forth in Section 3.2.
- c. The Property shall be set aside in perpetuity for the purposes of conservation, including the Purposes of Subgrant.
- d. Subgrantee and Successor Subgrantee shall comply with the terms and conditions of the award of Federal Grant Funds to CDFG, to the extent such terms and conditions are applicable to Subgrantee, Successor Subgrantee, the Subgrant Funds or the Property. Such terms and conditions are contained in the Federal Assistance Requirements.
- e. Subgrantee and Successor Subgrantee shall recognize the cooperative nature of the Acquisition and shall provide credit to WCB, CDFG, USFWS, and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Subgrantee and/or Successor Subgrantee which reference the Acquisition. Subject to the mutual agreement of WCB and Subgrantee regarding text, design and location, Subgrantee shall, or shall cause Successor Subgrantee to, post

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

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

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

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

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

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

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

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

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

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

and/or

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

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

7. **BREACH AND DEFAULT**

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

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

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

8. REMEDIES

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

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

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

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

8.3. Intentionally Left Blank.

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

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

9. NONPROFIT ORGANIZATION SUBGRANTEE

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

10. TERM

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

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

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

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

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

11. LIABILITY, MODIFICATIONS, INTERPRETATION

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

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

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

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

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

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

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

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

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

12. CONDEMNATION

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

13. AUDIT

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

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

14. UNION ORGANIZING

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

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

15. NON-DISCRIMINATION

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

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

16. **DRUG-FREE WORKPLACE REQUIREMENTS**

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

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

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

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

17. EXHIBITS

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

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

Exhibit B – Certification of No Regulatory Requirements

Exhibit C – Commitment to Management Funding

Exhibit D – Assurances and Certifications

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

Exhibit F – WCB’s Logo

Exhibit G – Form of Notice of Unrecorded Agreement to Subgrant

18. AUTHORIZATION

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

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

**STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD**

**SUBGRANTEE
EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY**

By: _____
John P. Donnelly, Executive Director

By: _____
(John Kopchik)

Title: Executive Director

Date: _____

Date: _____

**SUCCESSOR SUBGRANTEE
EAST BAY REGIONAL PARK DISTRICT**

By: _____
(Robert E. Doyle)

TITLE: General Manager

Date: _____

EXHIBIT A
(Legal Description and APNs of Property)

EXHIBIT B

Certificate of No Regulatory Requirement

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

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

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

Dated: _____, 20_____

SUBGRANTEE

East Contra Costa County Habitat Conservancy

By: _____

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

EXHIBIT C

Commitment for Management and Funding

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

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

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

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

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

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

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

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

Dated: _____, 20_____

SUBGRANTEE

East Contra Costa County Habitat Conservancy

By:_____

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By:_____

Print Name: Robert E. Doyle

Title: General Manager

EXHIBIT D
(Assurances and Certifications)

ASSURANCES - CONSTRUCTION PROGRAMS

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

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

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

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

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

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

ASSURANCES - CONSTRUCTION PROGRAMS

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

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

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

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

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

EXHIBIT E

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

EXHIBIT F
(WCB Logo)



EXHIBIT G

(Notice of Unrecorded Grant Agreement)

RECORDING REQUESTED BY:

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

WHEN RECORDED, RETURN TO:

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

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

Space above line for Recorder's use

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conservancy

SUBGRANTEE:

East Contra Costa County Habitat

By: _____

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR SUBGRANTEE:

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

[Notary Acknowledgment]

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

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

Attn: John Kopchik, Executive Director

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

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

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

Attn: Nancy Wenninger, Assistant General Manager

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

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

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

Grant Agreement Number: [Insert Grant Agreement Number]

Notices to be addressed to:

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

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

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

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

1. SCOPE OF AGREEMENT

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

2. PURPOSES OF GRANT

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

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

3. CONDITIONS OF GRANT

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

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

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

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

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

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

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

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

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

4. DISBURSEMENT PROCEDURE

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

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

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

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

5. GRANTEE'S AND SUCCESSOR GRANTEE'S COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and/or

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

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

6. BREACH AND DEFAULT

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

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

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

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

7. REMEDIES

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

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

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

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

8. NONPROFIT ORGANIZATION GRANTEE

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

9. TERM

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

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

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

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

10. LIABILITY; MODIFICATIONS; INTERPRETATION

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

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

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

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

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

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

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

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

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

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

11. CONDEMNATION

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

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

12. AUDIT

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

13. UNION ORGANIZING

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

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

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

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

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

14. NON-DISCRIMINATION

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

15. EXHIBITS

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

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

16. AUTHORIZATION

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

17. NON-AVAILABILITY OF FUNDS.

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

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

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

STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD

GRANTEE:
EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY

By: _____
John P. Donnelly

By: _____
John Kopchik

Title: Executive Director

Title: Executive Director

Date: _____

Date: _____

SUCCESSOR GRANTEE
EAST BAY REGIONAL PARK DISTRICT

By: _____
Robert E. Doyle

TITLE: General Manager

Date: _____

Project Name:

County:

Project ID:

FUNDING CERTIFICATION:

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

Fiscal Officer

Date

Grantee:

Organization name

Mailing Address

City, State Zip

Contact Name

Contact Telephone No.

Contact Facsimile No.

WCB Grant Agreement #: WC-_____

Agreement Term: _____ to

WCB Grant Amount:

Fund Source:

Appropriation Item: Chapter _____, Statutes of _____
Item _____

Expenditure Code:

EXHIBIT A

(Legal Description)

EXHIBIT B

(Resolution)

EXHIBIT C

(WCB Logo)



EXHIBIT D
(Notice of Unrecorded Grant Agreement)

RECORDING REQUESTED BY:

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

WHEN RECORDED, RETURN TO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GRANTEE: EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
John Kopchik

Title: Executive Director

Date: _____

SUCCESSOR GRANTEE: EAST BAY REGIONAL PARK DISTRICT

By: _____
Robert E. Doyle

TITLE: General Manager

Date: _____

EXHIBIT E

Certificate of No Regulatory Requirement

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

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

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

Dated: _____, 20_____

GRANTEE

East Contra Costa County Habitat Conservancy

By: _____

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR GRANTEE

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

EXHIBIT F
Commitment for Management and Funding

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

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

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

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

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

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

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

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

Dated: _____, 20____

GRANTEE

East Contra Costa County Habitat Conservancy

By:_____

Print Name: John Kopchik

Title: Executive Director

SUCCESSOR GRANTEE

East Bay Regional Park District

By:_____

Print Name: Robert E. Doyle

Title: General Manager



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

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

VIA ELECTRONIC MAIL

August 23, 2010

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

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

Dear Mr. Kopchik:

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

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

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

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

1. Payments and Funding Requirements:

- (a) Payment Disbursements: Grant funds will be disbursed according to the schedule in Attachment 2, subject to the conditions of this Grant Agreement. If an escrow account has been opened by the time of the first scheduled payment, the ECCCHA will provide the Foundation with written instructions to transfer the Grant funds directly into the escrow account. If the escrow account has not been opened by the time of the first scheduled payment, the ECCCHA will maintain the Grant funds in a segregated interest-bearing account until such time as an escrow account is open.
- (b) Wire Transfer Funds: Grant funds will be paid by the Foundation in US Dollars via wire transfer. ECCCHC will provide the Foundation with funding instructions from its financial institution, and will advise its financial institution that the Foundation's ordering bank will be The Northern Trust Company. If the Grant funds need to go through an intermediary bank(s), ECCCHC will provide this information to the Foundation in the requisite order, with the receiving bank listed last. ECCCHC will provide all necessary bank codes, account numbers and account names for each institution to Blake Barthold, Accountant, at Blake.Barthold@moore.org, along with the name and telephone number of a contact at your organization who can answer questions regarding the banking information supplied.
- (c) Use of Grant Funds: ECCCHA will use the Grant funds solely for the acquisition of the Souza III Property and research as identified in Attachment 1. In the event that the land acquisition of the Souza III Property does not occur by December 30, 2010, ECCCHA will return all Grant funds, plus any interest earned thereon, to the Foundation by January 15, 2011, unless the Foundation agrees in writing to extend the term of the Grant Agreement to accommodate a later acquisition date. ECCCHC understands that this Grant is not a "gift," and understands and agrees that funds are being granted to ECCCHC to pursue the Purposes outlined in this Grant Agreement.
- (d) Treatment of Interest: Any interest earned on the Grant funds by ECCCHC from the investment of such funds should be used by ECCCHC to cover project-related activities supporting the Purposes of the Grant.
- (e) Right to Curtail or Terminate Grant: The Foundation reserves the right to curtail or terminate the Grant if at any time the Foundation determines that the Grant Purposes or terms and conditions of the Grant Agreement are not being met or are unlikely to be met. The

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

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

2. Reporting and Notifications:

- (a) Grant Reports: ECCCHC will deliver a written report(s) to the Foundation (each a "Grant Report"), according to the schedule in Attachment 2. The Grant Report will contain a detailed narrative report and financial report. Grant Reports will be submitted to the Foundation, by electronic mail where possible, to the attention of Gary Knoblock, Program Officer (gary.knoblock@moore.org) and Grants Administration, (GrantsAdmin@moore.org).
- (b) Narrative Reports: The narrative report should describe what was accomplished by this Grant as of the date of the Grant Report, outlining the activities that were undertaken by ECCCHC, the strategic choices that were made as a result of the Grant, and achievement of Grant Purposes described in Attachment 1. In addition, the narrative report should also include an accounting for grant expenditures, a copy of the final deed and close of escrow documentation. The research results and publishable manuscript will serve as the final narrative report.
- (c) Financial Reports: The financial report should reflect the expenditures of the Grant funds, and any income earned thereon, in accordance with the Budget, as of the end of the reporting period and cumulative across the Grant term in US Dollars. The financial reports should include an analysis of Budget versus actual spending by outcome or output at the level of detail contained in the Budget, and include a narrative explanation of the Budget variances. Total project spending, in addition to Foundation Grant spending, will also be provided. In addition, the financial reports must include proposed Budget revisions for future years, if applicable.
- (d) Grant Report Follow-up: The Foundation may request in-person meetings with ECCCHC to discuss details of the Grant Report, and if any Reports are deemed inadequate in the Foundation's reasonable discretion, the Foundation may require additional supporting documentation or clarifications to the Grant Report prior to release of the next scheduled payment. Upon completion of the Grant, ECCCHC will submit a Final Grant Report according to the schedule in

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

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

- (e) Notification for Collaborative Projects: ECCCHC will notify the Foundation in writing of any substantive issues or concerns that may develop between ECCCHC, other Foundation grantees and/or other ECCCHC partners that have the potential to significantly impair or impact the Purposes, progress or schedule of this Grant.
 - (f) Notification of Change in Key Personnel, and Succession Approval as a Condition to Funding: ECCCHC will notify the Foundation immediately of any change in ECCCHC's executive staff, key Grant staff or consultants responsible for achieving the Grant Purposes. In addition, the Foundation must be notified of any pending changes in the employment or project participation status of John Kopchik, Executive Director. The Foundation reserves the right to terminate the Grant if any of the aforementioned individuals or other key personnel leave the project during the term of the Grant.
 - (g) Close of Escrow: Upon closing escrow, ECCCHA will provide the Foundation with written verification that the acquisition closed, and a copy of the final deed.
3. Grant Modifications: The terms and conditions of this Grant Agreement may not be amended or modified, except as agreed to by the parties in writing. Any change in the Purposes for which Grant funds are spent must be approved in writing by the Foundation before implementation. Moreover, ECCCHC must obtain the prior written approval of the Foundation for any Budget modification that results in a variance to any annual expense category sub-total or annual output or outcome total in the Budget greater than 20 percent, whether or not the requested variance will affect the Grant Purposes. Annual sub-totals refer to the expense categories present in the Budget and may include any or all of the following: Personnel, Consultants & Contractors, Sub-grants, Scholarships & Awards, Other Direct Expenses, and Equipment & Capital Expenditures. In addition, no reallocation of Grant funds may be made to a category of Overhead or Indirect Costs.
4. Maintenance of Financial Records: ECCCHC will maintain its financial books and records in such a fashion that it can provide the Foundation with sufficient detail to substantiate all expenditures related to the Grant. ECCCHC will make such books and records available to the Foundation at reasonable times. ECCCHC will keep copies of all books and records and all

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

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

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

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

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

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

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

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

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

- (c) Pre-approved Attribution Language: ECCCHC may use the following standard language in making attributions for funding without prior approval of the Communications Department. However, all other references to the Foundation in press releases or other Grant publicity will require advance written approval of the Foundation's Communications Department:
- (i) About the Gordon and Betty Moore Foundation:
 "The Gordon and Betty Moore Foundation, established in 2000, seeks to advance environmental conservation and cutting-edge scientific research around the world and improve the quality of life in the San Francisco Bay Area. For more information, visit www.moore.org."
 - (ii) Attribution for full Grant funding:
 "This (research, publication, project, Web site, report, etc.) is funded by the Gordon and Betty Moore Foundation."
 - (iii) Attribution for partial Grant funding:
 "This (research, publication, project, Web site, report, etc.) is funded in part by the Gordon and Betty Moore Foundation."
- (d) Logo: The Foundation encourages the use of its logo in connection with Grant Publicity. Various file formats may be obtained by contacting the Foundation's Communications Department at communications@moore.org or 650-213-3000. Supported uses of the logo include presentation materials, papers, symposia and conference brochures; use of the logo for promotional materials or commercial use (e.g., caps, jackets, mugs, tote bags, etc.) are not permitted. ECCCHC may use the Foundation logo in connection with Pre-Approved Attribution Language without the prior approval of the Communications Department. ECCCHC will obtain the Foundation's advance written approval from the Communications Department for all other uses of its logo.
8. Information and Data Sharing: The parties understand that a material condition of this Grant Agreement is that ECCCHC makes the data, research, knowledge and other information developed with any Grant funds freely

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

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

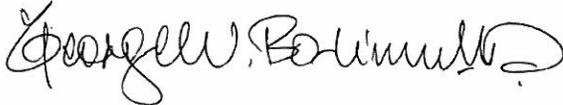
9. Grantee's Tax Exempt Status: By entering into this Grant Agreement, ECCCHC confirms that its tax-exempt status has not been revoked or modified, and agrees to maintain this status during the term of the Grant. ECCCHC will notify the Foundation immediately of any change in ECCCHC's tax-exempt status or its non-private foundation status. ECCCHC has a reasonable basis for determining it will not fail to qualify as a public charity within the meaning of the Code during the term of the Grant.
10. No Promise of Future Funding: ECCCHC acknowledges that the Foundation and its representatives have made no actual or implied promise of funding except for the amounts specified by this Grant Agreement. However, the foregoing is not intended to prohibit the Foundation from providing a future grant to ECCCHC, if the Foundation in its sole discretion determines that a future grant is appropriate.
11. Miscellaneous Provisions: This Grant Agreement supersedes any prior oral or written understandings or communications between the parties and constitutes the entire agreement between the parties with respect to the subject matter. Any dispute arising from or related to this Grant Agreement will be resolved by the laws of and in the State of California.
12. Effective Date: Upon the full execution of this Grant Agreement, the effective date of this Grant Agreement is the date that the Grant was approved, July 15, 2010, notwithstanding the later date of this letter and execution by the parties. Grant funds may not be used to support activities conducted prior to the effective date of the agreement.

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

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

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

Best regards,



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

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

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

AGREED AND ACCEPTED for East Contra Costa County Habitat Conservancy:

By: 
Title: Executive Director
Date: September 17, 2010

ATTACHMENT 1
GRANT OUTCOME PLAN (#2571)

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

Expected Date: 9/30/2010

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

ATTACHMENT 1
GRANT OUTCOME PLAN (#2571)

Outcome 2: Improved scientific understanding of wind turbine impacts on birds and/or bats that will help reduce conflict between wind energy production and conservation of native species.					
Expected Date: 6/30/2012					
<i>Output</i>	<i>Activities / Indicators</i>	<i>Expected Completion Date</i>	<i>Monitor Check (x)</i>	<i>Progress</i>	<i>% Complete / Actual Completion Date</i>
Complete design and implementation of research project designed to result in publication in a peer-reviewed journal.					
1. Finalize the gap analysis (including feasibility assessment) for potential research projects and draft scope of work.	Finalize the gap analysis. Conduct a feasibility analysis of potential research projects. Secure Foundation input and final approval of research project.	10/31/2010			
2. Secure a primary investigator (PI) for research and finalize scope of work with input from PI.	Identify a PI. Update and finalize the scope of work based on input and feedback from the PI.	12/30/2010			
3. Update Foundation.	Update Foundation on finalized research scope of work and PI selection.	12/30/2010			
4. Conduct study.	Implement the scope of work.	4/30/12			
5. Publish results of the research project.	Write up the report. Identify one or more publications for publishing. Submit the report for publication.	9/30/12	x		

ATTACHMENT 2
GRANT PAYMENTS AND REQUIREMENTS PLAN (#2571)

<i>Year</i>	<i>Payment Amount</i>	<i>Projected Payment Date</i>	<i>Financial Rpt Due¹</i>	<i>Narrative Rpt Due</i>	<i>Other Scheduled Activities or Events</i>	<i>Scheduled Meeting Date</i>	<i>Conditions for Payment / Other</i>
2010	\$2,250,000	9/1/10					Foundation receipt of fully signed Grant Agreement
2012			9/30/12	9/30/12			Final Narrative and Financial Grant Reports (The reports should include an accounting for grant expenditures, a copy of the final deed and close of escrow documentation. The research results and publishable manuscript will serve as the final narrative report.)

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

**ATTACHMENT 3
BUDGET (#2571)**

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

Summary by Year			
<i>Year 1</i>	\$2,075,000	\$3,405,400	5,650,400
<i>Year 2</i>	\$175,000	\$10,000	\$185,000
Total	\$2,250,000	\$3,415,400	\$5,650,400

Summary by Expense			
Outcome 1			
<i>Personnel Salaries</i>	\$0	\$0	\$0
<i>Consultant and Contractor Fees</i>	\$0	\$100,000	\$100,000
<i>Sub-Grants</i>	\$0	\$0	\$0
<i>Fee title acquisition</i>	\$2,000,000	\$3,300,400	\$5,300,400
<i>Equipment & Expenditures</i>	\$0	\$0	\$0
<i>Indirect Costs</i>	\$0	\$0	\$0
Outcome 2			
<i>Personnel Salaries</i>	\$0	\$15,000	\$15,000
<i>PI and Other Consultant and Contractor Fees</i>	\$232,000		\$232,000
<i>Equipment, Publication, Travel and Other Direct Expenses</i>	\$18,000	\$0	\$18,000
<i>Indirect Costs</i>	\$0	\$0	\$0
<i>Sub-Grants</i>	\$0	\$0	\$0
Total	\$2,250,000	\$3,415,400	\$5,665,400

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 22, 2013
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement Amendment with the Phillips 66 Pipeline LLC

RECOMMENDATION

AUTHORIZE staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline LLC for the Phillips 66 Pipeline Repair Project, Line 200, Spring 2013

DISCUSSION

At the April 4, 2013 meeting, the Board authorized staff to execute a Participating Special Entity (“PSE”) Agreement with the Phillips 66 Pipeline LLC (“Phillips 66”) for take coverage of the Phillips 66 Pipeline Repair Project, Line 200, Spring 2013 (“Project”). The Project consisted of operational and safety repairs at three repair sites (Site IDs 193,220.16.33; 204,220.12.21; and 216,780.15.92) that are located along the existing Line 200 Mainline trunk pipeline within East Contra Costa County. One of the repairs is located within the Altamont Wind Resources Area, while the two remaining repairs are located in the Marsh Creek Road corridor, one in the Clayton area and one adjacent to Round Valley Regional Preserve. On May 1, 2013, the PSE Agreement was fully executed. Phillips 66 paid all mitigation fees and the contribution to recovery as required in the Agreement, and was issued a Certificate of Inclusion on May 2, 2013.

Shortly after the PSE Agreement was executed, Phillips 66 completed repair at site ID 193,220.16.33 as described in the originally-approved PSR and attempted to complete the repair at site ID 216,780.15.92. The repair at site ID 216,780.15.92, which is the repair site located in the Marsh Creek Road corridor in the Clayton area, resulted in a larger impact area than was anticipated and described in the initially-approved PSR. This larger impact area was the

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>August 22, 2013</u> APPROVED AS RECOMMENDED: _____	
OTHER _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
AYES: _____	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

result of difficulties in locating the pipeline anomaly, owing to pipeline-distance-disparities between the above-ground markers (AGMs) and the pig run data. It was not until the initial excavation was complete that crews were able to discover and rectify the disparity, which increased the impact area from 0.15-acre to 0.95-acre.

On May 3, 2013, the applicant notified the Conservancy and Wildlife Agencies regarding the change in the project footprint resulting from the disparity in the data on the exact repair location and requested take coverage for the additional areas not originally anticipated to be part of the project footprint. Phillips 66 was given authorization to complete the repair with the understanding that they would seek retroactive incidental take coverage to mitigate for the additional impacts. In order to address the changes in the project description and associated impacts and mitigation, the PSE Agreement has to be modified by way of the proposed First Amendment.

The First Amendment reflects the change in the project description, an increase in the development fees (from \$5462.07 to \$22,940.70), an increase in the contribution to recovery (from \$5462.07 to \$14,201.38), and an increase in the cap on administrative fees (from \$5,000 to \$8,500). An Addendum reflecting the modifications to the original Planning Survey Report Application as a result of the First Amendment was prepared and is attached. This Addendum 1.0 will be added to and incorporated within the PSE Agreement.

Attachments:

- **PSE Agreement First Amendment, including:**
 - Main body of amendment
 - Addendum 1.0
 - Main body of Addendum
 - Updated Impact Map and Tables
 - Updated Fee Calculator

FIRST AMENDMENT

TO THE PARTICIPATING SPECIAL ENTITY AGREEMENT OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN/ NATURAL COMMUNITY CONSERVATION PLAN AND GRANTING TAKE AUTHORIZATION

Between

the EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, the Implementing
Entity, and PHILLIPS 66 PIPELINE LLC, a Participating Species Entity

RECITALS

The Participating Special Entity Agreement between the East Contra Costa County Habitat Conservancy (“Conservancy”) and Phillips 66 Pipeline LLC (“Participating Special Entity” or “PSE”) was entered into May 1, 2013 (the “PSE Agreement”).

The PSE Agreement provides, in Section 10.4, that it may be amended with the written consent of both parties.

The Conservancy and PSE wish to amend the terms of the PSE Agreement by way of this First Amendment (the “First Amendment”).

AMENDMENT

A. The Conservancy and the PSE agree to amend the PSE Agreement as follows:

1. Section 3.1 of the Agreement is amended as follows:

“**Application**” means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, [including Addendum 1.0 which describes minor modifications to the project description at repair site 216,780.15.92](#) and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.

2. Section 5.4 is amended as follows:

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of ~~\$37,142.08~~ ~~\$10,924.14~~, which amount includes all HCP/NCCP mitigation fees necessary for the Project. The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). The overall payment amount is the sum of the following:

Development Fee: ~~\$22,940.70~~ ~~\$5,462.07~~
Contribution to Recovery: ~~\$14,201.38~~ ~~\$5,462.07~~

The payment must be paid in full before any ground-disturbance associated with the Project occurs. Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, 2014 and construction of the Project commences before March 15, 2014, the amount due will be as stated above. If PSE pays on or after March 15, 2014 or construction of the Project does not commence before March 15, 2014, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland mitigation fee. Based on these adjustments, if PSE pays before March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

3. Section 7.6 is amended as follows:

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy’s “Administrative Costs”). Conservancy’s Administrative Costs shall not exceed ~~\$8,5000~~ ~~\$5,000~~ in the aggregate. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy’s discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

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

- B. This First Amendment may be executed in counterparts.
- C. All other terms and conditions of the PSE Agreement shall remain as originally agreed.

D. The Conservancy shall issue a Certificate of Inclusion pursuant to Section 6.1 of the PSE Agreement that is revised to incorporate reference to this First Amendment.

E. This First Amendment shall take effect on the date after both of the following have occurred:

1. The Conservancy and PSE have executed the First Amendment; and

2. The Conservancy has delivered written notice to PSE that the Conservancy has received written concurrence from the Wildlife Agencies regarding the First Amendment in accordance with Section 6.1 of the PSE Agreement.

IN WITNESS WHEREOF, the Conservancy and PSE hereto execute this First Amendment.

**THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

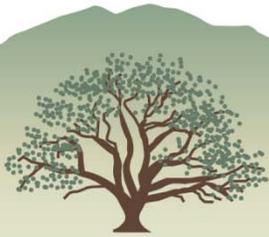
Dated: _____

By: _____
John Kopchik, Executive Director

PHILLIPS 66 PIPELINE LLC

Dated: _____

By: _____
William A. Hallett, Attorney-In-Fact



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

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

Template prepared by the
ECCC Habitat Conservancy

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

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

Addendum 1.0 for Repair 216,780.15.92

Project Applicant Information:

Project Name: Phillips 66 Pipeline Repairs Project, Line 200, Spring 2013- First Amendment

Project Applicant's Company/Organization: Phillips 66 Pipeline, LLC

Contact's Name: Terry Elrod

Contact's Phone: (559) 935-0388 Fax: (559) 935-8638

Contact's Email: terry.w.elrod@p66.com

Mailing Address: 256 East Polk Street
Coalinga, CA 93210

Project Description:

Lead Planner: Krystal Hinojosa

Project Location: East Contra Costa County, Marsh Creek Road Corridor and Altamont Wind Resources Area

Project APN(s) #: Unknown

Number of Parcels/Units: 4

Size of Parcel(s): N/A

Project Description/Purpose (Brief): Phillips 66 Pipeline, LLC received coverage under the NCCP/HCP to complete operational and safety repairs at three repair sites (Site IDs 193,220.16.33; 204,220.12.21; and 216,780.15.92) located along the existing Line 200 Mainline trunk pipeline within East Contra Costa County. Repair 193,220.16.33 was completed as described in the originally-approved PSR, while Repair 204,220.12.21 will be completed in the future. However, Repair 216,780.15.92 resulted in a larger impact area than was anticipated and described in the initially-approved PSR. This larger impact area was the result of difficulties in locating the pipeline anomaly, owing to pipeline-distance-disparities between the above-ground markers (AGMs) and the pig run data (see paragraph three of the executive summary). It was not until the initial excavation was complete that crews were able to discover and rectify the disparity, which increased the impact area from 0.15-acre to 0.95-acre.

Phillips 66 is requesting an amendment to the PSE Agreement for the Phillips 66 Pipeline Repairs Project, Line 200, Spring 2013 with the Conservancy to mitigate for the temporary impacts associated with the repair work.

Biologist Information:

Biological/Environmental Firm: Monk & Associates, Inc.

Lead Contact: Geoff Monk

Contact's Phone: (925) 947-4867 x 201 Fax: (925) 947-1165

Contact's Email: geoff@monkassociates.com

Mailing Address: 1136 Saranap Ave. Suite Q, Walnut Creek, CA 94595

East Contra Costa County HCP/NCCP Planning Survey Report for Phillips 66 Pipeline Repairs Project Participating Special Entity

Addendum 1.0

Executive Summary

The purpose of this Addendum is to request that the East Contra Costa County Habitat Conservancy approve the amendment of the Planning Survey Report (PSR) to address the changes in the project description. The Addendum only addresses the changes to Exhibit 1, the PSR, of the PSE Agreement dated May 1, 2013.

On May 3, 2013, the East Contra Costa County Conservancy (ECCCC) and Phillips 66 Pipeline Company (P66) entered into a *Participating Special Entity Agreement Implementing the Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP) Granting Take Authorization* (herein referred to as PSE) for the Line 200 Pipeline Repair Site 216,780.15.92 (hereafter “repair”) (this PSE also included take authorization for two other repair sites, which are not the subject of this addendum). The repair project consists of completing operational and safety pipeline repairs at a single location along P66’s Line 200 Mainline trunk pipeline within the HCP/NCCP jurisdictional area. Monk & Associates (M&A) has prepared this addendum to formally report, and request HCP/NCCP coverage for, necessary additional areas of impact associated with Line 200 Pipeline Repair 216,780.15.92.

In accordance with Section 6.4.3, Species-Level Measures, and Table 2a of the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP) (Jones & Stokes 2006), the presence of grassland vegetation at the pipeline repair site required that preconstruction surveys be conducted for the state and federal listed San Joaquin kit fox (*Vulpes macrotis mutica*) (kit fox), golden eagle (*Aquila chrysaetos*), and western burrowing owl (*Athene cunicularia hypugaea*), a California species of special concern, prior to the start of construction. Preconstruction surveys were completed in advance of construction with negative results. Similarly, no burrows or burrowing activity (i.e., suitable habitat for SJKF and WBO) were observed within the survey footprint of repair site 216,780.15.92. Survey results were submitted to the United States Fish & Wildlife Service (USFWS), the California Department of Fish and Wildlife (CDFW), and the East Contra Costa County Conservancy (ECCCC). It should be noted that the preconstruction surveys were of adequate extent as to include the original and additional repair footprints, and an area of influence. A formal survey report was sent to the USFWS, CDFW, and ECCCC. The pipeline repair work at Repair Site 216,780.15.92 commenced during the week of May 6, 2013, and was completed on June 10, 2013.

To determine the location of the pipeline anomaly, a “smart pig” and a “geo-pig tool” were dispatched through pipelines to conduct internal inspections of the pipelines. The “smart pig” detects any anomalies in the pipeline (e.g., shape deformities, dents, areas of corrosion, etc.). Anomalies meeting certain DOT-specified criteria are required to be repaired and/or evaluated. Actual repair sites are located by correlating smart pig data with above ground reference points (Above-ground markers, or AGMs). The distance to each anomaly is then measured in linear feet from the above ground reference locations. Since the linear footage of the run out of the smart pig does not account for hills, the depth of the pipe, and other surface features, the exact locations of the repair sites can only be estimated. Due to the extensive undulating topography at repair site 216,780.15.92, the initial repair site was erroneously located by some 300 feet. Unfortunately, the error in locating the pipeline repair was not discovered until the pipeline repair access road was cut and the repair excavation was dug.

To access the appropriate repair location, a new access route was graded upslope from Marsh Creek Road (see Figure 2.3 Revised). Once at the appropriate repair location, repair crews excavated the appropriate section of pipeline, located the anomaly and made the repair. Unfortunately, one of the local landowners who was providing repair crews with access to the pipeline, left for a vacation and did not want repair crews on their property in their absence. Thus, repair crews were forced to grade a very short third road from the original repair footprint to continue working at the appropriate repair location. The pipeline repair was completed and the land was restored to its previously existing condition on June 6, 2013. A table of impacts and costs is shown below.

Row ID	Disturbance Type	Land Type Disturbed	Acres of Temporary Disturbance	Acres of Permanent Disturbance	Mitigation Cost per Acre	Total Fee
A	Permitted Impact (Repair ID 216,780.15.92 Only)	Non-Native Annual Grassland	0.15-acre	None	\$21,848.28	**\$3,277.24 in mitigation and \$3,277.24 in contribution to recovery
B	Actual Initial Repair Impact (prior to addendum request)	Non-Native Annual Grassland	0.53-acre	None	\$20,152.00	*\$11,579.59
C	Additional Repair Impact	Non-Native Annual Grassland	0.42-acre	None	\$20,152.00	*\$9,176.28
D	Contribution to Recovery Fee for Amendment					\$8,739.31
E	Mitigation Fees Already Paid (Upon Approval of Initial PSR) for Repair ID 216,780.15.92 (From Row A)					\$3,277.24
F	Total Mitigation Fees Owed for All Work at Repair Site 216,780.15.92 (Rows B + C)- per Amendment					*\$20,755.87

G	Total Fees after what was already paid (Row F-Row E)	\$17,478.63
H	Plus Contribution to Recovery (Row D)- per Amendment	\$8,739.31
	Total Fees Outstanding (See Also Attached Fee Calculator)	\$26,217.94

*Mitigation Fees are based on the fee calculator in effect at the time of the project.

**The initially-permitted PSR included three repairs in total, and the total fee paid for the initial PSR was \$10,924.14, which consisted of \$5,462.07 in mitigation fees and \$5,462.07 in contribution to recovery fees. Of the three repairs initially permitted, Repair ID 216,780.15.92 constituted 60% of the total impact area. Thus, 60% of the initial fees should be applied towards the mitigation costs associated with Repair ID 216,780.15.92.

I. Project Overview

Project proponent: Terry Elrod

Project Name: Phillips 66 Pipeline Repairs Project, Line 200, Spring 2013-First Amendment

Application Submittal Date: March 18, 2013, Addendum August 14, 2013

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

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

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

Total Parcel Acreage: N/A

Acreage of land to be permanently disturbed²: 0.0-acre

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

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

Acreage of land to be temporarily disturbed³: 0.80-acre

II. Existing Conditions and Impacts

Land Cover Types

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

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Grassland^a				
<input checked="" type="checkbox"/> Annual grassland		0.80		
<input type="checkbox"/> Alkali grassland				
<input type="checkbox"/> Ruderal				
<input type="checkbox"/> Chaparral and scrub				
<input type="checkbox"/> Oak savanna ^a				
<input type="checkbox"/> Oak woodland				
Jurisdictional wetlands and waters				
<input type="checkbox"/> Riparian woodland/scrub				
<input type="checkbox"/> Permanent wetland ^a				
<input type="checkbox"/> Seasonal wetland ^a				
<input type="checkbox"/> Alkali wetland ^a				
<input type="checkbox"/> Aquatic (Reservoir/Open Water) ^a				
<input type="checkbox"/> Slough/Channel ^a				
<input type="checkbox"/> Pond ^a				
<input type="checkbox"/> Stream (acres) ^{a, d}				
<input type="checkbox"/> Total stream length (feet) ^{a, d}				
Stream length by width category				
<input type="checkbox"/> ≤ 25 feet wide				
<input type="checkbox"/> > 25 feet wide				
Stream length by type and order ^e				
<input type="checkbox"/> Perennial				
<input type="checkbox"/> Intermittent				

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

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Ephemeral, 3 rd or higher order				
<input type="checkbox"/> Ephemeral, 1 st or 2 nd order				
Irrigated agriculture^a				
<input type="checkbox"/> Cropland				
<input type="checkbox"/> Pasture				
<input type="checkbox"/> Orchard				
<input type="checkbox"/> Vineyard				
Other				
<input type="checkbox"/> Nonnative woodland				
<input type="checkbox"/> Wind turbines				
Developed				
<input type="checkbox"/> Urban				
<input type="checkbox"/> Aqueduct				
<input type="checkbox"/> Turf				
<input type="checkbox"/> Landfill				
Uncommon Vegetation Types (subtypes of above land cover types)				
<input type="checkbox"/> Purple needlegrass grassland				
<input type="checkbox"/> Wildrye grassland				
<input type="checkbox"/> Wildflower fields				
<input type="checkbox"/> Squirreltail grassland				
<input type="checkbox"/> One-sided bluegrass grassland				
<input type="checkbox"/> Serpentine grassland				
<input type="checkbox"/> Saltgrass grassland (= alkali grassland)				
<input type="checkbox"/> Alkali sacaton bunchgrass grassland				
<input type="checkbox"/> Other uncommon vegetation types (please describe)				
Uncommon Landscape Features or Habitat Elements				
<input type="checkbox"/> Rock outcrop				
<input type="checkbox"/> Cave ^a				
<input type="checkbox"/> Springs/seeps				

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Scalds				
<input type="checkbox"/> Sand deposits				
<input type="checkbox"/> Mines ^a				
<input type="checkbox"/> Buildings (bat roosts) ^a	—	—		—
<input type="checkbox"/> Potential nest sites (trees or cliffs) ^a	—	—		—
Total (Temporarily Impacted Acres)		0.80		

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

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

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

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

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

Field-Verified Land Cover Map

Figure 2.3 has been revised to reflect the new project footprint described in this application (attached).

Figures 3A.1-3A.3 which depict the field-verified land cover map for the repair site, remain unchanged. Due to missing ground-level photographs Figure 3B has not been included.

V. Mitigation Measures

The updated HCP/NCCP Fee Calculator has been included with this Addendum. As is shown in the Fee Calculator, a fee of \$17,478.63 is due for temporary impacts to 0.80-acre of land within HCP/NCCP Development Fee Zone Two. A contribution to recovery equal to 50% of the fees will be paid, in the amount of \$8,739.31. A total payment of \$26,217.94 will be paid by Phillips 66 for the Addendum. The fees shall be paid upon receipt of all project approvals and permits.

Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

PROJECT APPLICANT INFO:

Project Applicant: Phillips 66 Pipeline Company

Project Name: Phillips 66 Pipeline Repairs, Line 200, Spring 2013 - Amendment

APN (s): unknown

Date: August 14, 2013

Jurisdiction: Participating Special Entity

DEVELOPMENT FEE (see appropriate ordinance or HCP/NCCP Figure 9-1 to determine Fee Zone)

**Acreage of land to be
permanently disturbed (from
Table 1)¹**

	Full Development Fee		Fee per Acre (subject to change on 3/15/14 ²)	
Fee Zone 1		x	\$10,924.14 =	\$0.00
Fee Zone 2	0.80	x	\$21,848.28 =	\$17,478.63
Fee Zone 3		x	\$5,462.53 =	\$0.00
Fee Zone 4 ³		x	\$16,386.21 =	\$0.00
Development Fee Total =				\$17,478.63

**WETLAND MITIGATION FEE

	Acreage of wetland		Fee per Acre (subject to change on 3/15/14 ²)	
Riparian woodland / scrub		x	\$71,547.41 =	\$0.00
Perennial Wetland		x	\$123,103.63 =	\$0.00
Seasonal Wetland		x	\$257,781.10 =	\$0.00
Alkali Wetland		x	\$239,894.25 =	\$0.00
Ponds		x	\$123,103.63 =	\$0.00
Aquatic (open water)		x	\$61,025.73 =	\$0.00
Slough / Channel		x	\$130,468.80 =	\$0.00
Linear Feet				
Streams				
Streams 25 Feet wide or less (Fee is per Linear Foot)		x	\$428.23 =	\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)		x	\$644.98 =	\$0.00
Wetland Mitigation Fee Total =				\$0.00

FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee	
Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments	
Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant	
Reduction Total =	
\$0.00	

CALCULATE FINAL FEE

Development Fee Total	\$17,478.63
Wetland Mitigation Fee Total	+ \$0.00
Temporary Impact Fee Total (From Exhibit 2)	+ \$0.00
Fee Subtotal	= \$17,478.63
Contribution to Recovery	+ \$8,739.31
TOTAL AMOUNT TO BE PAID	= \$26,217.94

Notes:

1 City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.

2 The Conservancy is currently conducting the periodic fee audit required by the HCP/NCCP which could result in further adjustment to some or all fees in 2013. If the Conservancy Board approves changes to the fees based on the periodic fee audit on April 4, 2013 the fees will be adjusted to match the Board-approved fees. If the periodic audit is not adopted then fees will be as shown above.

3 "Fee Zone 4" is not shown on Figure 9.1 of the HCP/NCCP but refers to the fee applicable to those few covered activities located in northeastern Antioch (see page 9-21 of the HCP).

Template date: March 15, 2013